Religious Liberties

Conscience Protection in Health and Human Services

*By William L. Saunders & Michael A. Fragoso**

On August 21, 2008, Secretary of Health and Human Services (HHS) Mike Leavitt proposed regulations seeking to protect the rights of conscience for healthcare professionals. While the regulations themselves are new, conscience protection of medical personnel at the federal level dates back to the time of *Roe v. Wade* in the form of the Church Amendments.[1] Conscience rights are protected in two additional components of federal law: the Public Health Services Act § 245 (also known as the Coats Amendment)[2] and the Weldon Amendment.[3] The regulations proposed by Secretary Leavitt, entitled "Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law" ("the Regulations"), were an effort to provide a stronger regulatory context for the existing laws.[4]

These long-standing protections of conscience rights for medical personnel, however, are being challenged at home and abroad. In October 2008, for instance, the Australian state of Victoria passed the Abortion Reform Bill without clarifying amendments protecting physicians' conscience, meaning that doctors will potentially lose their medical licenses should they refuse to participate in abortions.[5] In early 2008 similar actions were taken in Ontario Province, Canada, but they largely failed after meeting stiff resistance.[6] Following the inauguration of President Barack Obama, the HHS, on March 10, 2009, issued a notice of proposed rule making to rescind the conscience protection regulations promulgated by President Bush.[7]

Background

In the United States, the most recent challenge to conscience rights came in November 2007. The American College of Obstetricians and Gynecologists (ACOG) issued an opinion (the "Opinion") in which it said that doctors who refused to perform abortions should be required to refer someone seeking an abortion to a doctor who would perform it.[8] The ethical problem is that if one believes a procedure to be immoral, the Act of referring it to someone else makes one complicit in the subsequent immoral act. Conscience protection, surely, means that one cannot be forced to do, directly or indirectly, what one judges to be immoral or unethical.[9]

The American Board of Obstetricians and Gynecologists (ABOG) issued a bulletin in November 2007 on maintenance by obstetricians of certification (the process by which a practicing obstetrician can maintain his professional credentials). The bulletin said certification could be revoked if there is a "violation of ABOG or ACOG rules and/or ethics principles or felony convictions."[10] Further, applicants for certification must sign a statement that they understand they face disqualification in the event "that the physician shall have violated any of 'The Ethical Considerations in the Practice of Obstetrics and Gynecology' currently published by the American College of Obstetricians and Gynecologists and adhered to by the Board."[11]

Therefore ACOG's opinion, if it becomes part of the larger body of ACOG ethical norms,[12] would strip board certification from doctors who refuse to *refer* for abortion, thus effectively denying them hospital privileges and costing them their livelihoods.

Various advocacy groups took issue with the Opinion,[13] and eventually Secretary Leavitt took interest in it.[14] He expressed concern that the Opinion, if put into force as an ethics requirement for obstetricians, would force pro-life obstetricians to refer for abortion in order to maintain their certifications and livelihoods, and thus would run counter to existing federal law protecting the rights of conscience of medical professionals and health care organizations.

ABOG and ACOG responded in a way Secretary Leavitt found "dodgy and unsatisfying."[15]

Existing Conscience Legislation

The earliest federal conscience protections date back to the aftermath of *Roe v. Wade*, and are known as the Church amendments, after the Democratic Senator from Idaho, Frank Church. The four "Church amendments" (two from 1973, one from 1974, and the last from 1979) contain multiple prohibitions on use of federal funds or guarantees regarding abortions, sterilizations, and other medical procedures and activities. The amendments prohibit courts, public officials, and recipients of funds under the Public Health Service Act (PHSA), 42 U.S.C. 201 et seq., the Community Mental Health Centers Act (CMHCA), 42 U.S.C. 2689 et seq., or the Developmental Disabilities Services and Facilities Construction Act (DDSFCA), 42 U.S.C. 6000 et seq., form forcing entities "to perform or assist in a sterilization procedure or an abortion, if it would be contrary to his/her religious beliefs or moral convictions." The amendments also prohibit employment or other discrimination against healthcare personnel because they either participated, or refused to participate, in lawful sterilization procedures or abortions. They also prohibit discrimination in admissions by PHSA-CMHCA-DDSFCA recipients because of an applicant's reluctance or willingness to "counsel, suggest, recommend, assist, or in any way participate" in abortions or sterilizations, due to religious beliefs or moral convictions.

