

or to accept any other medical health care service, if such patient (or legal representative of the patient) objects to such service on religious grounds, or

(2) Subject a religious nonmedical health care institution or its personnel to any medical supervision, regulation, or control, insofar as such supervision, regulation, or control would be contrary to the religious beliefs observed by the institution or such personnel, or

(C) Subject religious nonmedical health care institution to the provisions of part B of subchapter XI of Chapter 7 of Title 42 of the U.S. Code.

(iii) Pursuant to 42 U.S.C. 1396a(a), the entities to which this paragraph (q)(2)(iii) applies shall not fail or refuse to exempt a religious nonmedical health care institution from the Medicaid requirements to:

(A) Meet State standards described in 42 U.S.C. 1396a(a)(9)(A);

(B) Be evaluated under 42 U.S.C. 1396a(a)(33), on the appropriateness and quality of care and services;

(C) Undergo a regular program, under 42 U.S.C. 1396(a)(31), of independent professional review, including medical evaluation, of services in an intermediate care facility for persons with mental disabilities; and

(D) Meet the requirements of 42 U.S.C. 1396(b)(i)(4) to establish a utilization review plan consistent with, or superior to, the utilization review plan criteria under 42 U.S.C. 1395x(k) for Medicare.

(iv) Pursuant to 42 U.S.C. 1397j-1(b), the entities to which this paragraph (q)(2)(iv) applies shall not construe subtitle B of Title XX of the Social Security Act (42 U.S.C. 1397j-1397m-5) to interfere with or abridge an elder's right to practice his or her religion through reliance on prayer alone for healing when this choice:

(A) Is contemporaneously expressed, either orally or in writing, with respect to a specific illness or injury which the elder has at the time of the decision by an elder who is competent at the time of the decision;

(B) Is previously set forth in a living will, health care proxy, or other advance directive document that is validly executed and applied under State law; or

(C) May be unambiguously deduced from the elder's life history.

§ 88.4 Assurance and certification of compliance requirements.

(a) *In general*—(1) *Assurance*. Except for an application or recipient to which paragraph (c) of this section applies, every application for Federal financial assistance or Federal funds from the Department to which § 88.3 of this part applies shall, as a condition of the approval, renewal, or extension of any Federal financial assistance or Federal funds from the Department pursuant to the application, provide, contain, or be accompanied by an assurance that the applicant or recipient will comply with applicable Federal conscience and anti-discrimination laws and this part.

(2) *Certification*. Except for an application or recipient to which paragraph (c) of this section applies, every application for Federal financial assistance or Federal funds from the Department to which § 88.3 of this part applies, shall, as a condition of the approval, renewal, or extension of any Federal financial assistance or Federal funds from the Department pursuant to the application, provide, contain, or be accompanied by, a certification that the applicant or recipient will comply with applicable Federal conscience and anti-discrimination laws and this part.

(b) *Specific requirements*—(1) *Timing*. Entities who are already recipients as of the effective date of this part or any applicants shall submit the assurance required in paragraph (a)(1) of this section and the certification required in paragraph (a)(2) of this section as a condition of any application or re-application for funds to which this part applies, through any instrument or as a condition of an amendment or modification of the instrument that extends the term of such instrument or adds additional funds to it. Submission may be required more frequently if:

(i) The applicant or recipient fails to meet a requirement of this part, or

(ii) OCR or the relevant Department component has reason to suspect or cause to investigate the possibility of such failure.

(2) *Form and manner*. Applicants or recipients shall submit the assurance

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required in paragraph (a)(1) of this section and the certification required in paragraph (a)(2) of this section in the form and manner that OCR, in coordination with the relevant Department component, specifies, or shall submit them in a separate writing signed by the applicant's or recipient's officer or other person authorized to bind the applicant or recipient.

(3) *Duration of obligation.* The assurance required in paragraph (a)(1) of this section and the certification required in paragraph (a)(2) of this section will obligate the recipient for the period during which the Department extends Federal financial assistance or Federal funds from the Department to a recipient.

(4) *Compliance requirement.* Submission of an assurance or certification required under this section will not relieve a recipient of the obligation to take and complete any action necessary to come into compliance with Federal conscience and anti-discrimination laws and this part prior to, at the time of, or subsequent to, the submission of such assurance or certification.

(5) *Condition of continued receipt.* Provision of a compliant assurance and certification shall constitute a condition of continued receipt of Federal financial assistance or Federal funds from the Department and is binding upon the applicant or recipient, its successors, assigns, or transferees for the period during which such Federal financial assistance or Federal funds from the Department are provided.

(6) *Assurances and certifications in applications.* An applicant or recipient may incorporate the assurances and certifications by reference in subsequent applications to the Department or Department component if prior assurances or certifications are initially provided in the same fiscal or calendar year, as applicable.

(7) *Enforcement of assurances and certifications.* The Department, Department components, and OCR shall have the right to seek enforcement of the assurances and certifications required in this section.

(8) *Remedies for failure to make assurances and certifications.* If an applicant or recipient fails or refuses to furnish

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an assurance or certification required under this section, OCR, in coordination with the relevant Department component, may effect compliance by any of the mechanisms provided in § 88.7.

(c) *Exceptions.* The following persons or entities shall not be required to comply with paragraphs (a)(1) and (2) of this section, provided that such persons or entities are not recipients of Federal financial assistance or other Federal funds from the Department through another instrument, program, or mechanism, other than those set forth in paragraphs (c)(1) through (4) of this section:

(1) A physician, as defined in 42 U.S.C. 1395x(r), physician office, pharmacist, pharmacy, or other health care practitioner participating in Part B of the Medicare program;

(2) A recipient of Federal financial assistance or other Federal funds from the Department awarded under certain grant programs currently administered by the Administration for Children and Families, the purpose of which is either solely financial assistance unrelated to health care or which is otherwise unrelated to health care provision, and which, in addition, does not involve—

(i) Medical or behavioral research;

(ii) Health care providers; or

(iii) Any significant likelihood of referral for the provision of health care;

(3) A recipient of Federal financial assistance or other Federal funds from the Department awarded under certain grant programs currently administered by the Administration on Community Living, the purpose of which is either solely financial assistance unrelated to health care or which is otherwise unrelated to health care provision, and which, in addition, does not involve—

(i) Medical or behavioral research;

(ii) Health care providers; or

(iii) Any significant likelihood of referral for the provision of health care.

(4) Indian Tribes and Tribal Organizations when contracting with the Indian Health Service under the Indian Self-Determination and Education Assistance Act.