



ENFORCEMENT OF THE FEDERAL HEALTH CARE PROVIDER CONSCIENCE PROTECTION LAWS



Overview

This presentation will explain the:

- Role of the HHS Office for Civil Rights (OCR) in enforcing the Federal Health Care Provider Conscience Protection Laws;
- Protections for the conscience rights of health care providers; and
- Protections for the rights of patients to access needed health care.



Our Mission

The mission of the U.S. Department of Health and Human Services (HHS) is to enhance the health and well-being of Americans by providing for effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services.

HHS accomplishes its mission through several hundred programs and initiatives that cover a wide spectrum of activities, serving the American public at every stage of life.



*PROTECTING THE CONSCIENCE
RIGHTS OF
HEALTH CARE PROVIDERS*





Federal Health Care Provider Conscience Protection Laws

The conscience rights of health care providers are established in the following Federal Health Care Provider Conscience Protection Laws:

- *the Church Amendments;*
- *the Public Health Service Act Section 245;*
- *the Weldon Amendment; and*
- *the Affordable Care Act.*



Role of HHS OCR in Provider Conscience Enforcement

- HHS OCR has been designated to receive complaints of discrimination and coercion based on the Federal Health Care Provider Conscience Protection Laws.
- HHS OCR will coordinate the handling of complaints with the staff of the HHS programs from which the entity, with respect to whom a complaint has been filed, receives funding (i.e., the HHS funding component).



Role of HHS OCR in Provider Conscience Enforcement (continued)

- If HHS becomes aware that a state or local government or an entity has undertaken activities that may violate the statutory conscience protections, HHS will work with such government or entity to assist them in achieving voluntary compliance.
- If voluntary compliance is not achieved, HHS will consider all legal options, including:
 - Termination of funding; or
 - Collection of funds paid out in violation of the statutory conscience protections, pursuant to 45 C.F.R. parts 74, 92 and 96, as applicable.



How to File a Complaint Under the Federal Health Care Provider Conscience Laws

If you wish to file a complaint under the Federal Health Care Provider Conscience Protection Laws, because you believe you have suffered discrimination on the basis of your objection to, participation in, or refusal to participate in abortion and sterilization, and related training and research activities; or if you believe that you have been coerced into performing procedures that you find religiously or morally objectionable, you may file a complaint with HHS OCR.

We recommend using the [Civil Rights Discrimination Complaint Form Package](#), which can be found on our website at www.hhs.gov/ocr/civilrights/complaints/index.html

To request a copy of the complaint form or help filing a complaint, please contact HHS OCR at OCRMail@hhs.gov or by telephone at 1(800)368-1019, 1(800)537-7697 (TDD).



HHS OCR's Other Enforcement Responsibilities

HHS OCR also enforces:

- civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, religion, including the refusal to provide assisted suicide services, by recipients of Federal financial assistance from HHS and by HHS-conducted programs; and
- the Privacy and Security Rules under the Health Insurance Portability and Accountability Act (“HIPAA”), which protects health information from improper uses and disclosures, and the confidentiality provisions of the Patient Safety Rule.



FEDERAL HEALTH CARE PROVIDER CONSCIENCE PROTECTION LAWS IN-DEPTH





First Conscience Provision of the Church Amendments

- *What conduct by the covered entities is prohibited?*

The receipt by an individual or entity of any grant, contract, loan or loan guarantee under certain HHS-implemented statutes does not authorize a court, public official or public authority to require, if it would be contrary to the individual's or entity's religious beliefs or moral convictions:

- the individual to perform or assist in sterilization or abortion;
- the entity to make its facilities available for sterilization or abortion; or
- the entity to provide personnel for the performance or assistance in sterilization or abortion. 42 U.S.C. 300a-7(b).



Second Conscience Provision of the Church Amendments

- *Who are the covered entities?*
 - ❖ Any entity that receives a grant, contract, loan or loan guarantee under certain HHS-implemented statutes

- *What conduct by the covered entities is prohibited?*

The covered entity may not discriminate against any physician or health care personnel in employment, promotion, termination of employment, or extension of staff privileges because the individual:

 - Performed or assisted in a lawful sterilization or abortion; or
 - Refused to perform or assist in a sterilization or abortion on the grounds that the individual's performance or assistance would be contrary to the individual's religious beliefs or moral convictions.

42 U.S.C. 300a-7(c)(1).



Third Conscience Provision of the Church Amendments

- *Who are the covered entities?*
 - ❖ Any entity which receives a grant or contract for biomedical or behavioral research under any HHS-administered program

- *What conduct by the covered entities is prohibited?*

The covered entity may not discriminate against any physician or health care personnel in employment, promotion, termination of employment, or extension of staff privileges because the individual:

 - Performed or assisted in any lawful health service or research activity; or
 - Refused to perform or assist in any lawful health service or research activity on the grounds that the individual's performance or assistance would be contrary to the individual's religious beliefs or moral convictions. 42 U.S.C. 300a-7(c)(2).



