

National Committee for a Human Life Amendment

The Second Session of the 112th Congress convened on January 3, 2012. Bills are carried over from 2011. Information related to federal legislation—text of bills, testimony from hearings, committee reports, floor debates in the *Congressional Record*, roll call of floor votes, and the like—is available on the Library of Congress website: thomas.loc.gov.

I. Highlights**1. Health Care Mandates Violate Conscience Rights**

On January 20, the U.S. Department of Health and Human Services (HHS) reaffirmed a rule that virtually all private health care plans must cover sterilization, abortifacients, and contraception. The rule is set to take effect August 1, 2012. Non-profit religious employers that do not now provide such coverage, and are not exempt under the rule's extremely narrow definition of religious employer, will be given one year—to August 1, 2013—to comply. Those religious employers who would qualify under the narrow exemption would be required to notify employees of their policy and provide information where the services can be obtained.

Responding to the January 20 announcement, Cardinal-designate Timothy Dolan, archbishop of New York and president of the U.S. Conference of Catholic Bishops, stated: "In effect, the president is saying we have a year to figure out how to violate our consciences." Cardinal-designate Dolan continued: "To force Americans to choose between violating their consciences and forgoing their healthcare is literally unconscionable. . . It is as much an attack on access to health care as on religious freedom." Noting that the Obama administration "has now drawn an unprecedented line in the sand," the Cardinal-designate urged that the HHS mandate be overturned. "The Catholic bishops are committed to working with our fellow Americans to reform the law and change this unjust regulation." See: www.usccb.org/news/2012/12-012.cfm. For more information, see: www.usccb.org/conscience.

Last August 1, HHS issued a list of "preventive services for women" to be mandated in almost all private health plans under the new health care law, the Patient Protection and Affordable Care Act (PPACA). The mandated services include sterilization, all FDA-approved birth control (such as the IUD, Depo-Provera, 'morning-after' pills, and the abortion-inducing drug Ella), and "education and counseling" to promote these among all "women of reproductive capacity."

HHS's interim final rule allowed only a very narrow exemption for a "religious employer." The January 20 announcement made the interim rule final.

It is more important than ever that Members of Congress be urged to co-sponsor and work for the passage of the Respect for Rights of Conscience Act (H.R. 1179/S. 1467). See NCHLA Action Alert at: nchla.org/actiondisplay.asp?ID=292.

2. Abortion Non-Discrimination Act

A national campaign to force health care providers to participate in abortion threatens the civil rights of health care professionals and other health care entities. The Abortion Non-Discrimination Act (ANDA) (H.R. 361, S. 165) strengthens existing federal conscience protection laws and affirms the principle that no health care entity should be forced by government to perform or participate in abortions. ANDA will codify the Hyde/Weldon conscience protection amendment that has been part of annual appropriations law since 2004. ANDA also enhance enforceability, and will allow federal courts to provide the remedies needed to stop discrimination. Members of Congress should be urged to co-sponsor and support H.R. 361 and S. 165. For Action Alert, see: nchla.org/actiondisplay.asp?ID=287.

3. Respect for Rights of Conscience Act

The Respect for Rights of Conscience Act (H.R. 1179, S. 1467) would amend the new health care reform law, the Patient Protection and Affordable Care Act (PPACA), to preserve the rights of insurance issuers, providers and purchasers to negotiate a plan excluding items that are against moral and religious convictions. Until the passage of PPACA, the Federal Government had not imposed coverage or care requirements “that infringe on the rights of conscience” of the various stakeholders in health care. Members of Congress should be urged to co-sponsor and work for the passage of H.R. 1179/S. 1467. For Action Alert, see: nchla.org/actiondisplay.asp?ID=292.

4. Religious Liberty

In 2006, Migration and Refugee Services (MRS) of the U.S. Conference of Catholic Bishop (USCCB) was awarded a five-year government contract to provide assistance to victims of human trafficking. Starting October 10, 2011, the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services (HHS) declined to renew the contract. In its instructions to grant applicants, HHS stated that they would give “strong preference” to applicants willing to offer referrals for the “full range of legally permissible gynecological and obstetric care,” including family planning services. In 2009, the American Civil Liberties Union (ACLU) brought a lawsuit claiming that the MRS contract was unconstitutional. A spokesperson for the ACLU applauded HHS for its non-renewal of the USCCB contract.

5. Protect Life Act

The Protect Life Act (H.R. 358, S. 877) would bring the new health care law, the Patient Protection and Affordable Care Act (PPACA), into line with abortion policies related to funding and conscience rights that have long prevailed in other federal health programs. In 2011, the House passed H.R. 358. Senators should be urged to support and co-sponsor the S. 877. For Action Alert, see: nchla.org/actiondisplay.asp?ID=286.

6. No Taxpayer Funding for Abortion Act

The new health care reform law, the Patient Protection and Affordable Care Act (PPACA), underlined the need to place in permanent law the policies now found in various appropriations bills to restrict the funding and promotion of abortion. In 2011, the House passed the No Taxpayer Funding for Abortion Act (H.R. 3), a measure that would prevent federal funding of elective abortions and protect the rights of pro-life health care providers in all government programs. The Senate companion bill, S. 906, has the same text as the House-passed H.R. 3. Senators should be urged to co-sponsor and support this measure. For Action Alert, see: nchla.org/actiondisplay.asp?ID=288.

