

Blog Post

# Department of Health and Human Services Proposes New Rule For Healthcare Workers

April 2, 2018

Healthcare employers take note: the Department of Health and Human Services (“HHS”) has issued a proposed rule that, if passed, will allow healthcare workers who object to performing certain medical procedures like abortions and gender reassignment surgeries to refuse to perform such procedures on the grounds of religious freedom. If passed, the proposed rule would apply to over 700,000 healthcare facilities, including hospitals, dentists’ offices, pharmacies, ambulance services and others that receive federal funding. Again, if the rule is passed, it would require healthcare entities receiving federal grants to certify their compliance with the law. The proposed rule would also require healthcare entities to notify employees of the law and allow the Office of Civil Rights to initiate a compliance review of any entity receiving federal funds to determine whether the employee notice appears in appropriate places, like employee handbooks and employment applications.

The proposed rule came one day after HHS announced the formation of a new Conscious and Religious Freedom Division in the HHS Office for Civil Rights. In its press release, HHS stated that the division was established “to restore federal enforcement of our nation’s laws that protect the fundamental and unalienable rights of conscience and religious freedom.” Existing federal laws

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protected the religious freedom and conscientious rights of healthcare workers, but complaints of violations have dramatically increased since Trump took office. During the Obama administration, the HHS Office for Civil Rights received 10 complaints. Since Trump was elected, the HHS Office of Civil Rights has received 34 complaints.

The proposed rule has already sparked significant debate. Supporters of the rule state that it addresses “conscience rights” and protects healthcare workers from having to perform medical procedures that violate their religious beliefs, while critics say that it attempts to legitimize discrimination. The comment period closed on March 27, 2018.

In response to this proposed rule, healthcare employers should assess their employees’ attitudes on the subject to determine if any of its healthcare workers object to performing any such procedures, both to ensure compliance with the rule if it is passed and to ensure that they will be prepared in the event of a medical emergency.

If you have questions about the proposed rule and its potential impact on you, contact your Akerman Labor and Employment or Healthcare lawyer.

This information is intended to inform clients and friends about legal developments, including recent decisions of various courts and administrative bodies. This should not be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this email without seeking the advice of legal counsel.