



**NATIONAL
MEETING
SPRING 2023**

LOUISVILLE

CONSUMER LIAISON COMMITTEE

Obstacles to Medically Necessary Care – Part 2: Refusal of Care and Network Adequacy

Dorianne Mason, National Women's Law Center

Wayne Turner, National Health Law Program

March 21, 2023

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Health Care Refusals: How Departments of Insurance Can Protect Patient Access

National Association of Insurance Commissioners

Spring 2023 National Meeting, Consumer Liaison

Health Care Refusals

- What are they?
- Statutory and regulatory landscape
- Denying medically necessary care harms patients
- How state regulators can help protect access
 - Prioritize patient access
 - Review network adequacy
 - Require transparency
- Resources

What are health care refusals?

- **Denial of medically necessary care**
 - Refusing to provide referral
 - Failing to inform patient of other treatment options
- **Individual provider**
 - Citing personal or religious objections
- **Religiously-affiliated health care systems**
 - Ethical and Religious Directives (ERDs)
 - Small and large provider groups, health insurers, Medicaid managed care organizations
- **Medically necessary services**
 - Reproductive health services, LGBTQ+, end-of-life care

Health care refusals harm patients

“A physician shall, while caring for a patient, regard responsibility to the patient as paramount.”

[AMA Code of Medical Ethics](#)

- Denial of care contrary to standards of care, scientific evidence, good medical practice, and patient needs
- Refusing to inform patient of treatment options defies informed-consent
- Health care is different from other kinds of services

Statutory and regulatory landscape

Federal and State Landscape

Federal Statutes

- Weldon Amendment, Consolidated Appropriations Act, 2009, Pub. L. No. 111-117, 123 Stat 3034, Title V, Sec. 508
- Church Amendments, 42 U.S.C. § 300a-7
- Coats Amendment, Public Health Service Act, 42 U.S.C. § 238n

Federal Regulations

- Proposed Partial Rescission - RIN 0945-AA18

State legislation and regulations

**Denying medically necessary
care harms patients**

Refusing reproductive health care

[Ethical and Religious Directives \(ERDs\)](#) promulgated by US Conference of Catholic Bishops prohibit:

- all birth control methods
- sterilization
- abortion
- certain miscarriage management techniques
- the least invasive treatments for ectopic pregnancies
- infertility treatments such as in vitro fertilization (IVF)
- treatment options to prevent pregnancy as a result of sexual assault, such as oral emergency contraception pill

Refusals harm LGBTQ+ individuals and families

According to a Center for American Progress [2023 report](#):

- 15% of transgender people were refused gender affirming care
- 20% of transgender people of color reported that a provider refused to see them due to the provider's religious beliefs or the stated religious tenets of the health care facility

Reports of physicians refusing to prescribe PrEP to Gay and Bisexual men

- See [How Some US Doctors Are Hindering HIV Prevention, Getting to Zero SF](#)

But, nondiscrimination laws apply

See, e.g., [Hammons v. University of Maryland Medical System](#)

Morning Mix

Pediatrician refuses to treat baby with lesbian parents and there's nothing illegal about it



<https://www.washingtonpost.com/news/morning-mix/wp/2015/02/19/pediatrician-refuses-to-treat-baby-with-lesbian-parents-and-theres-nothing-illegal-about-it/>

