

Memorandum

To: Office of Public Health and Science, Department of Health and Human Services
Attention: Rescission Proposal Comments

From: Jonathan Imbody, Christian Medical Association, Vice President for Government Relations

Date: April 9, 2009

Re: Data and analysis of two national surveys on conscience rights regulation and laws, as related to HHS requested information on rescission proposal

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Executive summary

The objective and scientific polling data reported in this document answers the four specific questions posed by HHS:

1. "Information, including specific examples where feasible, addressing the scope and nature of the problems giving rise to the need for federal rulemaking and how the current rule would resolve those problems;"
 - **Answer:** Discrimination is rampant in health care, and those experiencing the discrimination virtually unanimously support the regulation.
2. "Information, including specific examples where feasible, supporting or refuting allegations that the December 19, 2008 final rule reduces access to information and health care services, particularly by low-income women;"
 - **Answer:** *Rescinding* the regulation--and thereby diminishing the *reality* of the protections intended by the laws the regulation implements--holds the potential to create a crisis of healthcare access, particularly for the poor and medically underserved populations served by faith-based healthcare professionals.
3. "Comment on whether the December 19, 2008 final rule provides sufficient clarity to minimize the potential for harm resulting from any ambiguity and confusion that may exist because of the rule;"
 - **Answer:** To our knowledge, apart from anecdotal accusations by opponents of the final rule, no credible data or scientific evidence whatsoever has been presented to demonstrate that the conscience protection rule has caused harm. Since the final rule went into effect, none of the dramatic speculations of harm postulated by opponents of the rule seem to have materialized.

To the contrary, this objective polling data clearly demonstrates that the regulation is seen by those healthcare professionals who have experienced actual harm as the best vehicle to *reduce* the harm of discrimination caused by long-standing ambiguity and confusion in the medical community regarding conscience-protecting laws.
4. Comment on whether the objectives of the December 19, 2008 final rule might also be accomplished through non-regulatory means, such as outreach and education.
 - **Answer:** This data clearly shows that healthcare professionals who actually have been experiencing discrimination flatly and overwhelmingly reject outreach and education as an alternative to the regulation, which they virtually unanimously support.

Introduction

The attached document provides scientific polling information that addresses the four specific questions requested by HHS in evaluating the provider conscience regulation.

1. One poll was conducted online and sampled the opinions of **faith-based healthcare professionals**—the group most likely to experience the type of discrimination on the basis of religious beliefs prohibited by the three federal laws that form the basis for the provider conscience regulation.
2. Another poll sampled opinions of the general **public**, was conducted by the polling companyTM, inc./WomanTrend and fielded March 23-25, 2009 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers.

Online survey of faith-based healthcare professionals

Rationale and methodology

Accurately gauging the impact of applicable civil rights laws and the conscience protection regulation in addressing discrimination on the basis of religious convictions requires a specific focus on the population most likely affected by such discrimination: faith-based healthcare professionals.

On behalf of the Christian Medical Association, the polling companyTM, inc./ WomanTrend conducted an online survey of members of faith-based healthcare organizations. The survey was fielded March 31, 2009 to April 3, 2009 and was completed by 2,298 members of the Christian Medical Association (CMA), 400 members of the Catholic Medical Association (CMA), 69 members of the Fellowship of Christian Physicians Assistants, 206 members of the Christian Pharmacists Fellowship International, and 8 members of Nurses Christian Fellowship. Respondents were allowed to select membership in multiple organizations; the total number of participants was 2,865.

Each respondent was provided with a unique hyperlink to take the survey, allowing no member to take the survey more than once and prohibiting respondents from passing the link to another individual after completing the survey. This survey is intended to demonstrate the views and opinions of members surveyed. It is not intended to be representative of the entire medical profession nor of the entire membership rosters of these organizations. Respondents who participated in the survey were self-selecting.

Key Findings

In overwhelming numbers, faith-based healthcare professionals and students will quit medicine before compromising religious convictions.

In the survey of 2,865 members of faith-based organizations, a full 91% of respondents agreed with the question, "Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the following statement: 'I would rather stop practicing medicine altogether than be forced to violate my conscience.'"