7. Child Interstate Abortion Notification Act

The Child Interstate Abortion Notification Act (CIANA) was first introduced in Congress in 2005. CIANA has two parts. The first consists of an earlier, related measure, the Child Custody Protection Act (CCPA), which makes it a federal crime to transport a minor girl across state lines to obtain an abortion with the intent of circumventing the parental involvement law of the girl's home state. The second part requires an abortion provider in a state without a parental involvement law to provide 24 hour notice to a parent or legal guardian before performing an abortion on a girl who is a resident of a different state.

In 2011, Rep. Ileana Ros-Lehtinen (R-FL) introduced CIANA (H.R. 2299) in the House, and Sens. Marco Rubio (R-FL) and Orrin Hatch (R-UT) introduced the companion bill (S. 1241) in the Senate.

8. China's Coercive One Child Policy and UNFPA

The United Nations Population Fund (UNFPA) has a record of supporting China's coercive one child policy. In 2011, Rep. Renee Ellmers (R-NC) introduced a bill to prohibit U.S. funding to the UNFPA (H.R. 2059). The bill was favorably reported from committee and is awaiting House floor action.

II. Review of Legislation

The Review of Legislation section contains detailed information on legislative action, along with reports on executive actions and court developments that have important implications for legislative policies. Bills are divided into two general kinds: appropriations and authorization. Please note that some issues relate to both kinds of bills.

Authorization bills provide the fundamental authority – the policies and procedures – by which various government agencies and programs operate. The authorization can be for an indefinite period, or for one or several years. Some authorization bills set a ceiling on the amount of money that can be spent, while others are open-ended.

However, authorization bills do not provide the money. That is the function of the annual appropriations bills, currently 12 in number. Within annual budget targets, these bills “appropriate” the actual amount of money to be spent on various authorized agencies and programs each fiscal year (October 1 to September 30). This amount may well be below the authorized ceiling. Congress also passes short-term and supplemental appropriations bills. Sometimes Congress appropriates funds for programs or agencies whose authorization has lapsed. And sometimes Congress attaches policy riders to the appropriations bills. A number of policies prohibiting government funding of abortion exist as riders or amendments that must be enacted into law each year as part of an appropriations bill.

Ideally, appropriations bills are first passed by the House and then the Senate. Each bill is developed in its own subcommittee.

The target date for Congress to pass a budget resolution is April 15. Even if there is no budget resolution, the House can consider appropriations bills on the floor beginning May 15. The House is supposed to finish passing all its appropriations bills by June 30. The bills should then be taken up by the Senate, with all bill signed into law by September 30.

The process can be neither orderly nor timely. Not infrequently, one or more stopgap funding bills called Continuing Resolutions (CRs) temporarily extend the government’s authority to spend money until long-term funding measures of some kind are passed.

B. Authorization Bills

Issues considered in this section include:

1. Abortion Non-Discrimination Act
2. Child Interstate Abortion Notification Act
3. China’s Coercive One-Child Policy and UNFPA
4. Embryonic Stem Cell Research
5. Health Care Mandates
6. No Taxpayer Funding for Abortion Act
7. Protect Life Act
8. Religious Liberty
9. Respect for Rights of Conscience Act

1. Abortion Non-Discrimination Act

A national campaign to force health care providers to participate in abortion threatens the civil rights of health care professionals and other health care entities. The Abortion Non-Discrimination Act (ANDA) (H.R. 361, S. 165) strengthens existing federal conscience protection laws and affirms the principle that no health care entity should be forced by government to perform or participate in abortions.

A 1996 law prohibits governmental discrimination against health care entities because they decline to train in, perform, or arrange for abortions. In 2004, through passage of the Hyde/Weldon Amendment, Congress extended the 1996 law's protection to the full range of health care entities and prohibited discrimination also when the health care entities do "not provide, pay for, provide coverage of, or refer for abortions." The Hyde/Weldon Amendment has been part of the annual Labor/Health and Human Services appropriations bills since then.

ANDA will codify the Hyde/Weldon Amendment by making it permanent law. It will allow federal courts to provide the remedies needed to stop discrimination. It also will enhance enforceability. Health care entities may initiate legal action to defend their conscience rights; the U.S. Attorney General may also initiate action on their behalf. The Office for Civil Rights of the Department of Health and Human Services may also investigate claims of discrimination, in coordination with the Attorney General.

The need for ANDA is clear from recent increased threats against pro-life health care providers. The U.S. Department of Health and Human Services has begun discriminating against grant applicants that will not do abortion referrals, claiming that current conscience laws do not forbid this. The University of Medicine and Dentistry of New Jersey recently threatened the jobs of twelve nurses who would not assist in abortions, saying the nurses have no right to sue them in court because existing laws do not clearly state this. In California, state officials are demanding that even Catholic organizations provide abortion coverage, arguing that current laws do not apply and that the federal government would never deny California all its funds under the Labor/HHS bill. These threats will only grow unless ANDA is enacted into law.

Language embracing the intent of ANDA is included in the No Taxpayer Funding for Abortion Act (H.R.3) passed by the House on May 4, 2011, and in the Protect Life Act (H.R. 358) passed by the House on October 13, 2011.