Patients should direct their own end-of-life care

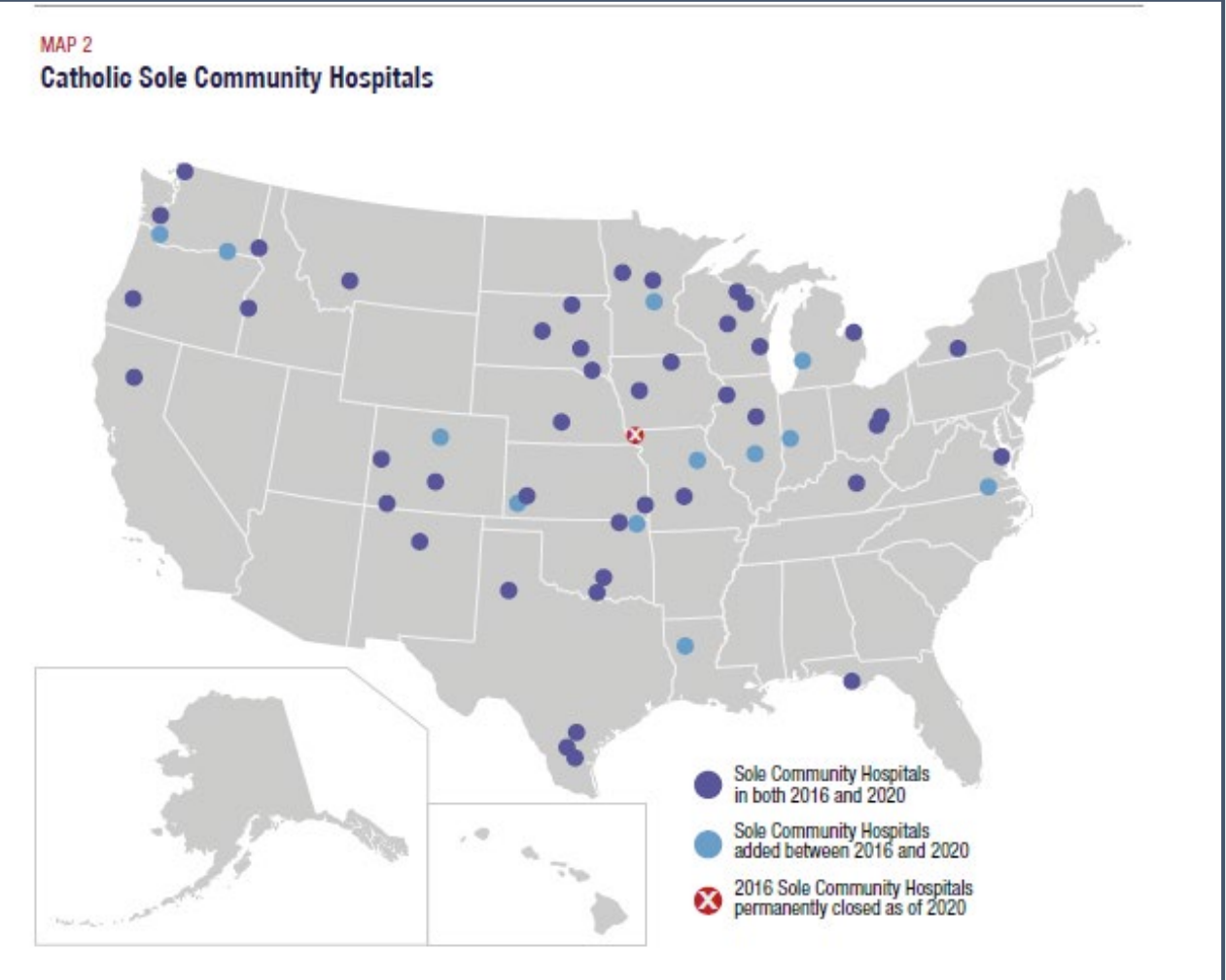