- 14% Somewhat Agree
- 77% Strongly Agree

When Obstetricians and Gynecologists are segmented out of the overall survey respondents, results show that nearly all say they will quit medicine if pressured to compromise ethical standards. Over half of the faith-based Ob-Gyn physician respondents serve the poor and medically underserved.

"Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the following statement: 'I would rather stop practicing medicine altogether than be forced to violate my conscience.'"

- 9% Somewhat Agree
- 88% Strongly Agree

"Are you currently involved in serving poor and medically-underserved populations?"

- 6% Yes, in a full-time capacity
- 13% Yes, in a part-time capacity
- 36% Yes, in an occasional capacity
- 54% Yes total

When the subgroup of students is segmented out from the survey respondents, a similar response is found. An overwhelming 85% of students agreed with this statement: "Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with the following statement: 'I would rather stop practicing medicine altogether than be forced to violate my conscience.'"

- 21% Somewhat Agree
- 64% Strongly Agree

Patient access—especially in medically underserved areas--will suffer if faith-based healthcare professionals are forced to violate their moral and ethical codes.

If these doctors follow through with their promises to limit their practices, it could have wide-reaching implications in areas already lacking in medical access:

- Eighty-nine percent of individuals who practice mostly in rural areas, 82% who work mainly in urban areas, and 86% who provide services in suburban areas said they would be “somewhat” or “very” likely to reduce or end altogether their practice of medicine.
- Eighty-seven percent of respondents with a patient base that is predominantly low-income (76% to 100% “low-income”) said they could be very or somewhat likely to limit the scope of their practice.
- Eighty-two percent who serve poor and medically-underserved populations on a full-time basis said they would likely cut back or cease practicing if coerced to perform abortions.

Physicians and other medical professionals voiced their concerns that serious consequences could occur if doctors are forced to participate in or perform practices to which they have moral or ethical objections:

- Nearly three-quarters (74%) believed that elimination of the conscience protection could result in “fewer doctors practicing medicine,”
- 66% predicted “decreased access to healthcare providers, services, and/or facilities for patients in low-income areas,”
- 64% surmised “decreased access to healthcare providers, services, and/or facilities for patients in rural areas,”
- 58% hypothesized “fewer hospitals providing services.”

When asked how rescission of the conscience rule would affect them personally, fully 82% said it was either “very” or “somewhat” likely that they personally would limit the scope of their practice of medicine. This was true of 81% of medical professionals who practice mainly in rural areas and 86% who work full-time in serving poor and medically-underserved populations.

Faith-based healthcare professionals nearly unanimously support the conscience protection regulation and the principles behind it.

Fully 97% of the faith-based healthcare professionals who participated in the survey supported the two-month-old conscience protection clause, and 96% objected to rescission of the rule.

In a question relating to current rules and regulations, 97% of respondents offered their stamp of approval to the rule that was described as follows: “just over two months ago, a federal regulation known as “conscience protection” went into effect in the U.S. after reports of discrimination against healthcare professionals who decline to participate in abortions. It protects doctors and other healthcare professionals who work at institutions that receive federal money from participating in abortion and other procedures to which they object on moral or religious grounds.”

Among the more than 2,800 respondents who participated in the survey, nearly all (98%) strongly or somewhat opposed any types of regulations that “require medical professionals to perform or provide procedures to which they have moral or ethical objections.”

When asked to assess the importance of “[making] sure that healthcare professionals in America are not forced to participate in procedures or practices to which they have moral objections,” 100% of respondents said it was imperative (98% “very” and 2% “somewhat”).