The Church amendments go further than protecting conscience only in the areas of abortion and sterilization. Any recipient of funds administered by the Secretary of HHS "for biomedical or behavioral research" cannot discriminate against health care personnel in employment, promotion, termination, or extension of medical privileges "because [they] performed or assisted in the performance of any lawful health service or research activity, or because he refused to perform or assist in

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the performance of any such service or activity on the grounds that his performance of any such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity." The Church amendments are thus very broad in their protection of conscience, protecting the right of the individual to refuse to participate in any health service or research if it is contrary to his or her religion or morals.

The Coats amendment, named for the Indiana Senator Daniel Coats, was enacted by Congress in 1996, and provides protections for entities that refuse to participate in abortion. It was adopted in response to a requirement of the Accreditation Council for Graduate Medical Education that obstetrics and gynecological residency programs provide abortion training. As such, it provides that the federal government as well as any federally funded state or local government may not discriminate against a "health care entity" (defined to include physicians, medical schools, and medical students) if they (1) refuse to receive, provide or require abortion training; (2) refuse to provide abortions; (3) refuse to provide referrals for abortions or abortion training; or (4) attended a training program that did or does not require attendees to perform abortions or require, provide or refer for training in the performance of abortions or make arrangements for such training. Thus, the federal government or any government receiving federal funds may not require an "entity" to provide abortion training for post-graduate accreditation or as a requirement for professional certification or licensing.

The Weldon amendment is an appropriations rider from 2005, written by the retired Florida congressman, Dr. David Weldon, which states that the federal government as well as any federally funded state or local government cannot subject any institutional or individual healthcare entity to discrimination based on the fact that the entity does not "provide, pay for, provide coverage of, or refer for abortions."

Regulations under George W. Bush

Though the Church Amendments date back to the 1970s, there had never been a regulatory rule-making to determine how the conscience protection provided by it and the other two conscience provisions are to work. In response to the ACOG/ABOG controversy, Secretary Leavitt considered issuing regulations protecting medical professionals' rights of conscience, and HHS prepared draft regulations for internal discussion.

The draft was leaked to the *New York Times*, which published them with comments by pro-abortion groups such as Planned Parenthood.[16] The draft regulations made specific reference to pregnancy beginning at conception, and referred to "the termination of the life of a human… before or after implantation."[17] As such, it would have been possible for a "health care entity" (including doctors) to have a conscientious objection to abortifacients (for instance, drugs and devices which might prevent implantation of an embryo, such as Plan B, the birth control pill, and Intra-Uterine Devices).[18] Pro-abortion groups attacked the regulations, claiming they would limit access to contraception. NARAL Pro-Choice America[19] termed it "The Bush Administration's Attack on Birth Control."[20] On the other hand, a letter was sent to Leavitt by 132 members of Congress urging adoption of the regulations.[21]

Secretary Leavitt responded to this on his blog, confirming that regulations were being considered.[22] Pro-abortion activists flooded his comment section. Twenty-five of their blog posts were removed because they included "profane language or personal attacks on [Secretary Leavitt's] body parts, religion or family."[23] Secretary Leavitt summarized the pro-abortion argument as follows: "[I]f a person goes to medical school they lose their right of conscience. Freedom of expression and action is surrendered with the issuance of a medical degree."[24] He insisted that his goal was not to ban contraception or abortion, but to protect conscience—"If the Department of Health and Human Services issues a regulation on this matter, it will aim at one thing, protecting the right of conscience of those who practice medicine. From what I've read the last few days, there's a serious need for it."[25]

On August 21, 2008, ten days after his second blog post, Secretary Leavitt issued a notice of proposed rulemaking ("NPRM") announcing that HHS would, in fact, be filing the Regulations in the Federal Register clarifying federal law on the conscience rights of "health care entities."[26]

The Regulations were meant to bolster the federal legislation mentioned earlier in a manner as robust as possible. The final document notes, "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."[27]

