



DHHS Policy Prohibiting Discriminating Against Health Care Providers based on their Moral Beliefs

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The Department of Health and Human Services issued a final rule with the stated goal of ensuring that federally funded health care providers may safely decline to participate in certain health services because of their religious, moral, ethical, or other beliefs. The rule took effect on January 18, 2009, and prohibits federal fund recipients from discriminating against an entity or person who refuses to train to perform, participate in, or refer anyone for any lawful health service (such as an abortion) or research activity. Recipients of federal funds are required to keep written certifications of their compliance with the final rule, in a form set forth in the final rule. These “nondiscrimination” protections apply to institutional health care providers, as well as individual employees working for federally funded health care providers.

Protection extends to trainees, applicants, and those who may “assist in the performance” of the objectionable procedures. Entities that violate the regulations could lose federal funding or even be required to reimburse already-distributed funds.

The final rule aims to increase awareness of, and compliance with, existing statutes which permit health care providers to practice according to their conscience. Complaints alleging violations under the final rule may be filed with the HHS Office for Civil Rights.

The “provider conscience rights” rule has been challenged by several commentators. Legislative action is currently pending to prohibit the

enforcement or implementation of the rule. The new regulations add another level of considerations and require additional documentation for employers that receive federal funds in the health care industry. Healthcare employers may want to modify their nondiscrimination policies confirming their intent to comply with the regulations, once it is clear that pending legislation will not stop the enforcement of the rule.