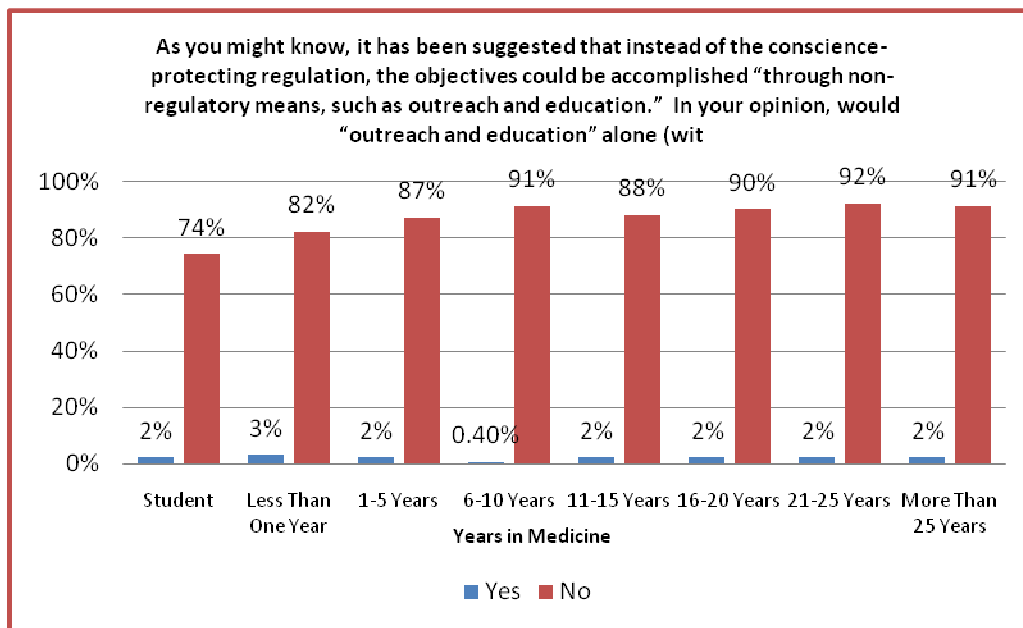
In a follow-up question, 92% of respondents said that the rule is necessary (83% “very” and 9% “somewhat” necessary) based on their own knowledge of discrimination in healthcare on the basis of conscience and religious and moral values.

In a related question, respondents learned (or were reminded) that the U.S. Department of Health and Human Services had more recently proposed rescission of the rule. Specifically, respondents were told: “In early March, a regulation change was proposed by the administration that would effectively eliminate the two-month-old conscience protection regulation. This could make it more likely that doctors and other healthcare professionals could be coerced to participate in procedures to which they object on moral or religious grounds.” Reaction to this possible revocation was intense, with fully 96% of these members of faith-based organizations opposing any removal of the rule.

Faith-based healthcare professionals flatly reject outreach and education as an alternative to regulation.

The Department of Health and Human Services has asked whether the objectives of the conscience protection regulation can be achieved “through non-regulatory means, such as outreach and education.” Nearly nine-in-ten (87%) members surveyed – those who are on the ground, in hospitals and clinics across the country – felt “outreach and education” alone were insufficient to accomplish the goal.

Ninety-two percent declared the codification of conscience protection to be necessary (83% “very” and 9% “somewhat”) based on their knowledge of “discrimination in healthcare on the basis of conscience, religious, and moral values.”



High percentages of faith-based professionals report experiencing discrimination in professional practice.

When asked to evaluate the prevalence of discrimination in the medical system against doctors, nurses, and other healthcare providers for “*declining to participate in or provide medical procedures to which they have moral or religious objections,*” nearly three-in-five (59%) said it was “very” (25%) or “somewhat” (34%) common.

Women were more likely than men (62% vs. 58%) to say this occurred with some frequency. Respondents in the following specialties were above the average in citing such discrimination as a common occurrence: anesthesia (69%), emergency medicine (69%), family medicine (67%), general medicine (76%), internal medicine (69%), and obstetrics and gynecology (66%).

When asked to assess their own professional experiences:

- 32% have “been pressured to refer a patient for a procedure to which [they] had moral, ethical, or religious objections
- 26% have “been pressured to write a prescription for a medication to which [they] had moral, ethical, or religious objections
- 17% have “been pressured to participate in training for a procedure to which [they] had moral, ethical, or religious objections.”
- 12% have “been pressured to perform a procedure to which you had moral, ethical, or religious objections.”