ANDA amends the Public Health Service Act (42 U.S. Code Sec. 238n). The provisions of the bill include:

- Sec. 2(1): "Abortion-related discrimination in governmental activities" is explicitly extended beyond the training and licensing of physicians to "the practice of physicians and other health care entities."
- Sec. 2. (2)(1): The grounds on which a health care entity may not be discriminated against by any governmental entity is expanded to include the entity's refusal to "participate in, provide coverage of, or pay for induced" abortions.
- Sec. 2. (4): The definition of "financial assistance" is amended to cover the variety of ways governments pay for health care related activities. The definition of "health care entity" is also amended to include the full range of health professionals, programs, organizations, and insurance plans.

- Sec. 2(5): A new definition is added for the term “State or local government that receives Federal financial assistance.”
- Sec. 2(7): Two new sections in the law address “Remedies” and “Administration.” Currently, the presumed recourse for violations of the law is the denial of all funding under the Labor/HHS bill. Under ANDA, the remedies are more focused. The courts will have jurisdiction “to prevent and redress actual or threatened violations” of this law, including injunctions against prohibited conduct or orders preventing disbursement of all or a portion of Federal financial assistance until the prohibited conduct at the State or local level has ceased. Health care entities may initiate legal action to defend their conscience rights; the U.S. Attorney General may also initiate action on their behalf. The Office for Civil Rights of the Department of Health and Human Services may also investigate claims of discrimination, in coordination with the Attorney General.

House: On January 20, 2011, Reps. John Fleming (R-LA) and Dan Boren (D-OK) introduced the Abortion Non-Discrimination Act (ANDA) (H.R. 361). The bill has 116 other sponsors and was referred to the Subcommittee on Health of the Committee on Energy and Commerce.

In a letter to Congress, Cardinal Daniel DiNardo urged Representatives to co-sponsor and support ANDA. For text of letter, see: nchla.org/datasource/iddocuments/HR361_USCCB.pdf.

Senate: On January 25, 2011, Sen. David Vitter (R-LA) introduced ANDA (S. 165) in the Senate. The bill has 10 co-sponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

For NCHLA Action Alert on H.R. 361/S. 165, see: nchla.org/actiondisplay.asp?ID=287.

For a list of current sponsors of H.R. 361 and S. 165, as found on the Thomas website, see, respectively: thomas.loc.gov/cgi-bin/bdquery/z?d112:HR00361:@@P and thomas.loc.gov/cgi-bin/bdquery/z?d112:S00165:@@P.

See NCHLA document listing the roll call vote on H.R. 3 and co-sponsors of H.R. 3, H.R. 358, H.R. 361, H.R. 1179 at: nchla.org/datasource/iddocuments/CoH2-3-12.pdf.

See NCHLA document listing co-sponsors of S. 165, S. 877, S. 906 and S. 1467 at: nchla.org/datasource/iddocuments/CoSen2-2-12.pdf.

2. Child Interstate Abortion Notification Act

Background: The Child Interstate Abortion Notification Act (CIANA) was first introduced in Congress in 2005. CIANA has two parts. The first consists of an earlier, related measure, the Child Custody Protection Act (CCPA), which makes it a federal crime to transport a minor girl across state lines to obtain an abortion with the intent of circumventing the parental involvement

law of the girl's home state. The second part requires an abortion provider in a state without a parental involvement law to provide 24 hour notice to a parent or legal guardian before performing an abortion on a girl who is a resident of a different state.

The House approved CCPA in 1998, 1999, and 2002, with substantial majorities—276-yes, 150-no; 270-yes, 159-no; and 260-yes, 161-no, respectively—but the Senate rebuffed the measure.

In 2005, the House passed the newly introduced CIANA, also by a substantial majority, 270-yes, 157-no. In 2006, the Senate passed CCPA, with a solid bipartisan vote, 65-yes, 31-no, but Senate leadership objected to a conference with the House to resolve differences between the two bills. Later in 2006, the House passed a revised CIANA (S. 403), 264-yes, 153-no, but the Senate fell short of the 60 votes needed to approve a motion to end debate on that bill, voting 57-yes, 42-no.

In general, the 2011 bill reflects the version of CIANA passed by the House later in 2006 (S. 403). It provides an exception if the abortion is necessary to save the life of the minor, and, in the second part of the law, the physician is required within 24 hours to notify a parent that the abortion was performed and its circumstances. An exception for the physical health of the minor that was part of this section of the 2006 bill is dropped in the 2011 bill. The parent who has committed an act of incest with the minor may not have recourse to civil action. A person who has committed an act of incest with the minor and transports the minor across state lines for an abortion shall be fined or imprisoned or both.

EndRoe.org provides a brief overview of U.S. Supreme Court cases addressing the application of *Roe* to state parental involvement laws: “The Court has struck down parental consent and notice statutes and ordinances if they did not contain a judicial bypass mechanism that would afford the pregnant minor the opportunity to avoid obtaining the consent of (or giving notice to) her parents or legal guardian. . . but has upheld statutes that contained an adequate judicial bypass. . . .” See “The Court’s Abortion Jurisprudence,” III. Applications of *Roe*, at: EndRoe.org/roeanalysis.aspx.

