



## **FACTSHEET**

### **Final Conscience Regulation**

#### **Purpose of the New Regulation**

This rule gives effect to longstanding laws that broadly protect individuals, health care entities, and providers from discrimination in health care by government or government-funded entities because of the exercise of religious belief or moral conviction.

The rule ensures that, among other things, healthcare professionals will not feel compelled to leave the practice of medicine because they decline to participate in actions that violate their conscience such as abortion, sterilization, or assisted suicide. It also protects the right of diverse faith-based health care institutions to retain their religious beliefs and identity as part of their mission of serving others.

The rule addresses a lack of knowledge of rights and obligations under HHS-funded or administered health programs and corrects misunderstandings about conscience protections.

The 2011 rule provided inadequate enforcement of conscience rights by only providing for handling complaints based on three federal conscience protection laws. This final rule implements approximately 25 federal conscience protection provisions, and provides significant tools and mechanisms appropriate for enforcing the conscience protections passed by Congress. These tools are needed in light of the substantial growth in conscience complaints received by the HHS Office for Civil Rights (OCR).

#### **Main Regulatory Provisions**

The rule revises the existing HHS conscience regulations in scope and procedure:

(1) **Scope:** The final rule creates greater parity in OCR's enforcement of civil rights laws by implementing enforcement mechanisms for federal health care conscience and associated anti-discrimination provisions. The current rule, issued in 2011, covers only three conscience statutes, while this final rule covers a total of 25 provisions passed by Congress. The rule provides greater specificity concerning what conscience laws require and ensures that the government or government-funded entities are not unlawfully discriminating against individuals, health care providers, or health care entities.

(2) **Procedure:** Similar to other civil rights laws, the final rule implements robust enforcement tools at HHS to protect conscience rights, including the authority to:

- Investigate complaints.
  - Initiate compliance reviews.
  - Conduct investigations.
  - Supervise compliance within HHS.
  - Make enforcement referrals to the Department of Justice in coordination with the HHS Office of the General Counsel.
  - Remediate the effects of discrimination in coordination with other funding components in HHS, which may include withholding federal funds, as appropriate.
- The rule requires certain recipients of federal funds from HHS:
- To submit assurances and certifications to HHS that they are in compliance with federal health care conscience laws.
  - To fully comply with the requirements of federal conscience laws.
  - To keep records to establish compliance.
  - To cooperate with OCR's enforcement activities.
  - Not to intimidate or retaliate against those who file complaints with OCR, alleging violations of federal conscience laws, or cooperate with OCR investigations of such complaints.
  - The rule incentivizes, but does not require, recipients of HHS funds to post notices of federal health care conscience rights, or otherwise inform patients or employees, of such rights, where applicable.

## **Protected Individuals and Entities**

Where certain federal funds are involved, the rules protect:

- Health care entities and employees who have conscience or religious objections related to performing, paying for, referring for, providing coverage of, or providing certain services, such as abortion, sterilization, or assisted suicide, or providing or receiving training in abortion.
- Health care professionals who decline to receive training in abortions or who attend medical schools that don't require abortion training, and applicants for training or study who have conscience or religious beliefs relating to assisting or recommending abortions or sterilizations.
- Individuals in a health service or research activity funded by an HHS program, where they decline to perform or assist in part of that program because of sincere religious beliefs or moral convictions.
- Patients who object to certain procedures, including screenings and mental health treatment of children or occupational illness testing, and in other specific instances set forth by Congress.

## **Covered Entities**

- Federal agencies and programs, and state and local governments receiving federal funds, as well as certain federally funded entities.
- Each federal conscience protection provision implemented in the final rule specifies the types of entities to which the law applies, but these can include:
  - HHS
  - State and local governments
  - Public and private health providers that receive HHS funds
  - Universities and schools that provide health care training
  - Individuals and entities receiving taxpayer dollars from HHS or through particular programs administered by HHS for health care services, insurance, provider licensing, and research, such as through Medicare, Medicaid, Global Health Programs, the Affordable Care Act, the Public Health Service Act, and HHS's annual appropriations acts.

## **Conscience Protections under the Rule**

The conscience protections covered by the rule include:

- The Church Amendments.
- The Coats-Snowe Amendment.
- The Weldon Amendment.
- Affordable Care Act conscience protections regarding abortion coverage, assisted suicide, and provisions prohibiting the discriminatory denial of a religious exemption from the individual mandate.
- Section 1553 of the Affordable Care Act concerning the right to not participate in assisted suicide.
- Certain conscience protections under Medicare Advantage and Medicaid.
- Conscience protections concerning advance directives with respect to certain HHS-funded programs.
- Conscience protections for Global Health Programs administered by HHS or funded by HHS appropriations.
- Conscience exemptions for patients from certain specified health care services.
- Conscience protections for religious nonmedical health care institutions and patients who seek religious nonmedical care.

## **Procedural History**

The rule follows a 60-day comment period ending March 27, 2018. During that time, HHS received 242,216 comments in 72,417 submissions. HHS analyzed and carefully considered all comments submitted from the public on the proposed conscience regulation and made appropriate modifications before finalizing. The rule goes into effect 60 days after it is published in the Federal Register, which is pending.

(May 2, 2019)