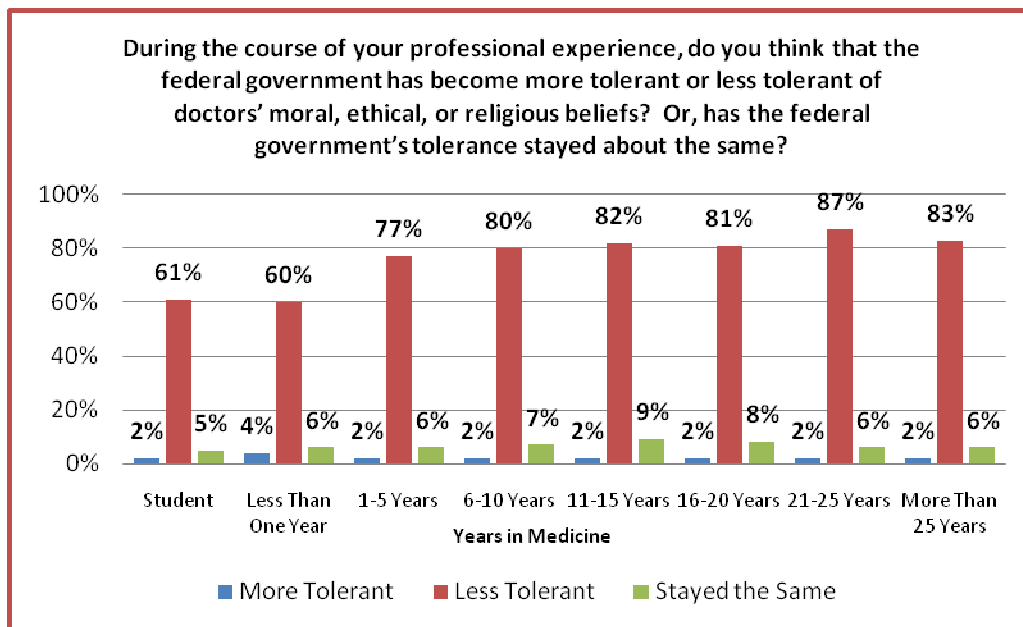
Respondents have witnessed growing hostility toward medical professionals with strong moral and religious beliefs.

Nearly two-thirds (66%) of respondents felt that “the number of doctors being asked to compromise their moral, ethical, or religious beliefs in the capacity of their work” increased during the course of their professional experience; just 7% thought it has stayed the same while a paltry 1% believed it has decreased.

Though respondents with 20+ years of experience were especially likely to believe that the number of instances has grown, even those who are relatively “new” to the profession have witnessed an upward trend in this type of discrimination:



Separately, more than three-quarters (78%) reflected on their careers and considered the federal government to have become less tolerant of “doctors’ moral, ethical, or religious beliefs.” In contrast, 6% believed the tolerance level has not changed while only 2% saw improvement.



High percentages of faith-based professionals report experiencing discrimination in education.

Many respondents held this opinion due in part to their own personal experience. When asked to assess their educational experiences:

- 39% have “experience pressure from or discrimination by faculty or administrators based on [their] moral, ethical, or religious beliefs”

- 33% have “considered not pursuing a career in a particular medical specialty because of attitudes prevalent in that specialty that is not considered tolerant of [their] moral, ethical or religious beliefs.”
- 23% have “experienced discrimination during the medical school or residency application and interview process because of [their] moral, ethical or religious beliefs.”

Significant numbers are eschewing careers in obstetrics because of discrimination and coercion.

Among the 608 respondents who said they have “considered not pursuing a career in a particular medical specialty because of attitudes prevalent in that specialty that is not considered tolerant of [their] moral, ethical or religious beliefs,” 81% said they specifically avoided obstetrics and gynecology when presented with a list of 38 medical specialties and asked to identify the areas they passed up.

An alarming number of faith-based students are deciding not to pursue careers in Ob-Gyn as a result of perceived discrimination and coercion in the field related to their convictions. The following responses were entered in response to, "Which of the following best describes you:"

- 6% I am currently pursuing a career in Obstetrics or Gynecology.
- 20% I am not pursuing a career in Obstetrics or Gynecology mainly because I do not want to be forced to compromise my moral, ethical, or religious beliefs by being required to perform or participate in certain procedures or provide certain medications.