House: On June 22, 2011, Rep. Ileana Ros-Lehtinen (R-FL) introduced CIANA (H.R. 2299). The measure has 145 co-sponsors and was referred to the Subcommittee on the Constitution and to the Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary.

On introduction of H.R. 2299, Rep. Ros-Lehtinen stated: “CIANA reflects the inviolable right of parents to guide their children’s upbringing. States have implemented parental notification and consent laws in recognition of this right. Yet, minors cross into other states to avoid these state requirements. CIANA would address this loophole by requiring that parents be notified before their children have abortions.”

Senate: On June 21, 2011, Sens. Marco Rubio (R-FL) and Orrin Hatch (R-UT) introduced the companion CIANA bill (S. 1241). The measure has 31 other sponsors and was referred to the Committee on the Judiciary.

On introduction of S. 1241, Sen. Rubio stated that this bill “is supported by a broad majority of parents, who are in a much better position to help children with tough decisions than virtually anyone else.” Sen. Hatch added: “The majority of States have laws requiring parental involvement and, with its interstate component, this bill is a legitimate and constitutional way for Congress to help protect children and support parents.” *Congressional Record*, S3975 (June 21, 2011).

3. China’s Coercive One Child Policy and UNFPA

The United Nations Population Fund (UNFPA) has a record of supporting China’s coercive one child policy.

House: On May 31, 2011, Rep. Renee Ellmers (R-NC) introduced a bill entitled, To prohibit funding to the United Nations Population Fund (H.R. 2059). The measure has 107 co-sponsors. The bill states: “Notwithstanding any other provision of law, the Secretary of State may not make a contribution to the United Nations Population Fund (UNFPA).”

Committee: On October 5, 2011, the Committee on Foreign Affairs (Rep. Ileana Ros-Lehtinen, R-FL, Chairman) held a markup hearing on H.R. 2059, favorably reporting the measure, 23-yes, 17-no. Addressing the committee, Chairman Ros-Lehtinen argued that the UNFPA “not only supports China’s coercive ‘One Child’ policy, but commends it as a ‘model’ for population programs across the globe.” Because the Obama Administration fails to enforce the Kemp-Kasten Amendment as it applies to the UNFPA, it is necessary for Congress to take action “to prevent U.S. taxpayer dollars from continuing to benefit UNFPA, in contravention of U.S. law.” The Chairman also noted that the UNFPA does not need U.S. funding, reportedly having reserves of 500 million dollars.

Following the committee action, Rep. Ellmers stated that “this important bill will now be granted the opportunity to have a full vote in the House and I urge my colleagues to vote for its passage.”

4. Embryonic Stem Cell Research

Background: In 2009, following a directive from President Obama, the National Institutes of Health (NIH) published guidelines for government funding of destructive embryonic stem cell research (ESCR). In 2011, the ESCR guidelines were upheld in a court challenge.

Legislation: On June 24, 2011, Rep. Diana DeGette (D-CO) introduced the Stem Cell Research Advancement Act (H.R. 2376), which is being promoted as the vehicle to place the Obama guidelines in permanent law. The bill has 25 co-sponsors and was referred to the Subcommittee on Health of the Committee on Energy and Commerce.

The Secretary of HHS is authorized to conduct and support research using human stem cells,

include embryonic stem cells, which must be derived from human embryos donated by IVF clinics. The embryos must be in excess of those needed for treatment, be otherwise discarded, and be given with written informed consent of the donors. The Secretary, with the Director of NIH, is authorized to maintain, review and update guidelines for human stem cell research. The bill contains a prohibition against government funding of human cloning, but the term “human cloning” is defined to mean implantation of a human clone into a uterus. As a result, human clones not implanted in a uterus can be destroyed through government funded research.

Public Opinion Polling: A recent public opinion poll shows that 47% of Americans oppose federal funding of stem cell research that involves destroying human embryos, while only 38% support such funding. These findings are consistent with earlier polls in 2004, 2005, and 2006. Asked whether scientists should be allowed to clone human embryos to be destroyed in medical research, 12% responded “yes,” 76% responded “no.” For more information, see: old.usccb.org/comm/archives/2010/10-159.shtml.

5. Health Care Mandates

On January 20, 2012, the U.S. Department of Health and Human Services (HHS) reaffirmed a rule that virtually all private health care plans must cover sterilization, abortifacients, and contraception. The rule is set to go into effect August 1, 2012. Non-profit religious employers that do not now provide such coverage, and are not exempt under the rule’s extremely narrow definition of religious employer, will be given one year—to August 1, 2013—to comply. Those religious employers who would qualify under the narrow exemption would be required to notify employees of their policy and provide information where the services can be obtained.

Responding to the January 20 announcement, Cardinal-designate Timothy Dolan, archbishop of New York and president of the U.S. Conference of Catholic Bishops, stated: “In effect, the president is saying we have a year to figure out how to violate our consciences.” Cardinal-designate Dolan continued: “To force Americans to choose between violating their consciences and forgoing their healthcare is literally unconscionable. . . . It is as much an attack on access to health care as on religious freedom.” Noting that the Obama administration “has now drawn an unprecedented line in the sand,” the Cardinal-designate urged that the HHS mandate be overturned. “The Catholic bishops are committed to working with our fellow Americans to reform the law and change this unjust regulation.” See: www.usccb.org/news/2012/12-012.cfm.