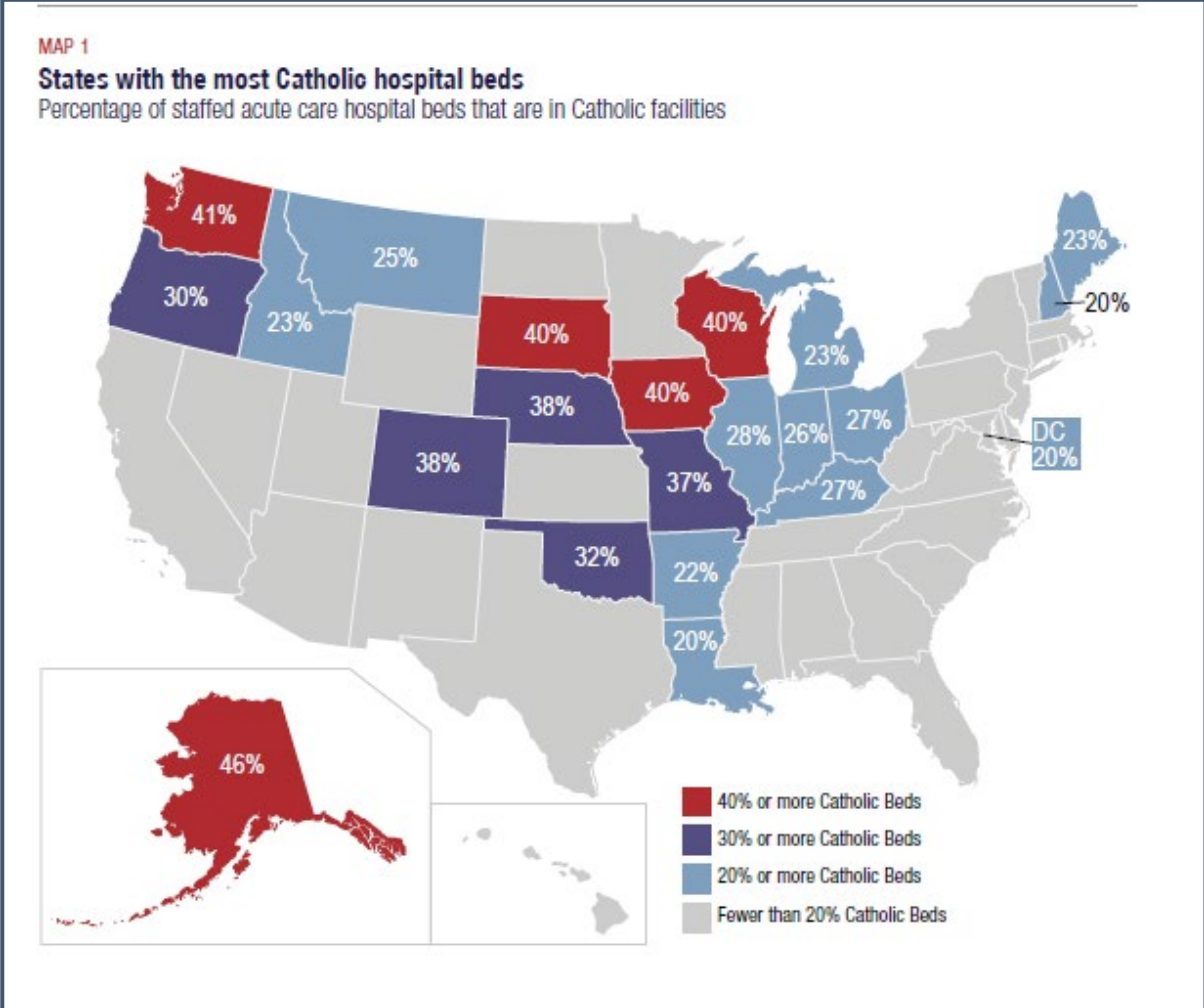
[Ethical and Religious Directives \(ERDs\)](#) require:

- medically assisted nutrition and hydration for those who cannot take food orally. This obligation extends to patients in chronic and presumably irreversible conditions (e.g., the ‘persistent vegetative state’)

“If you get in a car accident and suffer irreversible brain damage, you could be forced to live indefinitely on a ventilator, regardless of whether you have an advance directive and a healthcare advocate indicating that is not what you would want.”

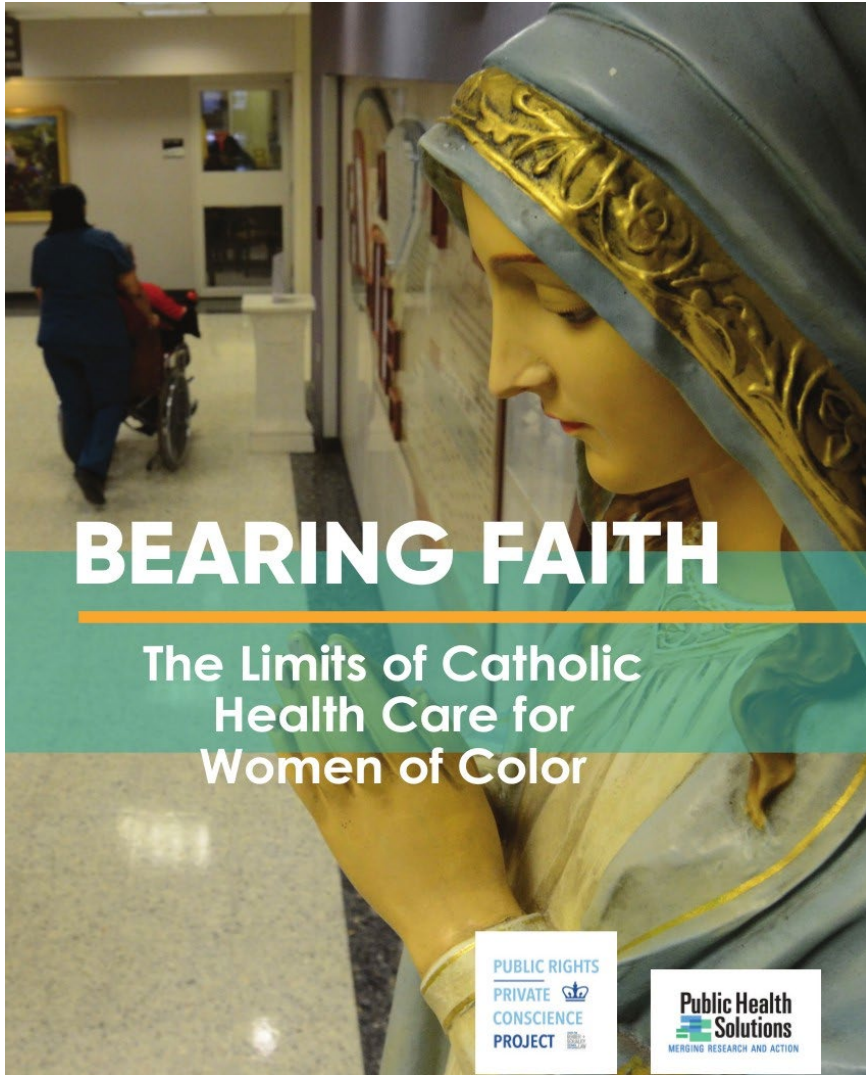
[Kim Callihan, *Commentary: Hospital merger imperils options for end-of-life care*, Times Union \(Oct. 13, 2021\)](#)

Religiously-affiliated providers dominate some markets



Source: Community Catalyst: [Bigger and Bigger: The Growth of Large Catholic Health Systems](#) (2020)

Impact on Access to Care for Women of Color



The expansion of Catholic health care has had a disproportionate effect on the sexual and reproductive health care available to women of color in many communities.

- Women of color were more likely than white women to give birth at a Catholic hospital
- In nineteen of thirty-three states and one territory, Catholic hospitals reported a higher percentage of births to women of color than did non-Catholic hospitals.

