Congress of the United States

Washington, D.C. 20515

May 1, 2015

The Honorable Michael Madigan, Speaker
Members of the Illinois House of Representatives
Capitol Building
Springfield, IL 62706

Dear Speaker Madigan and Members of the Illinois House of Representatives:

We write to express our strong support for Senate Bill 1564, as amended by Senate Amendment 3, ("S.B. 1564") and our disagreement with recent assertions by our fellow members of Congress that S.B. 1564 would violate the Weldon, Coats-Snowe, and Church Amendments, putting at risk federal funds that go to the State of Illinois.

We applaud S.B. 1564's sponsor, Senator Daniel Biss and the House sponsor Representative Robyn Gabel, as well as the Illinois Catholic Conference, the Illinois Catholic Health Association and the Illinois State Medical Society for working together to craft common-sense changes to Illinois' Health Care Right of Conscience Act (HCRCA). Those changes will maintain the religious or conscience protections afforded medical providers, while providing patients with the information necessary to make informed medical decisions and access the care they require – medical procedures that are often necessary to protect against threats to patient health or life. By protecting patients' rights to information, S.B. 1564 will help safeguard patients when health care providers have religious or conscience objections to providing care. A number of recent stories of patients harmed by lack of information and the inability to access care in the face of provider religious or conscience objections have highlighted the need to address these concerns in the Illinois law.[1]

S.B. 1564 makes modest changes to the law in an attempt to protect patients from harm. Nothing in S.B. 1564 is contradictory to the Weldon, Coats-Snowe or Church amendments. Those statutes make certain federal funds unavailable to certain recipients of funding (including states in some cases) that "discriminate" against certain health care entities that refuse on religious or conscience grounds:

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[1] Clare Howard, *Contraceptive counseling by zip code,* The Community Word, Dec. 29, 2014, http://thecommunityword.com/online/blog/2014/12/29/contraceptive-counseling-by-zip-code/; Mindy and Adam's Story, https://www.youtube.com/watch?v=SCcvfgFZCF4; Manya Brachear Pashman, *Bill would make Catholic hospitals tell patients about options elsewhere,* Chicago Tribune (April 17, 2015), http://www.chicagotribune.com/news/local/politics/ct-right-of-conscience-act-met-20150417-story.html; Erik Eckholm, *Bishops Sued Over Anti-Abortion Policies at Catholic Hospitals,* The New York Times, Dec. 2, 2013, at A12, *available at* http://www.nytimes.com/2013/12/03/us/lawsuit-challenges-anti-abortion-policies-at-catholic-hospitals.html; Patricia Miller, *'A Risk of Harm': Catholic Hospitals' Ban on Tube-Tying,* The Atlantic, Jan. 2, 2015, http://www.theatlantic.com/health/archive/2015/01/a-risk-of-harm-catholic-hospitals-ban-on-tube-tying/383903/.

- "to provide, pay for, provide coverage of, or refer for abortions" (Weldon Amendment)[2];
- "to undergo training in the performance of induced abortions,...require or provide such training, ...perform such abortions, ...provide referrals for such training or such abortions...[or] make arrangements for any of the activities specified" (Coats-Snowe Amendment)[3]; or
- "to perform or assist in the performance of ...[a lawful sterilization procedure]... or abortion" (Church Amendment)[4].

S.B 1564 does not compel any health care provider to do any of those things, much less discriminate against them for their refusal to do so. S.B.1564 requires that objecting health care providers give patients information about their medical condition and treatment options in accordance with current standards of medical practice. If the health care provider does not offer the service the patient requires, the bill *permits* them to refer or transfer the patient; however, the provider is *not required* to do so. Instead, if the provider objects to referring or transferring a patient, the provider may still claim the additional protections afforded by the law (e.g., a defense to malpractice actions, disciplinary proceedings, and other consequences of refusals to provide patients with health care and information) by simply giving the patient "information about other health care providers who they reasonably believe *may offer* the health care service" that is being denied. The minimal requirement that patients be given information about where they reasonably may be able to access care is consistent with federal law.

As the U.S. Department of Health and Human Services has made clear, the Weldon, Coats-Snowe and Church amendments do not alter "the scope of information that must be provided to a patient by their provider in order to fulfill informed consent requirements."[5] The information patients are entitled to receive under S.B. 1564 is that which is required by the common law. S.B. 1564 makes clear that health care providers are not relieved of their common law duty to provide information consistent with the standard of care.

Notably, leaders of Catholic health care in Illinois have no objection to the addition of these patient protections.[6] Specifically, Patrick Cacchione, Executive Director of the Illinois Catholic Health Association, recently explained that failing to inform patients "of all possible treatments" and failing to point "them in the right direction to get the care they need" when a Catholic hospital cannot provide the care can constitute malpractice. Similarly, Erica Lathaem, Director of Regional Ethics for OSF HealthCare, one of the state's largest Catholic health systems, explained that Catholic doctrine allows Catholic health care providers "to relate information" about other providers who have the appropriate specialty to help a patient. She specifically explained the difference between relating such information and providing a "direct referral," noting that there is an "important moral distinction" between the two.

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[2] P.L. 113-76, div. H, tit. V, §506 (d) (1).
[3] 42 U.S.C. §238n (a) (1) – (2).
[4] 42 U.S.C. §300a-7 (c) (1).
[5] *Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws*, 76 FR 9968-02, 9973, 45 CFR part 88 (Feb. 23, 2011).
[6] Brachear Pashman, *supra* note 1.

specifically explained the difference between relating such information and providing a "direct referral," noting that there is an "important moral distinction" between the two.

In sum, S.B. 1564 adds appropriate and much needed patient protections to Illinois law, and it does so without violating the federal statutes. We urge the Illinois General Assembly to pass this bill into law.

Thank you for your attention.

Sincerely,

Jan Schakowsky
Member of Congress

Danny K. Davis
Member of Congress

Luis V. Gutierrez
Member of Congress

Mike Quigley
Member of Congress

Robin L. Kelly
Member of Congress

Tammy Duckworth
Member of Congress