One shortcoming of federal legislation is its ambiguous language—what is meant by "Health Care Entity"? [28] What is meant by "abortion?" The Regulations address some of those concerns: they define "assist in the performance" so as to include referral; they also define "health care entity" broadly.[29]

However, the ambiguous use of the term "abortion" in the federal legislation is not clarified by the Regulations. In the Regulations, it is unclear whether a potentially abortifacient drug such as Plan B would count as the sort of abortion-related procedure for which a medical professional's conscientious objection is protected—the term "abortion" is never defined. It is possible that this definition was omitted from the final regulations due to the furor over the definition of abortion in the leaked draft.[30]

The Regulations spell out the protection for medical personnel from discrimination on a number of conscience-related grounds. First, medical students and practicing physicians are protected from having, "(A) to undergo training in the performance of abortions, or to require, provide, refer for, or make arrangements for training in the performance of abortions; (B) to perform, refer for, or make other arrangements for, abortions; or (C) to refer for abortions…"[31]

Second, students and physicians are protected from discrimination based on the sort of institution in which they received their training. They cannot be subject to discrimination

for having received their training at an institution "that does not or did not require attendees to perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training…"[32]

Lastly, medical personnel cannot be subject to any discrimination pertaining to credentialing or licensing on grounds related to abortion (thus answering the threat posed by the Opinion by ACOG).[33]

The Regulations further mandate that the applicable institutions[34] have to meet established certification standards for compliance.[35] This serves to make affected recipients (such as any state and local governments that receive funds through HHS, or any non-governmental entity that receives funds through HHS) better aware of their existing legal obligations to respect the conscience rights of medical professionals. It also establishes a robust regulatory mechanism for HHS to ensure that these rights are, in fact, being maintained.[36]

The regulations were promulgated on December 18, 2008 and came into force on January 20, 2009.[37]

Objections

The Regulations met fierce opposition by pro-abortion activists and organizations.

The idea of "conscientious objection" to abortion by medical professionals has long been perceived as an obstacle by those seeking to expand access to abortion. Evidence of this can be found in the International Planned Parenthood Federation's lengthy document entitled "Access to Safe Abortion: a tool for assessing legal and other obstacles."[38] This document is intended to be a primer for those seeking to change the abortion laws in countries where abortion is restricted, by showing the typical legal obstacles to abortion and instructing activists how to go about eliminating them. Section 12 of the document is "Conscientious Objection," a concept that "shields providers from liability for refusing to offer services that their patients are legally entitled to receive." These clauses can "deny access to services and violate providers' duty of care to patients." As such any conscientious objector ought to "give notice" to her patients that she objects to certain "care" on moral grounds and be prepared to refer them to those who lack such compunctions.

Likewise the United Nations Committee on the Elimination of Discrimination Against Women has urged state parties to the Convention on the Elimination of All Forms of Discrimination Against Women to eliminate conscience protections in domestic law, claiming they might impede access to abortion. As the Committee commented to Poland, "It also urges the State party to ensure that women seeking legal abortion have access to it, and that their access is not limited by the use of the conscientious objection clause."[39] The Committee made similar objections to Portugal,[40] Italy,[41] and Slovakia.[42]

Such views appeared in some of the comments filed with HHS following the NPRM of the Regulations. The American Medical Association (in conjunction with numerous other groups, including the American Psychological Association, the American Nurses Association, the American Academy of Pediatrics), for exampled, argued that the new regulations ought not to be promulgated because it might "undermine patients' access to medical care and information." Doctors who follow their consciences might violate their "paramount responsibility and commitment to serving the needs of their patients."[43] Likewise 13 state attorneys general issued comments opposing the Regulations,[44] as did the Alan Guttmacher Institute.[45]

Lawsuits

Following the promulgation of the Regulations, Connecticut Attorney General Richard Blumenthal announced his intention to take action against the Regulations,[46] claiming that they violate the rights of Connecticut, which in 2007 passed a law regarding the availability of emergency contraception ("EC") at hospitals.[47]

