

HHS Takes Major Actions to Protect Conscience Rights and Life

On Friday, the Department of Health and Human Services (HHS) announced two major actions to protect life and the conscience rights of Americans.

HHS's Centers for Medicare & Medicaid Services (CMS) is issuing new guidance to state Medicaid directors restoring state flexibility to decide program standards. The letter issued today rescinds 2016 guidance that specifically restricted states' ability to take certain actions against family-planning providers that offer abortion services.

Additionally, HHS's Office for Civil Rights (OCR) is announcing a new proposed rule to enforce 25 existing statutory conscience protections for Americans involved in HHS-funded programs, which protect people from being coerced into participating in activities that violate their consciences, such as abortion, sterilization, or assisted suicide.

"Today's actions represent promises kept by President Trump and a rollback of policies that had prevented many Americans from practicing their profession and following their conscience at the same time," said Acting HHS Secretary Eric D. Hargan. "Americans of faith should feel at home in our health system, not discriminated against, and states should have the right to take reasonable steps in overseeing their Medicaid programs and being good stewards of public funds."

"America's doctors and nurses are dedicated to saving lives and should not be bullied out of the practice of medicine simply because they object to performing abortions against their conscience," said OCR Director Roger Severino. "Conscience protection is a civil right guaranteed by laws that too often haven't been enforced. Today's proposed rule will provide our new Conscience and Religious Freedom Division with enforcement tools that will make sure our conscience laws are not empty words on paper, but guarantees of justice to victims of unlawful discrimination."

Background

New Draft Conscience Regulation

- The proposed rule provides practical protections for Americans' conscience rights and is modelled on existing regulations for other civil rights laws.
- The laws undergirding the proposed regulation include the Coats-Snowe, Weldon, and Church Amendments, as well as parts of Medicare, Medicaid, the Affordable Care Act, and others (25 statutes in total).
- The proposed rule applies to entities that receive funds through programs funded or administered in whole or in part through HHS.
- The proposed rule requires, for instance, that entities applying for federal grants certify that they are complying with the above-mentioned conscience-protection statutes.

- Since President Trump took office, OCR has stepped up enforcement of these conscience statutes, many of which saw little to no enforcement activity under the previous administration.
- The proposed rule includes a public comment period of 60 days.
- Friday's proposed rule follows the announcement on Thursday of a new Conscience and Religious Freedom Division in OCR, charged with implementing the proposed regulation as finalized and enforcing statutes that protect individuals and organizations from being compelled to participate in procedures such as abortion, sterilization, and assisted suicide when it would violate their religious beliefs or moral convictions.

New Medicaid Guidance Restoring State Flexibility

- On Friday, CMS issued a State Medicaid Director Letter restoring state flexibility to establish reasonable standards for their Medicaid programs.
- The letter rescinded an April 2016 guidance (State Medicaid Directors Letter #16-005), which limited states' long-standing authority to regulate providers operating within their states.
- The 2016 letter had said that states that attempted to protect the integrity of their program standards by disqualifying abortion providers from their Medicaid programs would come under CMS scrutiny, and would be required to present to CMS evidence of criminal action or unfitness to perform healthcare services.
- As stated in the Friday letter to state Medicaid directors, CMS is concerned that the 2016 letter may have gone beyond merely interpreting what the statute and current regulations require.
- This decision returns CMS policy to what it was prior to the issuance of the 2016 letter.
- States will still be required to comply with all applicable statutory and regulatory requirements, including the requirement that provider qualification standards be reasonable.

The new State Medicaid Directors Letter is here: <https://www.medicaid.gov/federal-policy-guidance/downloads/smd18003.pdf>

The conscience regulation can be found in the Federal Register here: <https://www.federalregister.gov/public-inspection/2018/01/19>