

lack thereof, of a recipient organization.

(m) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance with the provisions of this part and any implementing regulations or guidance by the sub-recipient. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

## PART 88—PROTECTING STATUTORY CONSCIENCE RIGHTS IN HEALTH CARE; DELEGATIONS OF AUTHORITY

Sec.

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APPENDIX A TO PART 88—MODEL TEXT: NOTICE OF RIGHTS UNDER FEDERAL CONSCIENCE AND ANTI-DISCRIMINATION LAWS

AUTHORITY: 42 U.S.C. 300a–7 (the Church Amendments); 42 U.S.C. 238n (Coats-Snowe Amendment); the Weldon Amendment (*e.g.*, Pub. L. 115–245, Div. B, sec. 507(d)); 42 U.S.C. 18113 (Section 1553 of the Affordable Care Act); Medicare Advantage (*e.g.*, Pub. L. 115–245, Div. B, sec. 209); the Helms, Biden, 1978, and 1985 Amendments, 22 U.S.C. 2151b(f) (*e.g.*, Pub. L. 116–6, Div. F, sec. 7018); 22 U.S.C. 7631(d); 29 U.S.C. 669(a)(5); 42 U.S.C. 300gg–92; 42 U.S.C. 1302(a); 42 U.S.C. 18041(a) (Section 1321 of the Affordable Care Act); 42 U.S.C. 18081 (Section 1411 of the Affordable Care Act); 42 U.S.C. 18023 (Section 1303 of the Affordable Care Act); 26 U.S.C. 5000A(d)(2); 42 U.S.C. 18031; 42 U.S.C. 280g–1(d); 42 U.S.C. 290bb–36(f); 42 U.S.C. 1315; 42 U.S.C. 1315a; 42 U.S.C. 1320a–1; 42 U.S.C. 1320c–11; 42 U.S.C.

1395cc(f); 42 U.S.C. 1395i–3; 42 U.S.C. 1395i–5; 42 U.S.C. 1395w–22(j)(3)(B); 42 U.S.C. 1395w–26; 42 U.S.C. 1395w–27; 42 U.S.C. 1395x; 42 U.S.C. 1396a; 42 U.S.C. 1396a(w)(3); 42 U.S.C. 1396f; 42 U.S.C. 1396r; 42 U.S.C. 1396s(c)(2)(B)(ii); 42 U.S.C. 1396u–2(b)(3)(B); 42 U.S.C. 1397j–1(b); 42 U.S.C. 5106i(a); 42 U.S.C. 14406; 5 U.S.C. 301; 40 U.S.C. 121(c); 42 U.S.C. 263a(f)(1)(E); 45 CFR parts 75 and 96; 48 CFR chapter 1; 48 CFR parts 300 thru 370; 2 CFR part 376.

SOURCE: 84 FR 23263, May 21, 2019, unless otherwise noted.

### § 88.1 Purpose.

The purpose of this part is to provide for the implementation and enforcement of the Federal conscience and anti-discrimination laws listed in § 88.3. Such laws, for example, protect the rights of individuals, entities, and health care entities to refuse to perform, assist in the performance of, or undergo certain health care services or research activities to which they may object for religious, moral, ethical, or other reasons. Such laws also protect patients from being subjected to certain health care or services over their conscientious objection. Consistent with their objective to protect the conscience and associated anti-discrimination rights of individuals, entities, and health care entities, the statutory provisions and the regulatory provisions 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 take an action that has a specific, reasonable, and articulable connection to furthering a procedure or a part of a health service program or research activity undertaken by or with another person or entity. This may include counseling, referral, training, or otherwise making arrangements for the procedure or a part of a health service program or research activity, depending on whether aid is provided by such actions.

*Department* means the Department of Health and Human Services and any component thereof.

*Discriminate* or *discrimination* includes, as applicable to, and to the extent permitted by, the applicable statute:

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(1) To withhold, reduce, exclude from, terminate, restrict, or make unavailable or deny any grant, contract, sub-contract, cooperative agreement, loan, license, certification, accreditation, employment, title, or other similar instrument, position, or status;

(2) To withhold, reduce, exclude from, terminate, restrict, or make unavailable or deny any benefit or privilege or impose any penalty; or

(3) To utilize any criterion, method of administration, or site selection, including the enactment, application, or enforcement of laws, regulations, policies, or procedures directly or through contractual or other arrangements, that subjects individuals or entities protected under this part to any adverse treatment with respect to individuals, entities, or conduct protected under this part on grounds prohibited under an applicable statute encompassed by this part.