Cardinal-designate Dolan also has expressed his views in a video. See: bcove.me/ob5itz9v.

On July 19, 2011, the Institute of Medicine (IOM) had submitted recommendations to the Department of Health and Human Services (HHS) on the “preventive services for women” to be mandated in almost all private health plans under the new health care law, the Patient Protection and Affordable Care Act (PPACA). The mandated services include sterilization, all FDA-approved birth control (such as the IUD, Depo-Provera, ‘morning-after’ pills, and the abortion-inducing drug Ella), and “education and counseling” to promote these among all “women of reproductive capacity.”

On August 1, 2011, HHS adopted these recommendations in an interim final rule. The rule allowed only a very narrow exemption for a “religious employer.” The time for public comment concluded September 30, 2011. The January 20 announcement made this interim rule final.

On August 31, 2011, the Office of General Counsel, USCCB, submitted formal comments on the interim final rule to HHS. See: nchla.org/datasource/idocuments/usccbhc-hhs-ps-2011-08.pdf.

For additional information, see: www.usccb.org/conscience.

Cardinal Daniel DiNardo, chairman of the bishops’ Committee on Pro-Life Activities, strongly opposed the IOM’s recommendations. People would be forced to carry health coverage “that violates the deeply-held moral and religious convictions of many.” See: usccb.org/news/2011/11-143.cfm. When HHS issued the rule, Cardinal DiNardo charged that the ‘religious’ exemption was so narrow “as to exclude most Catholic social services agencies and healthcare providers,” adding that “Catholics are not alone in conscientiously objecting to this mandate.” See: www.usccb.org/news/2011/11-154.cfm.

Statement of Leaders: In a statement published as an ad, 20 Catholic organizations responded to the HHS “preventive services” mandate. “In a pluralistic society, our health care system should respect the religious and ethical convictions of all. We ask Congress, the Administration, and our fellow Americans to acknowledge this truth and work with us to reform the law accordingly.” See: nchla.org/datasource/idocuments/usccb.conscience-ad.pdf. By December 22, 2011, at least 434 leaders had signed the statement. See: www.usccb.org/issues-and-action/religious-liberty/conscience-protection. The number of signees continues to increase.

Hearings: On November 2, 2011, the Subcommittee on Health (Chairman Rep. Joseph Pitts, R-PA) of the Committee on Energy and Commerce held a hearing, “Does New Health Law Mandate Threaten Conscience Rights and Access to Care?” On November 1, 2011, Cardinal Daniel DiNardo sent a letter to Chairman Pitts, urging Congressional approval of the Respect for Rights of Conscience Act. The Cardinal noted the legislation “would not affect any state or federal obligation to provide health coverage, except to provide that new nationwide mandates under the new health care reform law will not forbid the issuers, sponsors, and beneficiaries of private health plans to negotiate health coverage that is consistent with their moral and religious convictions.” For full text of the letter, see: usccb.org/issues-and-action/religious-liberty/conscience/protection/upload/DiNardo-to-Pitts-on-Conscience=Rights-11-1-11.pdf.

Action Alert: It is more important than ever that Members of Congress be urged to co-sponsor and work for the passage of the Respect for Rights of Conscience Act (H.R. 1179, S. 1467). See NCHLA Action Alert on the Respect for Rights of Conscience Act at: nchla.org/actiondisplay.asp?ID=292. For more information on this bill, see separate section below in this Legislative Report.

6. No Taxpayer Funding for Abortion Act

The passage in 2010 of the health care reform law, the Patient Protection and Affordable Care Act (PPACA), underlined the need to place in permanent law the policies now found in various appropriations bills to restrict the funding and promotion of abortion. In 2011, the No Taxpayer Funding for Abortion Act (H.R. 3, S. 906) was introduced in House and, with an amendment from the Ways and Means Committee, was approved. The House-passed bill was introduced in the Senate. This important measure prevents federal funding of elective abortions and protects the rights of pro-life health care providers in all government programs.

Title I of H.R. 3/S. 906 amends Title 1 of the U.S. Code by adding: “Chapter 4—Prohibiting Taxpayer Funded Abortions and Providing for Conscience Protection,” with 10 sections. Sections 301-303 specify prohibitions on use of federal funds for abortion. Sections 304-308 define limitations to the prohibitions, including “Treatment of abortion related to rape, incest, or preserving the life of the mother” (Section 308). Section 309 applies the funding prohibition to the District of Columbia. Section 310—“No government discrimination against certain health care entities”—provides for conscience protection, reflecting the Weldon conscience protection provisions in annual appropriations law and provisions in the Abortion Nondiscrimination Act (H.R. 361, S. 165).

Title II of H.R. 3/S. 906, concerned with eliminating tax benefits related to abortion, amends the Internal Revenue Code in four areas.

House: On January 20, 2011, Reps. Chris Smith (R-NJ) and Dan Lipinski (D-IL) introduced the No Taxpayer Funding for Abortion Act (H.R. 3). In a letter to Congress, Cardinal Daniel DiNardo urged Representatives to support and co-sponsor the bill. For full text of letter, see: nchla.org/datasource/idocuments/1.hr3letter21.11.pdf.