Blumenthal filed a lawsuit on January 15, 2009 on behalf of Connecticut, California, Illinois, Massachusetts, New Jersey, Oregon, and Rhode Island.[48] Blumenthal had previously spearheaded a group of attorneys-general from thirteen states in submitting comments following HHS's original NPRM.[49] The comments objected to the "vague" nature of the Regulations, particularly as to the lack of a definition of abortion. Further, "By focusing exclusively on the personal moral and religious beliefs of the health care provider, the proposed regulation unconscionably favors one set of interests, upsetting the carefully crafted balance that many states have sought to achieve." One such "balance" is that found in Connecticut, in which a victim of sexual assault is entitled to EC, even if the dispensing physical is conscientiously opposed. According to the comments, "the proposed regulation undermines this balancing of the interests of the patient and health care provider by failing to ensure that the patient's rights are adequately protected." Furthermore, should the Regulations be enforced "[f]or the plaintiff States, Connecticut, Illinois, California, New Jersey, Massachusetts, Rhode Island, Oregon, the loss [of HHS funds] would total billions of dollars annually."

The complaint has six counts: (1) the Regulations violate the Administrative Procedures Act by exceeding Congressional delegation of authority, (2) the Regulations violate the Administrative Procedures Act by failing to respond adequately to "significant public comments," (3) the Regulations violate the Spending Clause due to vagueness, (4) the Regulations violate the Spending Clause due to unrelatedness, (5) the Regulations violate the Spending Clause due to coercion (6) a declaratory relief asking to define the applicability of the Regulations to emergency contraception.

Substantially similar lawsuits were also filed in federal court in Connecticut by the Planned Parenthood Federation of America, as well as the American Civil Liberties Union (on behalf of the National Family Planning & Reproductive Health Association).[50]

Regulations under Barack Obama

On March 10, 2009 HHS issued an NPRM proposing "Rescission of the Regulation entitled 'Ensuring That Department of Health and Human Services Funds Do Not

Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law.'"[51] According to the NPRM,

> The Department of Health and Human Services proposes to rescind the December 19, 2008 final rule entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law." The Department believes it is important to have an opportunity to review this regulation to ensure its consistency with current Administration policy and to reevaluate the necessity for regulations implementing the Church Amendments, Section 245 of the Public Health Service Act, and the Weldon Amendment.[52]

The NPRM explains the legislative framework for conscience protection and then notes, "No statutory provision requires the promulgation of rules to implement the requirements of the Church Amendments, Public Health Service (PHS) Act Sec. 245, and the Weldon Amendment. Nevertheless, on August 26, 2008, the Department exercised its discretion and issued a proposed rule [the Regulations]…"[53] After describing the previous comment period and the non-discrimination framework laid out by the Regulations, the NPRM concludes,

> Commenters asserted that the rule would limit access to patient care and raised concerns that individuals could be denied access to services, with effects felt disproportionately by those in rural areas or otherwise underserved. The Department believes that the comments on the August 2008 proposed rule raised a number of questions that warrant further careful consideration. It is important that the Department have the opportunity to review this regulation to ensure its consistency with current Administration policy.

The NPRM solicited public comment until April 9, 2009. In particular, it solicits comments in four areas. To wit:

> 1. Information, including specific examples where feasible, addressing the scope and nature of the problems giving rise to the need for federal rulemaking and how the current rule would resolve those problems;
>
> 2. Information, including specific examples where feasible, supporting or refuting allegations that the December 19, 2008 final rule reduces access to information and health care services, particularly by low-income women;
>
> 3. Comment on whether the December 19, 2008 final rule provides sufficient clarity to minimize the potential for harm resulting from any ambiguity and confusion that may exist because of the rule; and
>
> 4. Comment on whether the objectives of the December 19, 2008 final rule might also be accomplished through non-regulatory means, such as outreach and education.