Nationwide survey of American adults

The polling companyTM, inc./WomanTrend on April 6 presented to the Christian Medical Association the findings of a recent nationwide survey of 800 American Adults (18+). All substantive questions were closed-ended in nature.

Following is an analysis of the specific questions in that survey that address the four questions solicited by HHS in evaluating the provider conscience regulation. Also included is an analysis of some questions that address public opinion in general related to the regulation and the laws that undergird the regulation.

Methodology

The survey was fielded March 23-25, 2009 at a Computer-Assisted Telephone Interviewing (CATI) facility using live callers. The sample was drawn utilizing Random Digit Dial, a computer dialing technique that ensures that every household in the nation with a landline telephone has an equal chance of being called. Each respondent was screened to ensure he or she was 18 years of age.

Sampling controls were used to ensure that a proportional and representative number of people were interviewed from such demographic groups as age, race and ethnicity, and region according to the most recent figures available from the U.S. Census Bureau and voter registration and turnout figures. After data collection, weighting was used to ensure that the sample reflected the current population. This is a common and industry-accepted practice. Age, race, and gender were

allowed four points of flexibility in pre-set quotas while three points of flexibility was permitted on region.

The overall margin of error for the survey is $\pm 3.5\%$ at a 95% confidence interval, meaning that in 19 out of 20 cases, the data obtained would not differ by any more than 3.5 percentage points in either direction if the survey were repeated multiple times employing this methodology and sampling method. Margins of error for subgroups are higher.

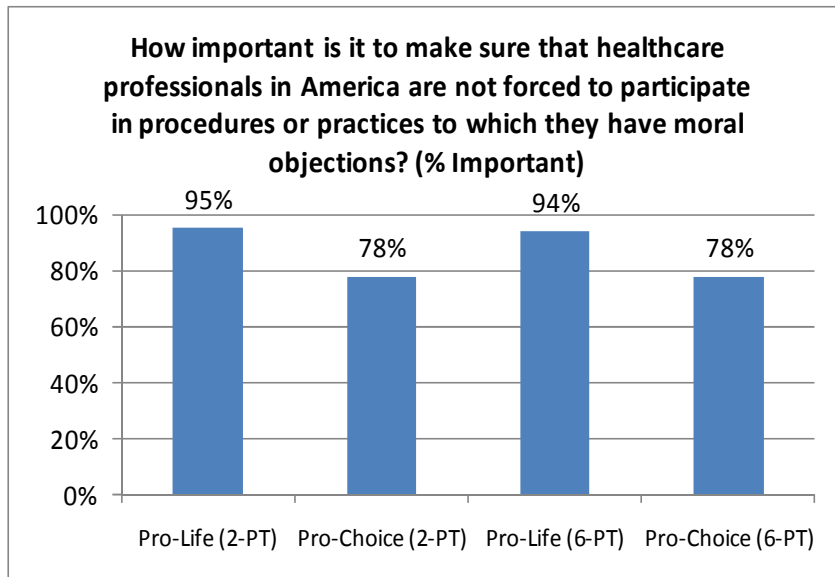
It should be noted that some of the subgroups in this study are quite small, accounting for less than 50 total respondents, e.g., Asian-Americans (n=32), self-identified Agnostics/Atheists (n=31), and self-identified moderate Republicans (n=36). It is not advisable to draw scientific conclusions about these cohorts within this study.

Key Findings

Americans of All Demographic Characteristics and Political Stripes Seek a Shared a Set of Values with their Healthcare Providers.

Fully 88% of American adults surveyed said it is either “very” or “somewhat” important to them that they enjoy a similar set of morals as their doctors, nurses, and other healthcare providers. Intensity was strong, as 63% described this as “very” important while at the other end of the spectrum, just 6% said it is “not at all important,” a ratio of more than 10-to-1.

Healthcare Providers’ Conscience Protections Viewed as an Inalienable Right



A sizable 87% of American adults surveyed believed it is important to “make sure that healthcare professionals in America are not forced to participate in procedures and practices to which they have moral objections.” Support for this protection garnered considerable intensity as well, with 65% of respondents considering it very essential. Majorities of men, women, and adults of all ages, races, regions, and political affiliations considered it critical to

defend the rights of healthcare providers to refuse to perform certain procedures on moral grounds.