Judiciary Committee: On February 8, 2011, the Constitution Subcommittee (Chairman, Rep. Trent Franks, R-AZ) of the House Judiciary Committee held a hearing on H.R. 3. For their testimony, see: judiciary.house.gov/hearings/hear_02082011.html.

On March 3, 2011, the full House Judiciary Committee marked up H.R. 3. Fifteen weakening amendments were rejected, and the bill was approved, 23-yes, 14-no. See: nchla.org/datasource/idocuments/HouseJudiciaryCommittee-votesg.pdf. For the committee report on H.R. 3, see House Report 112-38, Part 1a: www.gpo.gov/fdsys/pkg/CRPT-112hrpt38/pdf/CRPT-112hrpt38-pt1.pdf.

Ways and Means Committee: On March 29, 2011, Rep. David Camp (R-MI), chairman of the Ways and Means Committee, introduced H.R. 1232, a measure to modify and clarify the tax provisions of H.R. 3. These changes were acceptable to the sponsors of H.R. 3. On March 31, 2011, the Committee approved H.R. 1232, 22-yes, 14-no. See: nchla.org/datasource/idocuments/HR1232_Markup.pdf.

Floor: In Rules Committee, the measure approved by the Ways and Means Committee, H.R. 1232, was incorporated into H.R. 3 as Title II. *On May 4, 2011, the House passed the rule, and, after defeating a motion to recommit with instructions, approved H.R. 3, 251-yes, 175-no, 6-not voting (Roll Call 292).* See: nchla.org/keyvotes.asp.

Senate: On May 5, 2011, Sen. Roger Wicker (R-MS) introduced the No Taxpayer Funding for Abortion Act (S. 906). The measure has 36 co-sponsors and was referred to the Committee on Finance. The text of S. 906 is identical to H.R. 3 as approved by the House on May 4, 2011.

Senators should be urged to co-sponsor and support S. 906. For Action Alert, see: nchla.org/actiondisplay.asp?ID=288.

For a list of the Senate co-sponsors of S. 906, as found on the Thomas web site, see: thomas.loc.gov/cgi-bin/bdquery/z?d112:s00906:@@P.

Also see NCHLA document listing co-sponsors of S. 165, S. 877, S. 906, S. 1467: nchla.org/datasource/idocuments/CoSen2-2-12.pdf.

7. Protect Life Act

Background: The health care reform bill, the Patient Protection and Affordable Care Act (PPACA), was enacted into law in 2010. The provisions in the law on preventing abortion funding are unacceptable, and the provisions on conscience protections are not adequate for health care providers, plans or employers. The Protect Life Act, introduced in both House and Senate (H.R. 358, S. 877), would bring PPACA into line with abortion policies related to funding and conscience rights that have long prevailed in other federal health programs.

In PPACA, Sec. 1303 Special Rules is amended by Sec. 10104 (c). As amended, Sec. 1303 has four parts: (a) State Opt-Out of Abortion Coverage; (b) Special Rules Relating to Coverage of Abortion Services; (c) Application of State and Federal Laws Regarding Abortion; and (d) Application of Emergency Services Law. The Protect Life Act would modify these special rules “to conform to long-standing federal policy.”

- Sec. 1303 (b) is replaced with “(b) Special Rules Relating to Training in and Coverage of Abortion Services,” in which it is provided that PPACA does not require “any health plan to provide coverage of or access to abortion services” or “require coverage of, access to, or training in abortion services.”
- A new subsection is added, “(c) Limitation on Abortion Funding,” in which no funds under PPACA may be used to pay for any abortion except in the cases of rape or incest, or when the pregnant female is in danger of death due to a physical disorder, injury, or illness unless an abortion is performed. There are provisions in this subsection for the option to purchase and offer separate abortion coverage.

- A second new subsection is added, “(g) Nondiscrimination on Abortion,” in which the provisions of the Abortion Non-Discrimination Act (H.R. 361, S. 165) and the Weldon conscience protection appropriations law are applied to PPACA.
- Old subsections (c) and (d) are redesignated (e) and (f). Several amendments are made to these subsections, including the application of the new subsection (g) on conscience protection to their provisions.

House: On January 20, 2011, Reps. Joseph Pitts (R-PA) and Dan Lipinski (D-IL) introduced the Protect Life Act (H.R. 358).

In a letter to Congress, Cardinal Daniel DiNardo, Chairman of the bishops’ Committee on Pro-Life Activities, noted that H.R. 358 “will bring PPACA into line with policies on abortion and conscience rights that have long prevailed in other federal health programs.” The Cardinal highlighted four aspects of the Protect Life Act: (1) It would ensure “that all funds authorized or appropriated by PPACA are covered by the longstanding policy of the Hyde amendment, which prohibits funding abortions except in cases of life endangerment or rape/incest.” (2) It would prevent federal funds “from subsidizing health plans that cover abortions beyond the Hyde exceptions.” (3) It would restore conscience protections modeled on the Weldon amendment that has been part of annual appropriations law since 2004. (4) It would close a loophole in PPACA’s non-preemption clause on state laws. PPACA will not preempt states laws restricting abortion or protecting conscience rights and states will not be allowed to override PPACA’s provisions “ensuring that health plans without elective abortions are available in each state.” The Cardinal urged Representatives to support and co-sponsor this legislation. For full text of letter, see: nchla.org/datasource/idocuments/HR358_USCCB.pdf.