(4) Notwithstanding paragraphs (1) through (3) of this definition, an entity subject to any prohibition in this part shall not be regarded as having engaged in discrimination against a protected entity where the entity offers and the protected entity voluntarily accepts an effective accommodation for the exercise of such protected entity's protected conduct, religious beliefs, or moral convictions. In determining whether any entity has engaged in discriminatory action with respect to any complaint or compliance review under this part, OCR will take into account the degree to which an entity had implemented policies to provide effective accommodations for the exercise of protected conduct, religious beliefs, or moral convictions under this part and whether or not the entity took any adverse action against a protected entity on the basis of protected conduct, beliefs, or convictions before the provision of any accommodation.

(5) Notwithstanding paragraphs (1) through (3) of this definition, an entity subject to any prohibition in this part may require a protected entity to inform it of objections to performing, referring for, participating in, or assisting in the performance of specific procedures, programs, research, counseling, or treatments, but only to the extent that there is a reasonable likeli-

hood that the protected entity may be asked in good faith to perform, refer for, participate in, or assist in the performance of, any act or conduct just described. Such inquiry may only occur after the hiring of, contracting with, or awarding of a grant or benefit to a protected entity, and once per calendar year thereafter, unless supported by a persuasive justification.

(6) The taking of steps by an entity subject to prohibitions in this part to use alternate staff or methods to provide or further any objected-to conduct identified in paragraph (5) of this definition would not, by itself, constitute discrimination or a prohibited referral, if such entity does not require any additional action by, or does not take any adverse action against, the objecting protected entity (including individuals or health care entities), and if such methods do not exclude protected entities from fields of practice on the basis of their protected objections. Entities subject to prohibitions in this part may also inform the public of the availability of alternate staff or methods to provide or further the objected-to conduct, but such entity may not do so in a manner that constitutes adverse or retaliatory action against an objecting entity.

*Entity* means a "person" as defined in 1 U.S.C. 1; the Department; a State, political subdivision of any State, instrumentality of any State or political subdivision thereof; any public agency, public institution, public organization, or other public entity in any State or political subdivision of any State; or, as applicable, a foreign government, foreign nongovernmental organization, or intergovernmental organization (such as the United Nations or its affiliated agencies).

*Federal financial assistance* includes:

- (1) Grants and loans of Federal funds;
- (2) The grant or loan of Federal property and interests in property;
- (3) The detail of Federal personnel;
- (4) The sale or lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the

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recipient or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any agreement or other contract between the Federal government and a recipient that has as one of its purposes the provision of a subsidy to the recipient.

*Health care entity* includes:

(1) For purposes of the Coats-Snowe Amendment (42 U.S.C. 238n) and the subsections of this part implementing that law (§ 88.3(b)), an individual physician or other health care professional, including a pharmacist; 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 medical laboratory; an entity engaging in biomedical or behavioral research; a pharmacy; or any other health care provider or health care facility. As applicable, components of State or local governments may be health care entities under the Coats-Snowe Amendment; and

(2) For purposes of the Weldon Amendment (*e.g.*, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019, and Continuing Appropriations Act, 2019, Pub. L. 115-245, Div. B., sec. 507(d), 132 Stat. 2981, 3118 (Sept. 28, 2018)), Patient Protection and Affordable Care Act section 1553 (42 U.S.C. 18113), and to sections of this part implementing those laws (§ 88.3(c) and (e)), an individual physician or other health care professional, including a pharmacist; 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 medical laboratory; an entity engaging in biomedical or behavioral research; a pharmacy; a provider-sponsored organization; a health maintenance organization; a health insurance issuer; a health insurance plan (including group or individual plans); a plan sponsor or third-party administrator; or any other kind of health care organization, facility, or plan. As applicable, components of State or local governments may be health care entities

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under the Weldon Amendment and Patient Protection and Affordable Care Act section 1553.

