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REGULATORY UPDATE: Obama Administration Revises Conscience Clause Rules for Healthcare Professionals

On February 23, 2011, the Department of Health and Human Services published a final rule (“Rule”) rescinding most of a federal regulation designed to provide additional protections to healthcare professionals who refuse to provide care they find objectionable on moral or religious grounds.

Various federal statutes have long prevented discrimination against healthcare professionals who refuse to perform abortions or sterilizations, or to provide referrals for them on religious or moral grounds. In 2008 the Bush administration implemented a controversial regulation that was interpreted as extending these statutory protections to shield professionals that refused to participate in a broader set of medical services – such as providing contraception services other than abortion or infertility treatment for homosexual couples. The 2008 regulation also created an enforcement mechanism by adding a requirement that institutions receiving federal money certify their compliance with the “conscience laws.” Federal funds could also be cut off to those institutions that did not accommodate health professionals who refused to participate in care they felt violated their personal, moral or religious beliefs.

The new rule rescinds most of the 2008 regulations – leaving intact only the provisions protecting health professionals who do not want to perform abortions or sterilizations. It also replaces the 2008 financial enforcement mechanism with a process whereby health professionals can file a complaint with the HHS Office for Civil Rights if they feel they have not been accommodated.

The decision affects how healthcare institutions accommodate staff or employees that refuse to participate in medical care that violates personal, moral or religious beliefs. HHS’ stated purpose in revising the regulation is to remove the parts of the 2008 rule that “were unclear and potentially overbroad in scope.” The Obama administration’s announcement of plans to rescind the rule generated more than 300,000 comments, summarized in the February 23rd Federal Register notice. The revised regulation will go into effect on March 25, 2011.

If our firm can be of assistance in implementing or providing further interpretation of the Final Rule, please let Peter Mellette, Harrison Gibbs, or Nathan Mortier know.