Fourth Conscience Provision of the Church Amendments

“No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by [HHS] if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.” 42 U.S.C. 300a-7(d).



Fifth Conscience Provision of the Church Amendments

- *Who are the covered entities?*
 - ❖ Any entity which receives a grant, contract, loan, loan guarantee, or interest subsidy under certain HHS-implemented statutes

- *What conduct by the covered entities is prohibited?*

The covered entity may not:

- deny admission to any applicant (including applicants for internships and residencies), or
- otherwise discriminate against any applicant for training because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions. 42 U.S.C. 300a-7(e).



Public Health Service Act Section 245

- *Who are the covered entities?*
 - ❖ Federal government
 - ❖ State or local governments that receive Federal financial assistance

- *What conduct by the covered entities is prohibited?*

The covered entity may not subject any health care entity to discrimination on the basis that the health care entity:

- Refuses to undergo training in the performance of abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;
- Refuses to make arrangement for such activities; or
- Attends (or attended) a post-graduate physician training program, or any other health profession training program, that does not (or did not) perform induced abortions or require, provide, or refer for training in induced abortions.



Public Health Service Act Sec. 245 (continued)

- *What conduct by the covered entities is required?*

The covered entity shall deem accredited any postgraduate physician training program that would be accredited, but for the reliance on an accrediting standard that, regardless of whether such standard provides exceptions or exemptions, requires an entity:

- *To perform abortions; or*
- *To require, provide, or refer for training in the performance of abortions, or make arrangements for such training.*

42 U.S.C. 138n.



Weldon Amendment

- *Who are the covered entities?*
 - ❖ Federal agencies and programs
 - ❖ State or local governments that receive Federal financial assistance
- *What conduct by the covered entities is prohibited?*
 - The covered entity may not discriminate against any institutional or individual health care entity on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.
 - The term “health care entity” includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization or plan. Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279-80 (Dec. 16, 2009).



Affordable Care Act

- *Who are the covered entities?*
 - ❖ Qualified health plans offered through health insurance Exchanges

- *What conduct by the covered entities is prohibited?*
 - “No qualified health plan offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions.” Section 1303(b)(4) of the Affordable Care Act.
 - Note: HHS OCR coordinates the handling of such complaints but does not have authority to enforce Section 1303 of the Affordable Care Act.



PROTECTING THE RIGHTS OF PATIENTS





Patient Access to Needed Health Care

Health care entities that participate in HHS funded-programs must continue to comply with the requirements for providing health care services, for example:

- Medicaid program, 42 U.S.C. 1396-1396v (2006);
- Community Health Centers program, 42 U.S.C. 264(b) (2008); and
- Title X Family Planning program, 42 U.S.C. 264(b) (2008).



Civil Rights Protections

Health care entities must continue to comply with civil rights statutes enforced by HHS OCR, including:

- *Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (prohibiting race, color, or national origin discrimination in programs receiving Federal financial assistance (FFA));*
- *Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (prohibiting disability discrimination in Federally conducted programs and programs receiving FFA); and*
- *Age Discrimination Act of 1975, 42 U.S.C. 6101-6107 (prohibiting age discrimination in programs receiving FFA).*



SUCCESSFUL HHS OCR ENFORCEMENT





Successful HHS OCR Case Resolution

Corrective Action by Vanderbilt University

- HHS OCR received complaints alleging that Vanderbilt University had violated the conscience rights of two applicants to its nurse residency program.
- Pursuant to the Church Amendments, the complaints alleged that as a condition for admission to the residency program, Vanderbilt required applicants to promise in writing that they would assist in pregnancy termination procedures.
- Upon receiving these complaints, HHS OCR investigated and worked with Vanderbilt to address the concerns that were raised.



Successful HHS OCR Case Resolution (continued)

For resolution, Vanderbilt took these corrective actions:

- Vanderbilt emailed nurse residency candidates that it does not require nurses to participate in pregnancy termination procedures, if it is inconsistent with their religious beliefs or moral convictions.
- Vanderbilt removed the original acknowledgement form from its residency program application and replaced the form with a notice clarifying its accommodations for religious beliefs or moral convictions.
- Vanderbilt sent revised information packets, with these clarifications, to new nurse residency candidates, including the two complainants.



Why Is This Important? Your Role In Protecting Federal Civil Rights

As an Advocate or Health Care Provider, you can:

- *Educate your employees, clients, family, and friends about Federal civil rights in health care settings;*
- *File complaints with HHS OCR on behalf of “affected parties” or persons who cannot come forward on their own; and*
- *Ensure that your organization’s policies and procedures comply with Federal civil rights law.*



Thank You

Office for Civil Rights

U.S. Department of Health and Human Services

Toll-free Info: 1(800) 368-1019

TDD Toll-free Info: 1(800) 537-7697

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