

genuine and independent private choice of a beneficiary or through other indirect funding mechanisms, provided the religious organizations otherwise satisfy the requirements of the program. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or through a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

PART 88—ENSURING THAT DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS DO NOT SUPPORT COERCIVE OR DISCRIMINATORY POLICIES OR PRACTICES

Sec.

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AUTHORITY: 42 U.S.C. 300a–7, 42 U.S.C. 238n, Public Law 110–161, Div. G, §508(d), 121 Stat. 1884, 2209, 31, 42 U.S.C. 1395w–22(j)(3)(B), 42 U.S.C. 1396u–2(b)(3), and 5 U.S.C. 301.

SOURCE: 73 FR 78096, Dec. 19, 2008, unless otherwise noted.

§88.1 Purpose.

The purpose of this Part is to provide for the implementation and enforcement of the Church Amendments, 42 U.S.C. 300a–7, section 245 of the Public Health Service Act, 42 U.S.C. 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2008, Public Law 110–161, Div. G, §508(d), 121 Stat. 1844, 2209 (collectively referred to as the federal healthcare conscience protection statutes). These statutory provisions protect the rights of health care entities/entities, both individuals and institutions, to refuse to perform health care services and research activities to which they may object for religious, moral, ethical, or other reasons. Consistent with this objective to protect the conscience rights of health care entities/entities, the provisions in the

Church Amendments, section 245 of the Public Health Service Act and the Weldon Amendment, and the implementing regulations contained in this Part are to be interpreted and implemented broadly to effectuate their protective purposes.

§88.2 Definitions.

For the purposes of this part:

Assist in the Performance means to participate in any activity with a reasonable connection to a procedure, health service or health service program, or research activity, so long as the individual involved is a part of the workforce of a Department-funded entity. This includes counseling, referral, training, and other arrangements for the procedure, health service, or research activity.

Entity includes an individual physician or other health care professional, health care personnel, a participant in a program of training in the health professions, an applicant for training or study in the health professions, a post graduate physician training program, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, laboratory or any other kind of health care organization or facility. It may also include components of State or local governments.

Health Care Entity includes an individual physician or other health care professional, health care personnel, a participant in a program of training in the health professions, an applicant for training or study in the health professions, a post graduate physician training program, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, laboratory or any other kind of health care organization or facility. It may also include components of State or local governments.

Health Service Program includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded, in whole or in part, by the Department. It may also include components of State or local governments.

Individual means a member of the workforce of an entity/health care entity.

Instrument is the means by which federal funds are conveyed to a recipient, and includes grants, cooperative agreements, contracts, grants under a contract, memoranda of understanding, and any other funding or employment instrument or contract.

Recipient means an organization or individual receiving funds directly from the Department or component of the Department to carry out a project or program. The term includes State and local governments, public and private institutions of higher education, public and private hospitals, commercial organizations, and other quasi-public and private nonprofit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include foreign or international organizations (such as agencies of the United Nations) which are recipients, sub-recipients, or contractors or subcontractors of recipients or sub-recipients at the discretion of the Department awarding agency.

Sub-recipient means an organization or individual receiving funds indirectly from the Department or component of the Department through a recipient or another sub-recipient to carry out a project or program. The term includes State and local governments, public and private institutions of higher education, public and private hospitals, commercial organizations, and other quasi-public and private nonprofit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include foreign or international organizations (such as agencies of the United Nations) which are recipients, sub-recipients, or contractors or subcontractors of recipients or sub-recipients at the discretion of the Department awarding agency.

Workforce means employees, volunteers, trainees, contractors, and other persons whose conduct, in the performance of work for a Department-funded entity, is under the control or authority of such entity, whether or not they are paid by the Department-funded entity, or health care providers holding privileges with the entity.

§ 88.3 Applicability.

(a) The Department of Health and Human Services is required to comply with sections §§ 88.4(a), (b)(1), and (d)(1) of this part.

(b) Any State or local government that receives federal funds appropriated through the appropriations act for the Department of Health and Human Services is required to comply with §§ 88.4(b)(1) and 88.5 of this part.

(c) Any entity that receives federal funds appropriated through the appropriations act for the Department of Health and Human Services to implement any part of any federal program is required to comply with §§ 88.4(b)(2) and 88.5 of this part.

(d) Any State or local government that receives federal financial assistance is required to comply with §§ 88.4(a) and 88.5 of this part.

(e) Any State or local government, any part of any State or local government, or any other public entity must comply with § 88.4(e) of this part.

(f)(1) Any entity, including a State or local government, that receives a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Assistance and Bill of Rights Act of 2000, must comply with §§ 88.4(c)(1) and 88.5 of this part.

(2) In addition to complying with the provisions set forth in § 88.4(c)(1) of this part, any such entity that is an educational institution, teaching hospital, or program for the training of health care professionals or health care workers shall also comply with § 88.4(c)(2) of this part.

(g)(1) Any entity, including a State or local government, that carries out any part of any health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services must comply with §§ 88.4(d)(1) and 88.5 of this part.

(2) In addition to complying with the provisions set forth in (g)(1) of this section, any such entity that receives grants or contracts for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services shall also comply with §§ 88.4(d)(2) of this part.