Q & A

IS THERE ROOM FOR CONSCIENCE WITHOUT COMPROMISING ACCESS?

Are Affiliations Between Religious and Secular Health Care Organizations Threatening Access to Reproductive Health Services?

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WHAT IS HAPPENING WITH HEALTH CARE AFFILIATIONS?

Overall, close to 1,000 *mergers and acquisitions* took place in 1996 involving all segments of the health care industry—hospitals, long-term care facilities, physician groups and other providers—up 58 percent from 1995, according to Irving Levin Associates. Affiliations among health care organizations have taken many different forms in recent years, including both informal arrangements involving limited, shared activities and services, and more formal arrangements in the form of joint ventures, mergers, acquisitions, consolidations and long-term lease agreements.

WHAT FACTORS ARE CONTRIBUTING TO AN INCREASE IN HEALTH CARE AFFILIATIONS?

Rapid growth in managed care in recent years has vastly changed the financing, organization, and delivery of health care services in this country. Increasingly, large medical corporations are now providing the bulk of medical care once provided by smaller private practices. The growing trend of health care organizations of all kinds to form informal and formal affiliations reflects the market pressures to consolidate to reduce costs and potentiate their future growth to be able to compete successfully for managed care contracts.

HOW COMMON ARE AFFILIATIONS BETWEEN RELIGIOUS AND SECULAR HEALTH CARE ORGANIZATIONS?

Beyond the Catholic health care system, the largest religiously-sponsored health system in the country, little is known about the proportion of health care affiliations involving religious health care organizations. Given the rate of increase in affiliations in all sectors of the health care market, however, it is likely that many religiously-sponsored health care systems and facilities—including those founded by Adventists, Baptists, Episcopalians, Jewish organizations, Lutherans, Methodists, and the United Church of Christ, as well as those in the Catholic health care system—have been included in this trend.

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As of 1995, the approximately 600 Catholic hospitals in this country accounted for about 10 percent of acute-care hospitals. Since 1990, about two in 10 of the nation's hospital affiliations involved Catholic hospitals. During this same time period, more than 130 known affiliations involved a Catholic hospital or health system—eight in 10 of which were between Catholic and non-Catholic organizations. Forty percent of the known affiliations were mergers, 39 percent were acquisitions, 11 percent were joint ventures/holding companies and the remainder were other arrangements.

In 1996, two Catholic health systems—the Sisters of the Sorrowful Mother-U.S. Health System and Catholic Healthcare West—experienced the largest growth of any other health care system in the United States. Catholic Healthcare West grew by 33 percent in 1996; the Sisters of the Sorrowful Mother-U.S. Health System grew by 47 percent.

WHAT IS THE RELATIONSHIP BETWEEN A RELIGIOUSLY-SPONSORED HEALTH SYSTEM AND THE RELIGIOUS DENOMINATION IT IS FOUNDED BY?

The most detailed information regarding the provision of health care services in a religiously-sponsored organization is provided by the Catholic health care system. Catholic health care institutions are governed by a set of guidelines, known as the *Ethical and Religious Directives for Catholic Health Care Facilities*. The *Directives* were written by the United States Bishops in 1971, and revised in 1994, to provide a framework for the provision of health care services by Catholic health care institutions. The *Directives* direct the provision of certain health care services in Catholic health care institutions, including prohibiting abortion, sterilization for the sole purpose of contraception, and most infertility treatments. The *Directives* also state that "Catholic health care institutions may not promote or condone contraceptive practices" other than natural family planning.

According to Family Planning Advocates, a reproductive rights organization, the next two largest religiously-sponsored health care systems run by Adventists and Baptists do not provide abortions under most circumstances in at least some of their facilities.

WHAT ARE "CONSCIENCE CLAUSES"?

Soon after the Supreme Court decision *Roe* v. *Wade* in 1973, legislators actively sought to enact laws allowing individuals and medical facilities to refuse to provide health services for which they have religious, ethical or moral objections. By 1974, more than half the states and the federal government had adopted such provisions relating to abortion. During the mid-to-late 1970s, numerous other states adopted conscience clauses for contraception and sterilization, as well as abortion. Despite this fast and furious legislative activity, the issue went into a state of dormancy in the late 1970s, from which it is now emerging, at least in part in response to the changing health care marketplace. By mid-1997, conscience clauses of one form or another had been seriously considered by legislators in four states, three of which have enacted provisions into law.

