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HHS Takes Action To Protect Religious Beliefs and Moral Convictions

On January 19, 2018, the United States Department of Health and Human Services (“HHS”) announced its new policy entitled “HHS Takes Major Actions to Protect Conscience Rights and Life”. This policy initiative announced by HHS has two components. First, CMS advised state Medicaid Directors that it was reversing earlier guidance with respect to restricting states from taking any action against family planning providers that offer abortion services. In particular, HHS informed states that they would now be allowed to disqualify family planning providers from reimbursement in connection with providing abortion services.

[<https://www.medicaid.gov/federal-policy-guidance/downloads/smd18003.pdf>]

Second, HHS announced new proposed regulations providing certain protections for individuals in the health care sector who object to participating in certain activities based on their religious beliefs or moral convictions. Specifically, a new Conscience and Religious Freedom Division will be created within the Office for Civil Rights (“OCR”), charged with implementing the proposed regulations as finalized and enforcing statutes which protect individuals and organizations from being compelled to participate in procedures such as abortion, sterilization, assisted suicide, euthanasia, or being required to administer or receive certain vaccinations derived from aborted fetal tissue. There is a 60-day comment period for these regulations and they are summarized as follows:

- HHS will require providers to submit written assurances and certifications of compliance with the federal health care conscience and associated antidiscrimination laws, as applicable, as a condition of the terms of acceptance of the federal financial assistance or other federal funding from HHS.
- Providers will be required to notify the public, patients, and employees, which may include students or applicants for employment or training, of their protections under the federal health care conscience and associated anti-discrimination laws.
- Providers will be required to maintain records evidencing compliance with the federal health care conscience and associated anti-discrimination laws.
- OCR’s enforcement authority will include the authority to handle complaints, perform

compliance reviews, investigate, and seek appropriate action (in coordination with the leadership of any relevant HHS component) that OCR deems necessary to remedy the violation of federal health care conscience and associated anti-discrimination laws and these proposed regulations, as allowed by law.

- Where a state or local law provides as much or greater protection than federal law for religious freedom and moral convictions, HHS will not construe federal law to preempt or impair the application of that law, unless expressly provided.

The proposed regulations apply to health care providers, including physicians, hospitals, federally qualified health centers, and mental health clinics, health-related schools and other education entities that provide health professions training for medicine, oral health, behavioral health, geriatric care, nursing, etc., community-based organizations that provide substance abuse screening, HIV/AIDS prevention and treatment, and domestic violence screening, private non-profit and for-profit agencies that provide medical care to unaccompanied minors, and interdisciplinary university centers or public or nonprofit entities associated with certain universities that receive certain financial assistance.

Although HHS states that none of these rules are new, but are rather a compilation of existing laws and policy, it does create a unified federal standard which prohibits discrimination on the basis of moral convictions or religious beliefs. Where these proposed regulations once they are finalized will lead us, is very uncertain.

Questions or Assistance

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