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NEWS ALERT
January 15, 2009

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Expanded "Right of Conscience" Rule Grants New Protections to Health Care Workers Who Refuse to Participate in Delivery of Controversial Health Care Services

On January 20, 2009, a controversial rule goes into effect which expands protections to health care workers who refuse to provide care that violates their personal beliefs. This expanded rule, known as the "right of conscience" rule (45 CFR Part 88), will have a significant impact on federally funded entities, including hospitals, states and local governments that employ health care workers and provide "controversial" health care.

Although there are several laws currently on the books which protect health care providers from participating in certain health care procedures, according to the U.S. Department of Health and Human Services' Final Rule, published in the Federal Register on December 19, 2008 (73 FR 78071), the new regulation will increase compliance with such laws. The new regulation cuts off federal funding for any state or local government, hospital, health plan, clinic or other entity that does not accommodate doctors, nurses, pharmacists and other employees who refuse to participate in care they find ethically, morally or religiously objectionable. Under the rule, any worker with a "reasonable" connection to the delivery of health care can refuse to take part in controversial services such as abortion, dispensing birth control drugs and other forms of contraception or offering advice about such services, infertility treatment, scientific research, as well as certain types of end-of-life care. The regulation has drawn both criticism and praise for expanding the types of health care services and the employees who are entitled to the protections of the rule.

The rule requires 584,000 health care organizations to provide written certification of their compliance by October 1, 2009, and designates the HHS Office for Civil Rights as the entity to receive complaints of discrimination under the regulation and any existing conscientious objector statutes. In the event that the health care organizations do not comply with the rule, they face either having their funding cut off or having to return funding they have already received.

The regulation will take effect the same day President-elect Obama is inaugurated. Although there are indications that the incoming administration may seek to overturn the rule, necessary adherence to rulemaking procedures would make any immediate change in the rule unlikely.

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