At the heart of the ethical underpinnings of health care delivery, however, is also "the patient's right to self-decision." Providers have the legal and ethical responsibility to respect and respond to their patients' rights not only by obtaining their "informed consent" but also by providing them with health care alternatives and information necessary to choose from among the full range of these alternatives.

HOW MANY STATES CURRENTLY HAVE CONSCIENCE CLAUSE LAWS THAT APPLY TO THE PROVISION OF ABORTION?

Currently, 46 states have abortion-related conscience clause laws applying to *individual health care providers*. Nineteen states limit these clauses to providers who have moral, ethical or religious

objections, but more than half of the states do not specify the grounds on which an objection must be based. Only three states (Michigan, Montana and Oregon) require physicians to notify patients directly of their refusal to provide abortions.

Forty-two states provide *medical facilities* with the right to refuse to provide abortion services. More than half (27) permit any health care facility to refuse involvement in the provision of abortion services and some (15) limit their laws to private medical facilities. One state's law (California) is limited to facilities of religious organizations. Five states specify that the facility's refusal must be moral or religious. While the laws in all of the 42 states allow medical facilities to refuse to permit an abortion to take place, six states also allow facilities to refuse to provide either advice or abortion referrals, as well. Only seven of the 42 states require the facility to notify the public of its refusal to provide abortion services. Just five states specify that notice must be provided to individuals (Illinois, Nebraska, Oregon, Washington and Wyoming).

Four states—Alabama, Mississippi, New Hampshire and Vermont—have no conscience clauses related to abortion.

HOW MANY STATES HAVE CONSCIENCE CLAUSE LAWS THAT APPLY TO THE PROVISION OF CONTRACEPTION?

Conscience clause laws also apply to the provision of contraceptive services. Thirteen states have some form of conscience clause legislation applying to contraceptive services and/or information. Four states—Arkansas, Colorado, Maine and Tennessee—allow both individual providers and all private medical facilities to refuse to be involved in providing contraceptive services.

Laws in five states—Arkansas, Colorado, Florida, Maine and Tennessee—provide some form of conscience protection to *individual medical providers,* all five of which have language broad enough to include the provision of information alone. None of the five states requires that anyone be notified that an individual provider is refusing to provide this care.

Six states—Arkansas, Colorado, Maine, Massachusetts, Tennessee and Virginia—have provisions allowing *medical facilities* to refuse to participate in the provision of contraceptive services, all of which are broad enough to permit a facility to refuse to provide information alone. While the law in five of the six states applies to private medical facilities, the Virginia law is limited to "religious institutions." None of the six states require the facility to notify anyone that it is refusing to provide this care.

Eleven states have laws allowing individuals or facilities to refuse to provide sterilization services. Ten states extend this protection to individual medical providers, three of which have laws that are broad enough to include the provision of information, as well. And, ten

states extend this protection to medical facilities—two of which are broad enough to include the provision of information, as well. No state requires that an institution provide any notification of their refusal to provide sterilization services to the public or its patient population.

WHAT EFFECT HAVE AFFILIATIONS BETWEEN RELIGIOUS AND SECULAR ORGANIZATIONS HAD ON ACCESS TO REPRODUCTIVE HEALTH SERVICES?

Factors determining the availability of reproductive health services following affiliations between religious and secular health care organizations are complex and vary by case and community. These factors include: the financial strength and the range of services provided by the partnering

organizations prior to the affiliation; the history of prior affiliation attempts; and, the level of community involvement during the affiliation process as well as community attitudes with respect to women's reproductive rights.

Generally, affiliations have resulted in a number of different outcomes with regard to the accessibility of reproductive health care: services in some communities have continued unchanged, while in others services have been provided in different organizational arrangements, such as being continued in the secular hospital but not provided in the Catholic hospital or referrals are given to other associated facilities in the community who offer a given service.

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