

Final HHS Rule Threatens Women's Access to Health Care Information and Options, Poses Serious Risks to Women's Health

The final HHS rule, issued on December 18, 2008, significantly limits patients' access to health care and important information about their health care options. The National Women's Law Center calls on President-elect Obama to repeal the Department of Health and Human Services (HHS) rule that poses a serious threat to women's health.

The final rule gives specific and detailed guidance to health care providers about a myriad of ways in which they can refuse to provide care to patients. Yet, it offers almost no guidance to ensure patients can get access to the care and information they need, and no guidance to health providers about how they can meet their patients' needs in the face of employees' refusals. Specifically:

The Final HHS Rule Threatens Access to Most Forms of Birth Control. The final rule, as with the proposed rule, provides no definition of abortion. This gives an open invitation to any doctor, nurse, receptionist, insurance plan, or even hospital to refuse to provide access to, or information about, birth control on the grounds that they believe that contraception amounts to abortion.

Moreover, the final rule undermines state laws that ensure patients have access to essential medical care, including reproductive health care. At stake are state laws requiring insurance plans to cover contraceptives if they cover other prescription drugs; laws requiring hospitals to provide rape victims access to and information about emergency contraception; and laws requiring pharmacies to ensure that women have timely access to contraceptives.

Though the rule states that the Department is not aware of any state that has to date applied its laws "in an inappropriate fashion," it expressly leaves open the possibility that these important state protections could be lost. In fact, Connecticut Attorney General Richard Blumenthal has already vowed to fight it.

The Final HHS Rule Misreads Congressional Intent and Threatens to Undermine Employers' Ability to Protect Patients While Also Respecting Employees' Religious Beliefs. For more than four decades, Title VII of the Civil Rights Act of 1964 has provided a balance of interests, giving employers leeway to take into account the effect of an employee's refusal on patients' health care needs. The final rule undermines this carefully crafted balance between the right of individuals to enjoy reasonable

accommodation of their religious beliefs and the right of employers to conduct their business without undue interference.

Moreover, the Bush Administration justifies this departure from established law by wrongly asserting that Congress intended to overrule the careful balance struck in Title VII through passage of the Church, Coats, or Weldon Amendments and provide more leeway to employees working at institutions receiving federal health care dollars than to other employees in other settings. In fact, the Equal Employment Opportunity Commission (EEOC), the agency charged with enforcing Title VII, formally expressed concerns about this imbalance.

The Final HHS Rule Fails to Protect Patients Even in Emergency Situations. The final rule does not adequately address employers' legal obligations to provide medical care in the case of an emergency. This failure could place patients in need of emergency medical care in grave danger and expose them to serious harm. It could also create confusion among employers with respect to existing requirements to provide emergency care.

The Final HHS Rule Undermines the Title X Family Planning Program. The final rule undermines long-standing protections that ensure that women served by the Title X program can get information about and referrals for all their pregnancy options, including prenatal care, adoption, and abortion. The rule prohibits the enforcement of these long-standing "non-direct options counseling" protections, allowing clinics to receive Title X family planning funds even if they refuse to comply with these existing rules.

The Final HHS Rule Undermines Patients' Access to Basic Information about their Health and Treatment Options. Despite the repeated reference the rule makes to encouraging "open communication" between doctors and their patients, the rule provides no protection for women seeking care at a health care facility that receives direct or indirect funds from the Department to prevent them from being denied basic information about all of their health care options.

The HHS Rule prohibits entities from requiring individuals to "assist" (i.e., provide information, counseling, or referrals) 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" (emphasis added). Permitting health care providers to refuse to provide information and counseling to their patients regarding any health service would result in denying patients their right to informed consent.

The breadth of the HHS Rule also has implications for those providing services and information in a wide range of areas including HIV, drug addiction, infertility, vaccinations, psychology, sexually transmitted infections, and end-of-life care, among

others. And the rule does not even require that patients be informed of the providers' refusal to give them full information.

The following are some examples of the barriers patients could face as a result of the rule:

- An oncologist at a federally funded hospital could refuse to make a referral for a man with cancer facing radiation treatments to have his sperm frozen, on the grounds that the oncologist has a moral objection to assisted reproductive technologies.
- A receptionist at a community health center may refuse to schedule visits involving referrals for psychiatric treatment, on the grounds that practice of psychiatry violates her religious beliefs.
- An obstetrician employed by a federally funded prenatal screening program could interpret this rule to justify withholding tests that would confirm that a pregnant woman is carrying a fetus with a fatal anomaly. The obstetrician might believe that her religiously based opposition to abortion allows her to impede access to information that might result in the patient terminating the pregnancy.
- A nurse working in a federally funded hospital may refuse to participate in any procedure that requires a blood transfusion, on the grounds that such procedures violate her religious beliefs.

*Please call the National Women's Law Center at (202) 588-5180
if you have any questions or need additional information.*