Americans Oppose The Principle of Forcing Healthcare Providers to Act Against Their Consciences...

A majority (57%) of Americans opposed regulations “that require medical professionals to perform or provide procedures to which they have moral or ethical objections.” In contrast, 38% favored such rules. The potency of opposition was twice that of the supporters: 40% strongly objected to the laws while just 19% strongly backed them.

...support laws that protect them from doing so...

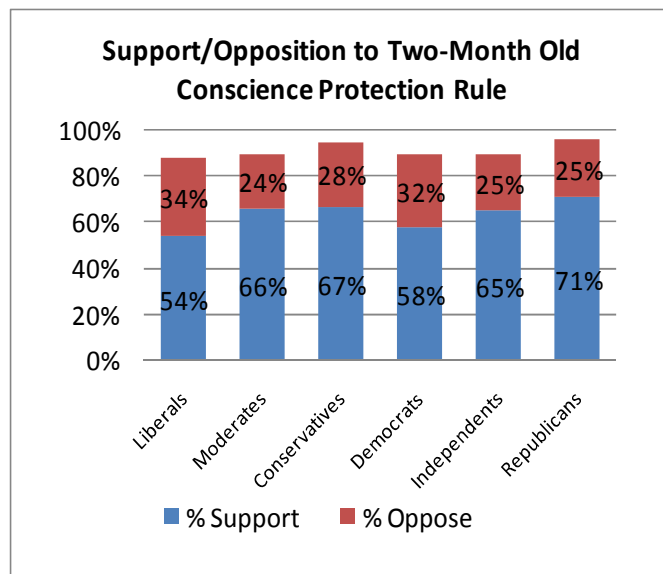
Without any names or political parties being mentioned, respondents were provided with a short description of the new conscience protection law and its recent inception: “Just two months ago, a federal law known as ‘conscience protection’ went into effect after reports of doctors being discriminated against for declining to perform abortions. It protects doctors and other medical professionals who work at institutions that receive federal money from performing medical procedures to which they object on moral or religious grounds.”

After hearing this short description, support for this new law outpaced opposition by a margin of more than 2-to-1 (63% vs. 28%). Intensity favored the law, with 42% strongly backing it and 19% strongly rejecting it. Endorsements for the rule spanned demographic and political spectra, with majorities in all cohorts offering their support. Even 56% of adults who said they voted for President Obama last fall and 60% of respondents who self-identified as “pro-choice” said they favor this two-month old conscience protection rule.

... and oppose any efforts to remove such laws.

Next, respondents were asked to react to the proposed rescission of the conscience protection law: “Earlier this month, officials from the U.S. Department of Health and Human Services introduced a rule change that would effectively eliminate the two-monthold conscience protection. This could mean that doctors and other medical professionals could be coerced to participate in medical procedures to which they object on moral or religious grounds.”

Opposition to revocation of the conscience protection law outpaced support by a margin of more than 2-to-1 (62% vs. 30%). As was the case in the previous question, intensity favored retention of the law (44% strongly opposing rescission versus 17% strongly supporting it). Again, there was consistent demographic alignment, as a majority of men, women, and adults of all ages, races, incomes, regions, and geographic types stood together to reject removal of the law. And, there was cohesiveness across political lines, as 52% of self-identified Democrats, 67% of self-identified Independents, and 73% of self-identified Republicans, as well as 50% of liberals, 65% of moderates, and 69% of conservatives also opposed nullification.



Americans pursue healthcare providers who share a similar set of moral beliefs

A full 88% of American adults considered it important for their doctors, nurses, and other healthcare providers to possess a common code of morals and values to their own. In fact, 63% said this criterion is “very important,” more than 10 times the number who said it was “not at all important” (6%).