Recommendations for Dols

- Prioritize patient access in federal and state rulemaking and legislation
- Conduct state assessment on access to services to identify coverage gaps (e.g., [Oregon Reproductive Health and Access to Care Work Group](#))
- Include health care refusals as part of network adequacy reviews
- Require transparency for exclusions and ERDs including provider directories
- Consider refusals when reviewing health plan/provider mergers and acquisitions

Resources

National Women's Law Center:

- [Refusals to Provide Health Care Threaten the Health and Lives of Patients Nationwide](#)
- [Health Care Refusals Harm Patients: The Threat to LGBT People and People Living with HIV/AIDS](#)

National Health Law Program:

- [Health Care Refusals & How They Undermine Standards of Care](#)
- [The Ethical & Religious Directives: What the 2018 Update Means for Catholic Hospital Mergers](#)

See also:

- National Center for Lesbian Rights: [Re: Request for Information on Merger Enforcement, Federal Trade Commissioner](#) (April 2022)
- Compassion & Choices: [Refusals to Provide Care](#)

Questions?

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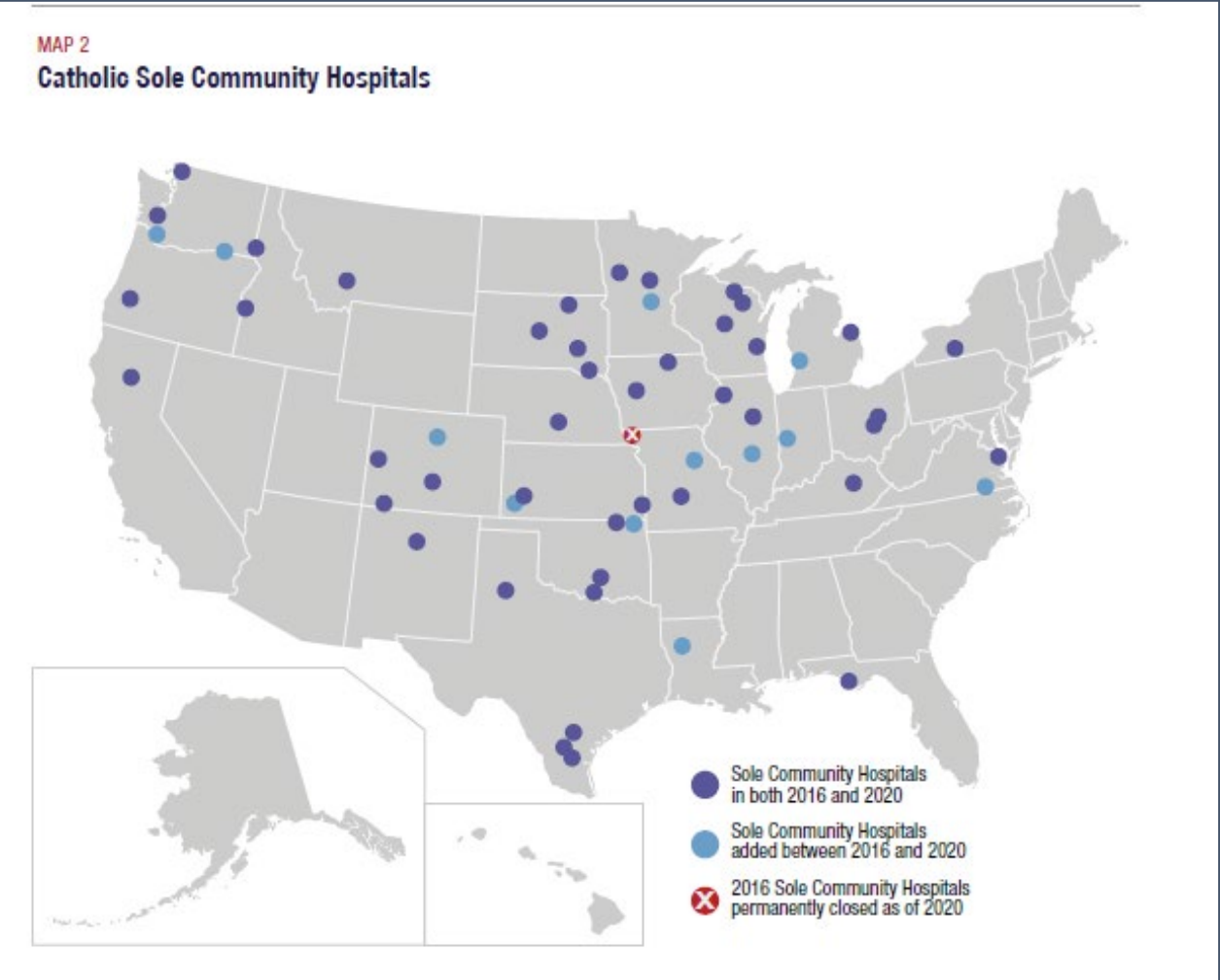
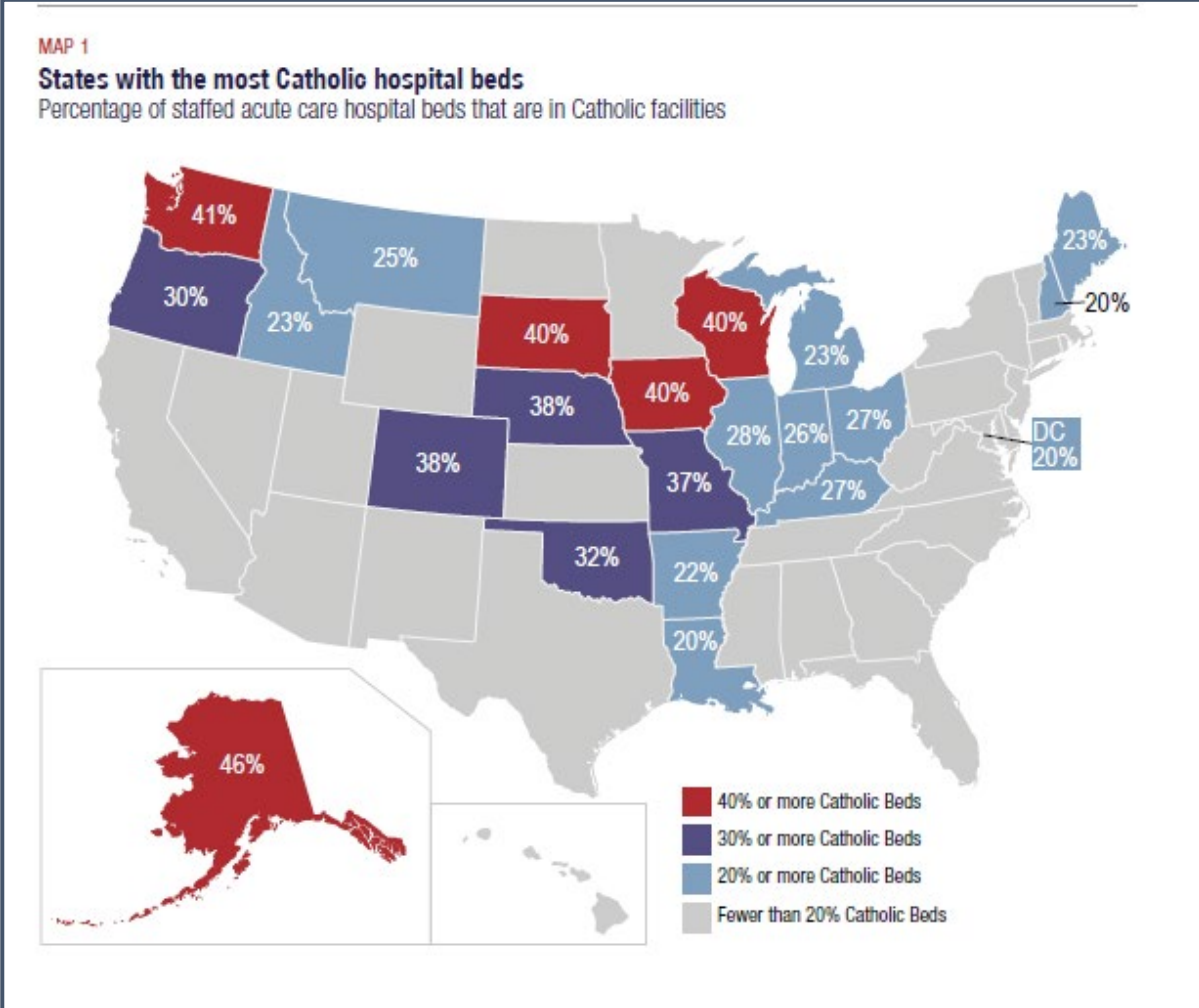
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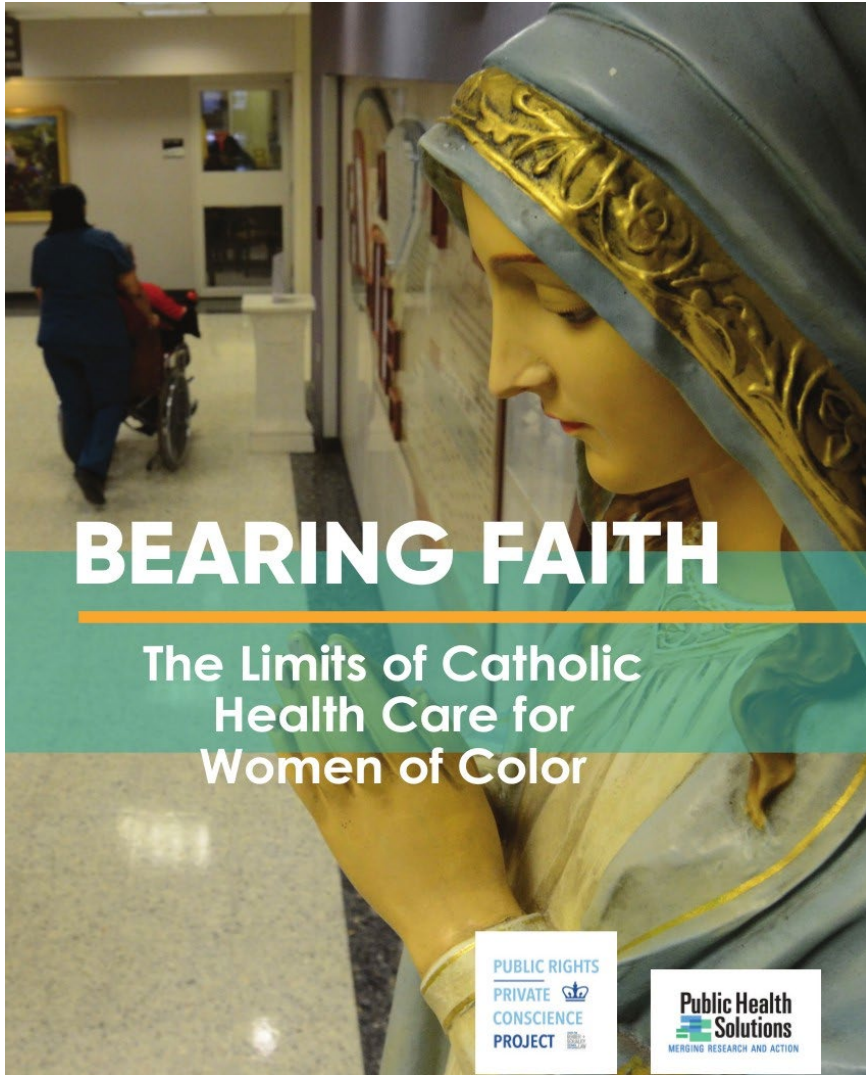
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