

LEGAL EAGLE EYE NEWSLETTER

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Morally Coercive Or Discriminatory Practices: New Regulations Take Effect January 20, 2009.

Excerpts From The New Regulations 45 CFR Part 88

(c) Entities to whom [these regulations] apply shall not:

(1) Discriminate against any physician or other health care professional in the employment, promotion, termination, or extension of staff or other privileges because he performed or assisted in the performance, or refused to perform or assist in the performance of a lawful sterilization procedure or abortion on the grounds that doing so would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions concerning abortions or sterilization procedures themselves;

(d) Entities to whom [these regulations] apply shall not:

(1) Require any individual to perform or assist in the performance of any part of a health service program or research activity funded by the Department if such service or activity would be contrary to his religious beliefs or moral convictions.

(2) Discriminate in the employment, promotion, termination, or the extension of staff or other privileges to any physician or other health care personnel because he performed, assisted in the performance, refused to perform, or refused to assist in the performance of



The word “entity” in the new regulations applies to any recipient of Federal funds.

Expressly included are hospitals, provider-sponsored organizations, health maintenance organizations, health insurance plans, laboratories, any other health care organizations or facilities, including components of State or local governments.

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any lawful health service or research activity on the grounds that his performance or assistance in performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of the religious beliefs or moral convictions concerning such activity themselves.

Certification Requirements

Health care entities will be informed of their specific compliance-certification requirements at the time of grant or provider agreement renewal, the Department says.

Who Is Protected?

The Department's official comments indicate an intent to widen as broadly as possible the application of the regulations. That was the rationale for using the phrase “other health care personnel” instead of listing specific professions and occupations, as that might give the impression that those not expressly listed are not protected by the new regulations.

The Department's official comments, rather than the regulations themselves, state for purposes of clarification that the phrase “other health care professionals” as used in the regulations refers to nurses, pharmacists, occupational therapists, public-health workers and technicians, psychiatrists, psychologists, counselors and other mental health workers.

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