Energy and Commerce Committee: On February 9, 2011, the House Energy and Commerce Subcommittee on Health (Chair, Rep. Pitts) held a hearing on H.R. 358. Douglas Johnson, National Right to Life Committee, and Helen Alvare, George Mason University School of Law, testified in favor of the bill. Their testimony can be found at: energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=8180.

On February 11, 2011, during markup of H.R. 358 in the Health Subcommittee, five hostile weakening amendments were rejected, and the bill was approved, 14-yes, 9-no. See: nchla.org/datasource/idocuments/HealthSub-HR358-Markup-e.pdf.

On February 15, 2011, during markup in the full Energy and Commerce Committee, three hostile weakening amendments were defeated, and the bill was approved, 33-yes, 19-no. See: nchla.org/datasource/idocuments/2HR358.FullComVts.15c.11.pdf.

For the committee report on H.R. 358, see House Report 112-40, Part 1 at: www.gpo.gov/fdsys/pkg/CRPT-112hrpt40/pdf/CRPT-112hrpt40-pt1.pdf.

Floor: Rep. Lois Capps (D-CA) offered a motion to recommit the bill to committee with instructions to amend the provision on EMTALA [Emergency Medical Treatment and Active Labor Act]. The Secretariat of Pro-Life Activities, USCCB, had prepared a fact sheet explaining why the EMTALA provision in H.R. 358 was consistent with long-established federal policy and should be retained. See: nchla.org/datasource/idocuments/emtalafact10.11.pdf. *On October 13, 2011, the motion to recommit was defeated, 173-yes, 249-no (Roll Call 788), and in a bipartisan vote H.R. 358 was approved, 251-yes, 172-no (Roll Call 789).*

Senate: On May 4, 2011, Sen. Orrin Hatch (R-UT) introduced the Protect Life Act (S. 877). The measure has 34 co-sponsors and was referred to the Committee on Finance.

In a May 13, 2011 letter, Cardinal Daniel DiNardo, chairman of the bishops' Committee on Pro-Life Activities, urged Senators to support and co-sponsor S. 877. See: nchla.org/datasource/idocuments/s877letter.pdf.

See NCHLA Action Alert at: nchla.org/actiondisplay.asp?ID=286.

For the list of current sponsors of S. 877, as found on the Thomas web site, see: thomas.loc.gov/cgi-bin/bdquery/z?d112:S00877:@@P.

For NCHLA document listing the roll call vote on H.R. 3 and co-sponsors of H.R. 3, H.R. 358, H.R. 361, H.R. 1179, see: nchla.org/datasource/idocuments/CoH2-3-12.pdf.

For NCHLA document listing co-sponsors of S. 165, S. 877, S. 906 and S. 1467, see: nchla.org/datasource/idocuments/CoSen2-2-12.pdf.

8. Religious Liberty

HHS Declines to Renew Church Contract: In 2006, Migration and Refugee Services (MRS) of the U.S. Conference of Catholic Bishop (USCCB) was awarded a five-year government contract to provide assistance to victims of human trafficking. Starting October 10, 2011, the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services (HHS) declined to renew the contract, awarding contracts to three other groups. In its instructions to grant applicants, HHS stated that they would give “strong preference” to applicants willing to offer referrals for the “full range of legally permissible gynecological and obstetric care,” including family planning services. In 2009, the American Civil Liberties Union (ACLU) brought a lawsuit—still underway—claiming that the MRS contract was unconstitutional. A spokesperson for the ACLU applauded HHS for its non-renewal of the USCCB contract.

The bishops' Media Office responded that there seems to be a new unwritten reg at HHS. “It’s the ABC Rule, Anybody But Catholics.” With respect to the ACLU lawsuit, ORR “apparently has made its own decision apart from any judgment of the court.” They added, “So much for the Administration’s guarantee of conscience protection.” For more, see: uscgbmedia.blogspot.com.

Hearings: On December 1 and 14, 2011, the House Committee on Oversight and Government Reform held hearings on “HHS and the Catholic Church: Examining the Politicization of Grants.” For more information, see: oversight.house.gov.

For resources and background information, see:
old.usccb.org/prolife/issues/abortion/andaindex.shtml.

9. Respect for Rights of Conscience Act

Background: The Respect for Rights of Conscience Act (H.R. 1179, S. 1467) would amend the new health care reform law, the Patient Protection and Affordable Care Act (PPACA), to preserve the rights of insurance issuers, providers and purchasers to negotiate a plan excluding items that are against moral and religious convictions. Until the passage of PPACA, the Federal Government had not imposed coverage or care requirements “that infringe on the rights of conscience” of the various stakeholders in health care.

