

CLIENT ADVISORY

**HHS Issues Regulation to Protect
Healthcare Providers' "Right of Conscience"**

The United States Department of Health and Human Services (HHS) has issued a regulation reinforcing protections for doctors and other healthcare workers who refuse to participate in abortions and other healthcare procedures because of religious or moral objections. The "right of conscience" regulation is intended to protect the right of healthcare providers to care for their patients in accord with their conscience. Specifically, the regulation:

- Cuts off federal funding for any healthcare entity that does not accommodate doctors, nurses, pharmacists and other employees who refuse to participate in care they find ethically, morally or religiously objectionable;
- Requires recipients of certain HHS funds to certify their compliance with laws protecting provider conscience rights; and
- Designates the HHS Office for Civil Rights as the entity to receive complaints of discrimination addressed by the existing statutes and the regulation.

Despite existing federal laws protecting healthcare providers, HHS explained that the regulation is needed to raise awareness of federal conscience protections and provide for their enforcement. Under long established federal law, institutions may not discriminate against individuals who refuse to perform abortions or provide a referral for an abortion. Massachusetts has two laws which protect healthcare workers¹ and private healthcare institutions² right to refuse to participate in abortions or sterilizations.

The regulation's critics complain that the protections of the regulation are so broad they limit a patient's right to get care and accurate information. In particular, they note that although the regulation is aimed at doctors and nurses, it provides protection to anyone with a "reasonable" connection to objectionable care (which could include technicians, nurses aides, secretaries, janitors, etc.). It is expected that the regulation will

¹ M.G.L. c. 112, § 12I.

² M.G.L. c. 272, § 21B (also includes protection for the right to refuse contraceptive devices or information).

meet opposition in Congress, as some lawmakers have promised to take up legislation that would overturn the regulation once Congress reconvenes in January. It is also expected that President-Elect Obama will address the regulation once he is sworn into office.

The regulation, which is available online at <http://edocket.access.gpo.gov/2008/E8-30134.htm>, goes into effect on **January 19, 2009**. However, HHS departments have been given discretion to phase in the written certification requirement by October 1, 2009. If you should have any questions or concerns about the regulation, please do not hesitate to contact any of the attorneys at The Rogers Law Firm at 617-723-1100.

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