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Fact Sheet: Safeguarding the Rights of Conscience as Protected by Federal Statutes

The Department of Health and Human Services (HHS) issued a Final Rule that restores the longstanding process for handling conscience complaints, strengthens safeguards to protect against conscience and religious discrimination, and partially rescinds the 2019 Rule, *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23,170 (May 21, 2019), which was held unlawful by three federal district courts.

The final rule clarifies OCR's conscience authorities, and the tools OCR has for enforcing these laws, including by (1) affirming that OCR is the office designated to receive, handle, and investigate complaints of the various statutes identified in the 2019 Final Rule; (2) retaining descriptions of OCR's enforcement process that fall within the Department's housekeeping authority; and (3) encouraging covered entities to post a notice to explain that individuals or entities may have rights under the Federal health care conscience protection statutes.

Background

HHS first published a regulation implementing the Church, Coats-Snowe, and Weldon Amendments in 2008. *See* 73 Fed. Reg. 78,072 (Dec. 19, 2008). In 2011, HHS revised the conscience rule to be narrower and handle conscience matters on a case-by-case basis. *See* 76 Fed. Reg. 9968 (Feb. 23, 2011).

In 2019, HHS finalized a sweeping revision of the rule that provided broad definitions, created new compliance regulations, and set forth a new enforcement mechanism for a number of statutes related to the conscience rights of certain federally funded health care entities and providers. On November 6, 2019, the Southern District of New York vacated the rule. That same month, the Northern District of California and the Eastern District of Washington issued similar rulings. Because this rule never took effect, the 2011 Conscience Rule has been in continuous operation since it was finalized.

On January 5, 2023, the Department proposed a new rule to return to the framework of the 2011 Rule while also strengthening that rule by implementing portions of the 2019 Rule that were not held unlawful to advance religious and conscience protections.

In response to comments that generally asked for more clarity in the rule text, the Department has made technical changes to the Final Rule, including:

- Clarifying that certain conscience statutes apply to more than just providers by referring to them as the “Federal health care conscience protection statutes” throughout the Final Rule;
- Noting that OCR’s investigations will be “prompt”;
- Explaining that if an investigated entity fails to respond to an OCR request for information within a reasonable timeframe and without good cause, OCR will consider that fact negatively as it evaluates all the evidence in a given case;
- Detailing OCR’s enforcement tools, including possible termination of funds in certain situations;
- Continuing to clarify that HHS may refer a matter to the Department of Justice for proceedings to enforce the conscience statutes;

- Encouraging covered entities to post a notice to ensure compliance and educate the public about conscience statutes, including by stating in regulatory text that ED OCR will consider an entity's posting of the notice as a factor in any investigation under the rule; and
- Lists federal conscience statutes in the model notice and acknowledges in the model notice's text that a person may base their claim of conscience on either religious beliefs or moral convictions.

In addition, the Department included information in the Final Rule about OCR's commitment and resources to continue to educate patients, providers, and other covered entities about their rights and obligations under the Federal health care conscience statutes.

If you believe that you or someone else has been discriminated against based on conscience or religion or because of race, color, national origin, disability, age, sex, or religion in programs or activities that HHS directly operates or to which HHS provides Federal financial assistance, you may file a complaint with the HHS Office for Civil Rights at: https://www.hhs.gov/ocr/complaints/index.html
<https://www.hhs.gov/ocr/complaints/index.html >

Summary of the Final Rule

Clarifies OCR is the office designated to receive, handle, and investigate complaints of the various statutes identified in the 2019 Final Rule.

Section 88.1 of the Final Rule explains that the Office for Civil Rights has the authority to receive, handle and investigate complaints regarding a number of provisions that protect conscience, including the Church, Coats-Snowe, and Weldon Amendments, among others. These statutes are collectively referred to as the Federal health care conscience protection statutes.

Restores OCR's long-standing enforcement process for the Federal health care conscience protection statutes

Section 88.2 of the Final Rule describes the tools available to OCR to enforce the Federal health care conscience protection statutes. These include the authority to:

- Investigate complaints.
- Initiate compliance reviews.
- Conduct investigations.
- Supervise compliance within HHS.
- Use existing enforcement regulations to achieve compliance or withhold relevant funding as authorized by the Federal health care conscience protection statutes and in consultation with the relevant Departmental component.
- In coordination with the relevant component or components of the Department, make enforcement referrals to the Department of Justice.

Otherwise strengthens protections against discrimination on the basis of conscience

Section 88.2 also makes clear elements of OCR's process for handling complaints, including:

- Noting that anyone may file a complaint with OCR and that OCR will be prompt as it conducts investigations;
- Explaining that if an investigated entity fails to respond to an OCR request for information within a reasonable timeframe and without good cause, OCR will consider that fact negatively as it evaluates all the evidence in a given case; and
- Committing to resolving matters informally, while also clarifying OCR and the Department's enforcement tools to achieve compliance.

Encourages entities to post a notice of rights

Section 88.3 of this final rule states that entities may post a notice. This notice provision encourages covered entities to post notices, including by stating in regulatory text that ED OCR will consider an entity's posting of the notice as a factor in any investigation under the rule. The notice informs providers and patients of their rights under the Federal health care conscience protection statutes and informs patients of alternative ways to obtain treatment. The rule provides model text for the notice in an Appendix, which includes:

- The full list of Federal health care conscience protection statutes that may be applicable to an entity;
- Direction to OCR's website for additional information to help entities determine which statutes are applicable to them; and

- Notice that a person may base their claim of conscience on either religious beliefs or moral convictions and where to file a complaint.

Severability

Section 88.4 of this final rule includes a severability provision to preserve portions of the rule if part of the rule is held unlawful.

Procedural History

The rule followed a 60-day comment period that ended March 6, 2023. During that time, HHS received 48,063 comments in 37,037 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.

For more information, please go to OCR's website at www.hhs.gov/ocr <http://www.hhs.gov/ocr>.

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