*Health service program* includes the provision or administration of any health or health-related services or research activities, health benefits, health or health-related insurance coverage, health studies, or any other service related to health or wellness, whether directly; through payments, grants, contracts, or other instruments; through insurance; or otherwise.

*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, loans, loan guarantees, stipends, and any other funding or employment instrument or contract.

*OCR* means the Office for Civil Rights of the Department of Health and Human Services.

*Recipient* means any State, political subdivision of any State, instrumentality of any State or political subdivision thereof, and any person or any public or private agency, institution, organization, or other entity in any State, including any successor, assign, or transferee thereof, to whom Federal financial assistance is extended directly from the Department or a component of the Department, or who otherwise receives Federal funds directly from the Department or a component of the Department, but such term does not include any ultimate beneficiary. The term may include a foreign government, foreign nongovernmental organization, or intergovernmental organization (such as the United Nations or its affiliated agencies).

*Referral* or *refer for* includes the provision of information in oral, written, or electronic form (including names, addresses, phone numbers, email or web addresses, directions, instructions, descriptions, or other information resources), where the purpose or reasonably foreseeable outcome of provision of the information is to assist a person in receiving funding or financing for, training in, obtaining, or performing a particular health care service, program, activity, or procedure.

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*State* includes, in addition to the several States, the District of Columbia. For those provisions related to or relying upon the Public Health Service Act, the term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. For those provisions related to or relying upon the Social Security Act, such as Medicaid or the Children's Health Insurance Program, the term "State" shall be defined in accordance with the definition of "State" found at 42 U.S.C. 1301.

*Sub-recipient* means any State, political subdivision of any State, instrumentality of any State or political subdivision thereof, or any person or any public or private agency, institution, organization, or other entity in any State, including any successor, assign, or transferee thereof, to whom there is a pass-through of Federal financial assistance or Federal funds from the Department through a recipient or another sub-recipient, but such term does not include any ultimate beneficiary. The term may include a foreign government, foreign nongovernmental organization, or intergovernmental organization (such as the United Nations or its affiliated agencies).

*Workforce* means employees, volunteers, trainees, contractors, and other persons whose conduct, in the performance of work for an entity or health care entity, is under the direct control of such entity or health care entity, whether or not they are paid by the entity or health care entity, as well as health care providers holding privileges with the entity or health care entity.

### § 88.3 Applicable requirements and prohibitions.

(a) *The Church Amendments, 42 U.S.C. 300a-7—(1) Applicability.* (i) The Department is required to comply with paragraphs (a)(2)(i) through (vii) of this section and § 88.6 of this part.

(ii) Any State or local government or subdivision thereof and any other public entity is required to comply with paragraphs (a)(2)(i) through (iii) of this section.

(iii) Any entity that receives a grant, contract, loan, or loan guarantee under the Public Health Service Act (42 U.S.C. 201 *et seq.*) after June 18, 1973, is required to comply with paragraph (a)(2)(iv) of this section and §§ 88.4 and 88.6 of this part.

(iv) Any entity that receives a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services after July 12, 1974, is required to comply with paragraph (a)(2)(v) of this section and §§ 88.4 and 88.6 of this part.

(v) The Department and any entity that receives funds for any health service program or research activity under any program administered by the Secretary of Health and Human Services is required to comply with paragraph (a)(2)(vi) of this section and §§ 88.4 and 88.6 of this part.

(vi) Any entity that receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act or the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C. 15001 *et seq.*] is required to comply with paragraph (a)(2)(vii) of this section and §§ 88.4 and 88.6 of this part.

(2) *Requirements and prohibitions.* (i) Pursuant to 42 U.S.C. 300a-7(b)(1), the receipt of a grant, contract, loan, or loan guarantee under the Public Health Service Act by any individual does not authorize entities to which this paragraph (a)(2)(i) applies to require such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions.

(ii) Pursuant to 42 U.S.C. 300a-7(b)(2)(A), the receipt of a grant, contract, loan, or loan guarantee under the Public Health Service Act by any recipient does not authorize entities to which this paragraph (a)(2)(ii) applies to require such recipient to make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the recipient on the basis