As with the Regulations, numerous groups from submitted comments during the period.[54] Over 49,000 comments were submitted in defense of the Regulations, many through the website www.Freedom2Care.org, an umbrella coalition of socially conservative organizations active in the question of conscience protection—such as the American Association of Pro-Life Obstetricians and Gynecologists, the Catholic Medical Association, Med Students for Life, the Catholic Family and Human Rights Institute, Family Research Council, Focus on the Family, and the Alliance Defense Fund, among many others.[55] Founded by the Christian Medical Association, Freedom2Care seeks "to educate and persuade the public, policy makers and the medical community regarding conscience rights in healthcare."[56]

A representative comment in favor of recission was filed by the National Women's Law Center. In it, they state "the HHS Regulation allows providers and entities to ignore the health needs of patients and restrict access to a wide range of health care services, information, counseling, and referrals. It opens the door for insurance plans, hospitals, and other entities to deny women access to most forms of birth control. The HHS Regulation has a disproportionate impact on low-income women and other vulnerable communities." As such, recession is necessary in order to clear the "confusion" caused by the ambiguous language in the Regulations, and to maintain "access" to healthcare services (especially for low-income women). They argue that "non-regulatory means" should suffice to protect the conscience rights of physicians.[57]

The day before the comment period ended, Freedom2Care also facilitated an event at the National Press Club to publicize new polling on conscience protection.[58] The Christian Medical Association and the Polling Company released the results of a poll conducted to gauge the public's position on the question of protection for physicians' conscience.[59] The results were very encouraging to those who support the conscience rights of healthcare professionals: 87% agreed that it is important to "maker sure that healthcare professionals in America are not forced to participate in procedures and practices to which they have moral objections." (65% of respondents said this was "very essential.") Fifty-seven percent opposed regulations "that require medical professionals to perform or provide procedures to which they have moral or ethical objections," whereas only 38% favored such regulations. After hearing an explanation of the Regulations participants were asked if they agreed with them, and 63% responded affirmatively—versus 28% to the contrary. This number includes 56% of those who said they voted for Barack Obama in November 2008, and 60% of those who identify as "pro-choice."[60] When asked if they supported or opposed the proposed rescission, 62% said that they opposed, while only 30% supported.

CONCLUSION

Given the recent NPRM by the Obama Administration to rescind the Regulations, it is likely that the three lawsuits will be dismissed for mootness.

Assuming HHS rescinds Bush's conscience regulations, conscience protection will return to the *status quo ante* Leavitt. The existing legislative protections of conscience (Church, Coats, and Weldon) will remain, although they will lack any effective enforcement mechanism.[61]

Endnotes

1 42 U.S.C. 3001-7.

2 42 U.S.C. 238n (also known as the "Coats Amendment").

3 Consolidated Appropriations Act, 2008, Pub L. 110-161, §508(d), 121 Stat. 1844, 2209 (Note, that being an appropriations "rider," rather than a law, the Weldon Amendment is more vulnerable in a hostile Congress, which can simply remove it during the next round of appropriations).

4 Department of Health and Human Services 45 CFR Part 88, *available at* http://secretarysblog.hhs.gov/my_weblog/2008/08/physician-con-2.html.

5 *Available at* http://prochoicevic.com/files/webfm/pdf/firstBill.pdf.

6 Following a chaotic and contentious comment period on the proposed conscience rules, the Ontario Physicians College was forced to jettison the most anti-conscience components. Nonetheless, physicians with conscientious objections still might be subject to the judgments of the Ontario Human Rights Commission. For a fuller treatment, *see* John Jalsevac, *Ontario Physicians College Backs Away from Controversial Conscience-Restriction Policy*, LifesiteNews.com, Sept. 18, 2008, *available at* http://www.lifesitenews.com/ldn/2008/sep/08091809.html.

7 Federal Register / Vol. 74, No. 45 / Tuesday, March 10, 2009 / Proposed Rules 10207, *available at* http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=090000648090229f.

8 *Available at* http://www.acog.org/from_home/publications/ethics/co385.pdf.

9 For a fuller treatment of the ethical problems present in the Opinion see William L. Saunders, *Let Your Conscience Be Your Guide*, Perspective (Family Research Council).

10 American Board of Obstetrics & Gynecology, Bulletin for 2008: Maintenance of Certification; Voluntary Recertification Certificate Renewal, at 10, ¶5.b (Nov. 2007).

11 *Id*. at 31, ¶3.f (Nov. 2007).

12 There is no reason to think the views of the Opinion would not be mainstreamed. However, it is possible that parliamentary action could be taken by the membership of ACOG in opposing the Opinion as happened in Ontario. (*See supra* note 6).