The Respect for Rights of Conscience Act adds a new section to the PPACA law: “Respecting Rights of Conscience with Regard to Specific Items or Services.” No health plan shall be considered to have failed to fulfill any requirement under various provisions of federal health care law because it declines to provide coverage of specific items or services on the grounds the coverage “is contrary to the religious beliefs or moral convictions” of the plan or its beneficiaries. No health care provider shall be required “to provide, participate in, or refer for a specific item or service contrary to the provider’s religious beliefs or moral convictions.” No official or entity implementing PPACA shall discriminate against a health plan, plan sponsor, health care provider, or other person “because of such plan’s, sponsor’s, provider’s, or person’s unwillingness to provide coverage of, participate in, or refer for, specific items or services pursuant to this paragraph.” These conscience rights concern the protection of individual rights and create a private cause of action. “Any person or entity may assert a violation of this paragraph as a claim or defense in a judicial proceeding.” The Federal courts shall have jurisdiction to address actual or threatened violations. Action may be instituted by the Attorney General of the United States or by any person or entity having standing to complain of a threatened or actual violation. The Office for Civil Rights of the Department of Health and Human Services may receive complaints of discrimination and coordinate the investigation.

House: On March 17, 2011, Reps. Jeff Fortenberry (R-NE) and Dan Boren (D-OK) introduced the Respect for Rights of Conscience Act (H.R. 1179). The measure has 118 other sponsors and was referred to the Subcommittee on Health of the Committee on Energy and Commerce.

Hearing: On November 2, 2011, the Subcommittee on Health (Chairman Rep. Joseph Pitts, R-PA) of the Committee on Energy and Commerce held a hearing, “Does New Health Law Mandate Threaten Conscience Rights and Access to Care?” In a November 1, 2011 letter, Cardinal Daniel DiNardo, chairman of the bishops’ Committee on Pro-Life Activities, urged Congressional approval of the Respect for Rights of Conscience Act, noting the legislation “would not affect any state or federal obligation to provide health coverage, except to provide

that new nationwide mandates under the new health care reform law will not forbid the issuers, sponsors, and beneficiaries of private health plans to negotiate health coverage that is consistent with their moral and religious convictions.” See: usc.cb.org/issues-and-action/religious-liberty/conscience/protection/upload/DiNardo-to-Pitts-on-Conscience=Rights-11-1-11.pdf. (See just below for earlier letters of April 6, 2011, July 22, 2011, and September 7, 2011.)

Senate: On August 2, 2011, Sen. Roy Blunt (R-MO) introduced the Respect for Rights of Conscience Act (S. 1467). The bill has 28 co-sponsors and was referred to the Committee on Health, Education, Labor, and Pensions.

In addition to his November 1, 2011 letter, Cardinal Daniel DiNardo had sent three earlier letters in support of the Respect for Rights of Conscience Act.

- On April 6, 2011, Cardinal Daniel DiNardo sent a letter to Congress, urging Representatives to co-sponsor and support H.R. 1179, a measure to “help ensure that the new health care reform act is not misused to violate the religious freedom and rights of conscience of those who offer and purchase health insurance coverage in our nation.” H.R. 1179 “does not reverse or alter any requirement under current state or federal law; it only prevents PPACA itself from being misused to deny Americans’ existing freedom to seek health care coverage that meets their medical needs and respects their deepest convictions.” See: nchla.org/datasource/ido cuments/DiNardo-ltr-HR1179.pdf.
- Because of the Institute of Medicine’s recommendations on mandated services under PPACA, the need for Members of Congress to co-sponsor the Respect for Rights of Conscience Act is more critical than ever, as Cardinal DiNardo noted in a new July 22, 2011 letter to Congress. See: nchla.org/datasource/ido cuments/1179-07-22-11.pdf.
- On September 7, 2011, Cardinal DiNardo sent a follow-up letter to Congress, stressing the importance of co-sponsoring and supporting both H.R. 1179 and S. 1467. The August 3, 2011 interim final rule on “preventive services for women” published by the Department of Health and Human Services brought a new urgency to the need. That rule would require most private health care plans under PPACA to cover surgical sterilization, all prescription contraceptives approved by the FDA (including drugs like Ella that can cause abortions in early pregnancy), and “education and counseling” to promote these to “all women of reproductive capacity.” The Cardinal stated, “The new HHS mandate underscores a major deficiency in PPACA—it lacks a conscience clause to prevent the Act itself from being used to suppress the rights and freedoms of those who may have moral or religious objections to specific procedures.” H.R. 1179 and S. 1467 address this serious flaw in PPACA.

The Cardinal decried the interim final rule’s “incredibly narrow exemption for ‘religious employers’ that protects almost no one.” To qualify for the exemption, a Catholic institution serving the poor would have to fire its non-Catholic staff, refuse care to non-Catholics, and devote itself instead to the inculcation of religious values. “The effort to

corral religion exclusively into the sanctuaries of houses of worship betrays a complete ignorance of the role of religion in American life, and of Congress' long tradition of far more helpful laws on religious freedom.” See: nchla.org/docdisplay.asp?ID=390.

See NCHLA Action Alert at: nchla.org/actiondisplay.asp?ID=292.

For a list of current sponsors of H.R. 1179 and S. 1467 as found on the Thomas website, see: thomas.loc.gov/cgi-bin/bdquery/z?d112:HR01179:@@P and thomas.loc.gov/cgi-bin/bdquery/z?d112:S01467:@@P.

For NCHLA document listing the roll call vote on H.R. 3 and co-sponsors of H.R. 3, H.R. 358, H.R. 361, H.R. 1179, see: nchla.org/datasource/idocuments/CoH2-3-12.pdf. For NCHLA document listing co-sponsors of S. 165, S. 877, S. 906 and S. 1467, see: nchla.org/datasource/idocuments/CoSen2-2-12.pdf.