Majorities of men, women, and adults in all age and income groups and of all races, regions, political identifications, and ideologies considered it not only important, but very important, that they share values with their healthcare providers. Even majorities of conservative Republicans (89%), moderate Republicans (95%), liberal and moderate Democrats (80%), and conservative Democrats (96%) aligned on this question, deeming it meaningful to find healthcare providers with analogous values as them.

Americans place high value on doctors’ rights to decline to participate in procedures they find morally wrong

A similar number to those who placed a premium on having healthcare providers who share their moral beliefs, 87%, said in a separate inquiry that it is important that “healthcare professionals in America are not forced to participate in procedures or practices to which they have moral objections.” Intensity was potent, with 65% saying that such a protection is “very important.” In contrast, just 11% dismissed its significance (5% “not too important” and 6% “not at all important”).

Again, there was demographic alignment across the board, as majorities of men, women, and adults of all ages, races, regions, and political stripes emphasized the need to protect medical professionals from being forced to violate their consciences.

Adults with opposing views on abortion forged similar opinions on this matter as well.

Three in five back two-month-old conscience protection rule; three in five oppose its rescission

In the next two questions, respondents were asked to express their views on the current conscience protection rule signed into law in January 2009 toward the end of the Bush administration and again on the proposed rescission of the rule suggested by officials at the U.S. Department of Health and Human Services. As indicated in the verbatim recitation of the questions (see textboxes), neither President Bush’s nor President Obama’s names were mentioned in the language of the questions; this was an intentional omission so as not to overly personalize or politicize respondents’ answers.

In the first question, respondents learned about the conscience protection rule, its origin, and its implications. Overall, support outpaced opposition by a margin of more than 2-to-1 (63% vs. 28%); and intensity favored the rule (42% strongly supporting vs. 19% strongly opposing). Even 59% of people who earlier in the survey generally supported regulations that required medical professionals to perform or provide procedures to which they have moral or ethical objections supported this rule.

Again, majorities of adults across gender, age, regional, party, ideological, and income lines, as well as among all three major geographic types (urban, rural, suburban), endorsed the two-month-old conscience protection law designed to protect doctors from obligatory participation in procedures to which they object.

In the second question, respondents were informed that officials at the U.S. Department of Health and Human Services had introduced a rule change that would effectively eliminate the conscience protection rule with a young age of two years. Like the previous question, a 2-to-1 margin emerged. In this case, however, opposition outweighed support (62% vs. 30%). Intensity favored retention of the rule (44% strongly oppose elimination vs. 17% strongly support elimination).

A majority of men and women, as well as more than one-half of adults in all age groups and of all races, regions, political parties, ideologies, income levels, and geographic types opposed rescission of the rule.

Hyde-Weldon backed by a majority of adults

After provided a short definition of the Hyde-Weldon amendment (see adjacent textbox), 57% of American adults affirmed their support for the law that states that tax dollars cannot be used by programs (government or non- government) to discriminate against hospitals, health insurance plans, and healthcare professionals who refuse to perform abortions. Though 31% overall opposed the rule (13% “somewhat” and 18% “strongly”), an even greater proportion of respondents – 34% – strongly backed the amendment.

In every major demographic category – age, gender, region, race, and income – as well as in all political categories – party, ideology, and presidential vote – more than one-half of respondents offered their support for the Hyde-Weldon Amendment.

Conclusion

The objective evidence is clearly on the side of the conscience protection regulation. Faith-based healthcare professionals report rampant discrimination in healthcare based on conscience. They overwhelmingly support the regulation and the laws that undergird it.

The support of the American public mirrors the support of these healthcare professionals for the regulation and civil rights protections in healthcare. Removing conscience protections—as embodied in the regulation—is an affront to most American patients, who prize the ability to choose healthcare professionals who share their moral values.

Virtually all faith-based healthcare professionals, if forced to violate their conscience and convictions, report that they will *leave medicine*. This loss could create a monumental healthcare access crisis, with poor patients and medically underserved populations hit hardest.

The conscience protection rule well serves its purpose--which is to implement the conscience protection laws and principles that have been neglected and violated for so long in the medical community. If left unchanged, will significantly reduce the discrimination in healthcare that has targeted life-affirming healthcare professionals with increasing ferocity and which threatens the conscientious care of millions of patients.

