To prevent governmental discrimination against providers of health services who decline involvement in abortion, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2016

Mr. LANKFORD (for himself, Mr. MORAN, and Mr. BLUNT) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To prevent governmental discrimination against providers of health services who decline involvement in abortion, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Conscience Protection Act of 2016”.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Thomas Jefferson stated a conviction common to our Nation’s founders when he declared in
1809 that “[n]o provision in our Constitution ought
to be dearer to man than that which protects the
rights of conscience against the enterprises of the
civil authority”.

(2) In 1973, the Supreme Court concluded that
the government must leave the abortion decision “to
the medical judgment of the pregnant woman’s at-
tending physician”, recognizing that a physician may
choose not to participate in abortion. Roe v. Wade,
410 U.S. 113, 164 (1973). The Court cited with ap-
proval a policy that “neither physician, hospital, nor
hospital personnel shall be required to perform any
act violative of personally-held moral principles”,
410 U.S. at 143 n. 38, and cited State laws uphอล-
ing this principle. Doe v. Bolton, 410 U.S. 179,

(3) Congress’ enactments to protect this right
of conscience in health care include the Church
amendment of 1973 (42 U.S.C. 300a–7), the Coats/
Snowe amendment of 1996 (42 U.S.C. 238n), and
the Hyde/Weldon amendment approved by Con-
gresses and Presidents of both parties every year
since 2004.

(4) None of these laws explicitly provides a
“private right of action” so victims of discrimination
can defend their conscience rights in court, and ad-
ministrative enforcement by the Department of
Health and Human Services Office for Civil Rights
has been lax, at times allowing cases to languish for
years without resolution.

(5) Defying the Federal Hyde/Weldon amend-
ment, California’s Department of Managed Health
Care has mandated coverage for all elective abor-
tions in all health plans under its jurisdiction. Other
States such as New York and Washington have
taken or considered similar action, and some States
may go further to require all physicians and hos-
pitals to provide or facilitate abortions.

(6) Members of Congress have repeatedly ques-
tioned U.S. Health and Human Services Secretary
Sylvia Burwell about California’s ongoing violation
which began in August 2014. The Department of
Health and Human Services has acknowledged Cali-
fornia’s violations and indicated that the Depart-
ment was taking them “seriously” and that the mat-
ter would be resolved “expeditiously”. Despite nu-
merous complaints and calls for prompt enforcement
of the Hyde/Weldon amendment in California, how-
ever, the Department has failed to resolve the mat-
ter.
(7) The vast majority of medical professionals do not perform abortions, with 86 percent of ob/gyns unwilling to provide them in a recent study (Obstetrics & Gynecology, Sept. 2011) and the great majority of hospitals choosing to do so in rare cases or not at all. Therefore, a policy requiring all health care providers to be involved in abortion could seriously disrupt the health care system, reducing the number and diversity of providers available to serve the basic health needs of American women and men.

(8) A health care provider’s decision not to participate in an abortion, like Congress’ decision not to fund most abortions, erects no new barrier to those seeking to perform or undergo abortions but leaves each party free to act as he or she wishes.

(9) Such protection poses no conflict with other Federal laws, such as the law requiring emergency stabilizing treatment for a pregnant woman and her unborn child when either is in distress (Emergency Medical Treatment and Active Labor Act). As the Obama administration has said, these areas of law have operated side by side for many years and both should be fully enforced (76 Fed. Reg. 9968–77 (2011) at 9973).
(10) Reaffirming longstanding Federal policy on conscience rights and providing a right of action in cases where it is violated allows longstanding and widely supported Federal laws to work as intended.

SEC. 3. GOVERNMENTAL DISCRIMINATION AGAINST PROVIDERS OF HEALTH SERVICES THAT ARE NOT INVOLVED IN ABORTION.

Title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by inserting after section 245 the following:

“SEC. 245A. GOVERNMENTAL DISCRIMINATION AGAINST PROVIDERS OF HEALTH SERVICES THAT ARE NOT INVOLVED IN ABORTION.

