Congress of the United States
Washington, DC 20515

November 25, 2014

The Honorable Sylvia Mathews Burwell
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell:

On August 22, 2014, the California Department of Managed Health Care (DMHC) issued a directive requiring that all insurance plans under DMHC authority immediately include coverage for abortion in all circumstances—including plans that previously contained an approved abortion exclusion—without exception. As a result, individuals, churches, religious charities, and other employers who had entered into insurance plan contracts specifically to exclude abortion services are now being forced to pay for the destruction of innocent human life.

The California mandate is a clear violation of long-standing federal law, the Weldon amendment conscience clause, which has been included in the Labor, Health and Human Services appropriations acts. The Weldon amendment specifies that funds may not be made available to a state government that discriminates against an entity that refuses to provide, pay for, provide coverage of, or refer for abortion. The amendment also clarifies that these protections include health insurance plans.

In 2011, the Administration issued final regulations regarding enforcement of the Weldon amendment designating the Office for Civil Rights within the U.S. Department of Health and Human Services (HHS) as the recipient of and arbiter for Weldon amendment complaints. With regard to states violating the policy, the narrative accompanying the final regulation explained:

> *"If the Department becomes aware that a state or local government or an entity may have undertaken activities that may violate the statutory conscience protections, the Department will work with such government or entity to assist such government or entity to comply with or come into compliance with such requirements or prohibitions. If, despite the Department's assistance, compliance is not achieved, the Department will consider all legal options, including termination of funding, return of funds paid out in violation of health care provider conscience protection provisions under 45 CFR parts 74, 92, and 96 as applicable."*

HHS has been made aware that California's actions are in direct violation of the Weldon amendment. In fact, at least three separate complaints associated with the California abortion mandate have been filed with the Office of Civil Rights. Complainants include the California Catholic Conference; employees of Loyola Marymount University; Skyline Church in La Mesa; Foothill Church and Foothill Christian School in Glendora; Alpine Christian Fellowship in El Cajon; The Shepherd of the Hills Church in Porter Ranch; City View Church in San Diego; Faith Baptist Church in Santa Barbara; and Calvary Chapel Chino Hills in Chino.

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There can be no more absolute form of discrimination against a health plan that excludes abortion than a government policy forbidding the very existence of such life-affirming health plans. California's sweeping abortion mandate is forcing churches, individuals and employers with deeply held moral and religious views on life to fund abortion on demand through their health insurance policies. Forcing pastors, teachers, social service providers, and Catholic institutions to pay for abortion should be unthinkable.

The Weldon amendment must be enforced. This assault on conscience rights is already having a significant impact. Churches and other institutions have had abortion coverage added to their health insurance policies, effective August 2014, without their consent and are now funding abortion contrary to deeply held beliefs.

We are concerned that HHS has failed to bring this discriminatory practice to a halt and as a result, we urge you to take action immediately. We respectfully request that you provide information about the steps HHS has taken to bring DMHC into compliance with the Weldon amendment, as well as your plans to enforce the amendment if the issue is not addressed quickly.

We look forward to your response no later than December 12, 2014.

Sincerely,

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Member of Congress

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Member of Congress

ANDY HARRIS, M.D.
Member of Congress

JEFF FORTENBERRY
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DANIEL LIPINSKI
Member of Congress

cc:

Ms. Jocelyn Samuels
Director, Office for Civil Rights
U.S. Department of Health and Human Services

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