



Secretariat of Pro-Life Activities

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194

202-541-3070 • FAX 202-541-3054 • EMAIL PROLIFE@USCCB.ORG • WEB WWW.USCCB.ORG/PROLIFE

Cases Showing the Need for the Conscience Protection Act

In **Washington**, a state court has ordered a county hospital to provide elective abortions, although all its obstetrics and maternity care staff object to doing so.¹ The court interpreted the state's 1991 abortion law to require all public hospitals providing maternity care to provide abortions, and said that the hospital's past practice of referring such cases to Planned Parenthood is not sufficient to comply with that law. The hospital has been told it must hire medical staff willing to perform abortions, even though this seems to conflict with a provision of state law that forbids employment discrimination against health professionals who object to abortion. In 2015 and previous years, the state House of Representatives also approved bills to force virtually all health plans in the state to cover elective abortions; these bills stalled in the Senate due to uncertainty as to what federal law may require.²

In **New York**, the state Department of Financial Services, without any basis in statute or regulation, insists that individual and group health plans include "model language" ensuring coverage of elective abortions. Even religious employers have been ordered to cover abortions that violate their moral and religious convictions. On investigating this mandate, religious organizations found that the department had already been covertly requiring insurance companies to cover all abortions under the umbrella term of "medically necessary" surgery. Churches and others filed a lawsuit in May 2016 to challenge these mandates.³ The Department has refused to back down, and in January 2017 announced plans to enshrine an abortion mandate in its regulations.⁴

In **California**, the state Department of Managed Health Care in 2014 began demanding that all health plans under its jurisdiction—even those purchased by churches and other religious organizations—must cover elective abortions for any reason, including late-term abortions and those performed for "sex selection."⁵ No exemption of any kind is allowed. Efforts to use the federal conscience law, the Weldon amendment, to stop this coercion failed when the Obama administration declared that the amendment does not cover such situations.⁶ In addition, in 2015 the state's "Reproductive FACT Act" took effect, requiring pro-life pregnancy aid centers that provide health care to instruct their clients on how to obtain free abortions; in 2016 the Ninth Circuit Court of Appeals declined to grant preliminary injunctive relief against this mandate, which was challenged on free speech and free exercise grounds.⁷ A similar law in **Illinois**, applicable to health professionals, took effect in 2017. It was enjoined by a state court, but only for the specific plaintiffs who challenged the law.⁸

In **Alaska**, the state supreme court has held since 1997 that private non-sectarian hospitals must provide abortions.⁹ The court said Alaska law protects abortion as a fundamental right; factors such as the state's granting of a certificate of need to the hospital, and the receipt of federal and state funds, make the hospital a "quasi-public" actor which must help ensure access to abortions. A nonprofit hospital, whose policy against abortion was based on the sincere moral convictions of its operating board, cited Alaska's conscience law as a defense to a lawsuit challenging the hospital's policy. The court said its immediate decision does not cover religiously-sponsored hospitals, but it left open the prospect that their pro-life policies could be challenged in the future.

¹ American Civil Liberties Union of Washington, “Court Affirms Public Hospitals Must Comply with Reproductive Privacy Act,” June 21, 2016, <https://aclu-wa.org/news/court-affirms-public-hospitals-must-comply-reproductive-privacy-act> (accessed March 21, 2017); Washington State Hospital Association, “Court ruling in ACLU/Skagit case,” June 23, 2016 <https://www.wsha.org/articles/court-ruling-acluskagit-case/> (accessed March 21, 2017).

² Genevieve Plaster, “Removing Choice in Washington State: Mandating Abortion in Health Insurance,” Charlotte Lozier Institute, March 2, 2016, <https://lozierinstitute.org/removing-choice-in-washington-state-mandating-abortion-in-health-insurance/> (accessed March 21, 2017).

³ Heather Clark, “New York Religious Groups Sue Over Requirement to Provide Employee Abortion Coverage,” *Christian News Network*, May 18, 2016, www.christiannews.net/2016/05/18/new-york-religious-groups-sue-over-requirement-to-provide-employee-abortion-coverage/ (accessed March 21, 2017).

⁴ New York State Department of Financial Services, “Governor Cuomo Announces Decisive Actions to Secure Access to Reproductive Health Services in New York,” January 21, 2017, www.dfs.ny.gov/about/press/pr1701211.htm (accessed March 21 2017).

⁵ Peter Jesserer Smith, “California Places Abortion Mandate on Catholic Universities’ Insurers,” *National Catholic Register*, August 27, 2014, www.ncregister.com/daily-news/california-places-abortion-mandate-on-insurers-of-catholic-universities-emp (accessed March 21, 2017).

⁶ Associated Press, “Federal agency upholds California abortion coverage mandate,” *U.S. News & World Report*, June 22, 2016, <https://www.usnews.com/news/news/articles/2016-06-22/federal-agency-upholds-california-abortion-coverage-mandate> (accessed March 21, 2017).

⁷ Laretta Brown, “9th Circuit: State Can Force Pro-Life Pregnancy Centers to Promote Abortion,” *CNS News*, October 18, 2016, www.cnsnews.com/news/article/laretta-brown/appeals-court-upholds-calif-law-forcing-pregnancy-centers-promote (accessed March 21, 2017).

⁸ John Biver, “Pregnancy Care Center of Rockford Wins Injunction,” Illinois Family Institute, December 21, 2016, <https://illinoisfamily.org/religious/pregnancy-care-center-rockford-wins-injunction-temporarily-halts-illinois-abortion-referral-mandate/> (accessed March 21, 2017).

⁹ *Valley Hosp. Ass’n v. Mat-Su Coalition*, 948 P.2d 963 (Alaska 1997), <https://www.courtlistener.com/opinion/1125379/valley-hosp-assn-v-mat-su-coalition/> (accessed March 21, 2017); “The amendments,” *Juneau Empire*, May 12, 1998, www.juneauempire.com/stories/051298/ban.html#.WNFBCW_yuUI (accessed March 21, 2017).