What is the new federal rule for conscience protection?

According to the U.S. Department of Health and Human Services (HHS), the “Protecting Statutory Conscience Rights in Health Care” rule or the “conscience protection” rule, seeks to broadly protect individuals, entities, and providers from discrimination because they decline to participate in medical services that violate their religious belief or moral conviction. The new conscience protection rule’s major provisions are:

1. Implementing 25 federal health care conscience statutes passed by Congress
2. Offering greater specificity concerning what conscience laws require
3. Consolidating the HHS Office for Civil Rights’ (OCR) enforcement authority over conscience protection laws

Although the new conscience protection rule focuses on abortion, it also applies to a range of other services including sterilization, assisted suicide, and advance directives.

Timeline

5/2/2019 HHS releases final rule on conscience protections
1/19/2018 HHS releases proposed rule on conscience protections
1/18/2018 HHS launches a new division of Conscience and Religious Freedom
10/6/2017 The Office of Attorney General issues guidance interpreting religious liberty per executive order
5/4/2017 President Trump signs executive order enhancing religious liberty
The scope of the new rule

Under the new rule, protected entities and individuals are divided into four large groups. First are health care entities and anyone employed by those entities that receive federal funds such as Medicare and Medicaid. These entities include hospitals, skilled nursing facilities, pharmacies and insurance companies. The next group is made up of health care professionals such as physicians, nurses, pharmacists, home health care providers, and first responders. The third group is researchers or other individuals participating in HHS-funded research or study. Lastly, patients who object to certain procedures, including screenings or mental health treatments for their children, are also protected under the new rule.

Under the conscience protection rule, state and local governments, federally-recognized tribes, public and private health providers, universities and schools that provide health care training, and other individuals and entities that receive federal funding must show compliance to the new rule by submitting compliance assurances, maintaining compliance records, cooperating with rule enforcement, and prohibiting discrimination or retaliation against those who file a complaint. In turn, the finalized conscience protection rule grants the OCR with greater authority to conduct investigations and enforce conscience protection violations that the Office previously did not possess. This includes conducting investigations once complaints are received by the OCR, initiating compliance reviews, supervising and coordinating compliance, providing enforcement referrals to the Department of Justice, and working with HHS funding sources to withhold federal funds temporarily or permanently when necessary.

What is the Office for Civil Rights (OCR)?

The HHS Office for Civil Rights (OCR) protects an individual’s “fundamental rights of nondiscrimination, conscience, religious freedom, and health information privacy.” Historically, the OCR focused on federal civil rights laws, the Health insurance Portability and Accountability Act (HIPAA) Privacy, Security, and Breach Notification Rules, and the Patient Safety Act and Rule.

In 2018, the HHS launched a new Conscience and Religious Freedom Division under the OCR to focus on religious exemption and address conscience laws. Recently, the OCR requested increased funding for the new division while proposing budget cuts for broader civil rights enforcement.
Next steps for the new conscience protection rule

The “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority” rule is supported by religious liberty and pro-life groups but opposed by groups such as the Planned Parenthood Federation of America (“Planned Parenthood”), the Americans Civil Liberties Union (ACLU), the Democratic National Committee as well as advocates for the Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) community.5,6

Although the finalized rule was initially set to go into effect on July 22, 2019, the implementation date is being delayed due to multiple challenges in court.2,7 On May 2, 2019, immediately after HHS released the finalized rule, the City of San Francisco sued the Department stating that the rule would increase discrimination and disparities in healthcare rather than remedy it.8 Additional court challenges were filed by the California Attorney General, New York Attorney General, Planned Parenthood, the National Women’s Law Center, Democracy Forward, ACLU, and the National Family Planning & Reproductive Health Association (NFPRHA).9

References

3. https://newsatjama.jama.com/2019/05/15/jama-forum-the-conscience-rule-how-will-it-affect-patients-access-to-health-services/