“(a) In General.—Notwithstanding any other law, the Federal Government, and any State or local government that receives Federal financial assistance, may not penalize, retaliate against, or otherwise discriminate against a health care provider on the basis that the provider does not—

“(1) perform, refer for, pay for, or otherwise participate in abortion;

“(2) provide or sponsor abortion coverage; or

“(3) facilitate or make arrangements for any of the activities specified in this subsection.
“(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

“(1) to prevent any health care provider from voluntarily electing to participate in abortions or abortion referrals;

“(2) to prevent any health care provider from voluntarily electing to provide or sponsor abortion coverage or health benefits coverage that includes abortion;

“(3) to prevent an accrediting agency or a Federal, State or local government from establishing standards of medical competency applicable only to those who have knowingly, voluntarily, and specifically elected to perform abortions, or from enforcing contractual obligations applicable only to those who, as part of such contract, knowingly, voluntarily, and specifically elect to provide abortions;

“(4) to affect, or be affected by, section 1867 of the Social Security Act (42 U.S.C. 1395dd, commonly referred to as the ‘Emergency Medical Treatment and Active Labor Act’); or

“(5) to supersede any law enacted by any State for the purpose of regulating insurance, except as specified in subsection (a).
“(c) ADMINISTRATION.—The Secretary shall designate the Director of the Office for Civil Rights of the Department of Health and Human Services—

“(1) to receive complaints alleging a violation of this section, section 245 of this Act, or any of subsections (b) through (e) of section 401 of the Health Programs Extension Act of 1973; and

“(2) to pursue the investigation of such complaints in coordination with the Attorney General.

“(d) DEFINITIONS.—For purposes of this section:

“(1) FEDERAL FINANCIAL ASSISTANCE.—The term ‘Federal financial assistance’ means Federal payments to cover the cost of health care services or benefits, or other Federal payments, grants, or loans to promote or otherwise facilitate health-related activities.

“(2) HEALTH CARE PROVIDER.—The term ‘health care provider’ means—

“(A) an individual physician or other health professional;

“(B) a hospital, health system, or other health care facility or organization (including a party to a proposed merger or other collaborative arrangement relating to health services, and an entity resulting therefrom);
“(C) a provider-sponsored organization, an accountable care organization, or a health maintenance organization;

“(D) a social services provider that provides or authorizes referrals for health care services;

“(E) a program of training in the health professions or an applicant to or participant in such a program;

“(F) an issuer of health insurance coverage; or

“(G) a group health plan or student health plan, or a sponsor or administrator thereof.

“(3) State or local government that receives federal financial assistance.—The term ‘State or local government that receives Federal financial assistance’ includes every agency and other governmental unit and subdivision of a State or local government, if such State or local government, or any agency or governmental unit or subdivision thereof, receives Federal financial assistance.
"SEC. 245B. CIVIL ACTION FOR CERTAIN VIOLATIONS.

(a) In General.—A qualified party may, in a civil action, obtain appropriate relief with regard to a designated violation.

(b) Definitions.—For purposes of this section:

(1) Qualified party.—The term ‘qualified party’ means—

(A) the Attorney General of the United States; or

(B) any person or entity adversely affected by the designated violation.

(2) Designated violation.—The term ‘designated violation’ means an actual or threatened violation of—

(A) section 245 or 245A of this Act; or

(B) any of subsections (b) through (e) of section 401 of the Health Programs Extension Act of 1973 regarding an objection to abortion.

(c) Administrative Remedies Not Required.—An action under this section may be commenced, and relief may be granted, without regard to whether the party commencing the action has sought or exhausted available administrative remedies.

(d) Defendants in Actions Under This Section May Include Governmental Entities as Well as Others.—
“(1) IN GENERAL.—An action under this section may be maintained against, among others, a party that is a Federal or State governmental entity. Relief in an action under this section may include money damages even if the defendant is such a governmental entity.

“(2) DEFINITION.—For the purposes of this subsection, the term ‘State governmental entity’ means a State, a local government within a State, and any agency or other governmental unit or subdivision of a State or of such a local government.

“(e) NATURE OF RELIEF.—In an action under this section, the court shall grant—

“(1) all necessary equitable and legal relief, including, where appropriate, declaratory relief and compensatory damages, to prevent the occurrence, continuance, or repetition of the designated violation and to compensate for losses resulting from the designated violation; and

“(2) to a prevailing plaintiff, reasonable attorneys’ fees and litigation expenses as part of the costs.”.