13 Letter to ACOG, signed by 29 representatives of non-governmental advocacy groups, *available at* http://www.cmda.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=12243.

14 Secretary Leavitt's letter to ACOG and ABOG, *available at* http://www.hhs.gov/news/press/2008pres/03/20080314a.html.

15 "Physician Conscience," August 7, 2008, *available at* http://secretarysblog.hhs.gov/my_weblog/2008/08/physician-consc.html.

16 Robert Pear, "Abortion Proposal Sets Condition on Aid," *New York Times,* July 15, 2008, *available at* http://www.nytimes.com/2008/07/15/washington/15rule.html?_r=1&scp=2&sq=proposed%20regulations%20birth%20control&st=cse&oref=slogin.

17 *Id.*

18 It is worth noting that the furor caused by the conception definition (in lieu of the "implantation" definition) reflects a larger debate within the medical community. *Pace* the vocal protestations of pro-abortion advocates, the implantation definition is *not* the settled scientific consensus on the beginning of pregnancy. In fact, the conception definition is one that enjoys widespread support in medical textbooks and other authorities within the field. *See* Christopher M. Gacek, *Conceiving 'Pregnancy' U.S. Medical Dictionaries And Their Definitions of "Conception" and "Pregnancy,"* Insight (Family Research Council) (April 2009).

19 NARAL Pro-Choice America, formerly known as the National Abortion and Reproductive Rights Action League, from the National Abortion Rights Action League, in turn formerly known as the National Association for the Repeal of Abortion Laws as founded by Dr. Bernard Nathanson and Betty Friedan in 1968.

20 https://secure.prochoiceamerica.org/site/Advocacy?pagename=homepage&page=UserAction&id=3253&autologin=true&JServSessionIdr012=61loe9ffe1.app44b.

21 http://nchla.org/datasource/idocuments/8HHSsig5.08.pdf.

22 "Physician Conscience Blog II," August 11, 2008, *available at* http://secretarysblog.hhs.gov/my_weblog/2008/08/physician-consc.html.

23 "Physician Conscience Blog III," August 21, 2008, *available at* http://secretarysblog.hhs.gov/my_weblog/2008/08/physician-con-1.html.

24 *Id.*

25 *Id.*

26 As defined in Section 88.2 Definitions: Health Care Entity / Entity: While both PHS Act § 245 and the Weldon Amendment provide examples of specific types of protected individuals and health care organizations, neither statute provides an exhaustive list of such health care entities. PHS Act § 245 defines "health care entity" as "includ[ing] an individual physician, a postgraduate physician training program, and a participant in a program of training in the health professions." As the Department has previously indicated, the definition of "health care entity" in PHS Act § 245 also encompasses institutional entities, such as hospitals and other entities. The Weldon Amendment defines the term "health care entity" as "includ[ing] an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan." The Church Amendment does not define the term "entity," and does not use the term "health care entity." In keeping with the definitions in PHS Act § 245 and the Weldon Amendment, the Department proposes to define "health care entity" to include the specifically mentioned organizations from the two statutes, as well as other types of entities referenced in the Church Amendments. It is important to note that the Department does not intend for this to be a comprehensive list of relevant organizations for purposes of the regulation, but merely a list of examples.

27 Section 88.1 "Purpose."

28 Section 88.2 "Definitions."

29 Some "entities" covered are physicians, hospitals, medical training programs. *See* fn. 26 above for a complete list.

30 *See supra* note 16.

31 88.4(a)(1).

32 88.4(a)(2).

33 88.4(a)(3).

34 The affected institutions are identified in §88.3 "Applicability."

35 Section 88.5 "Applicability" State and local governments, private entities, teaching hospitals, and government funded research institutions are all affected by these regulations in ways laid-out in this section.

36 The Regulations threaten withholding of HHS funds for non-compliant recipients, while requiring that recipients certify that they understand their obligations and are complying with them. Furthermore, alleged discrimination on the grounds of conscience is referred to HHS's Office of Civil Rights for investigation.

37 http://www.nfprha.org/images/HHS_Regs.pdf.

38 http://www.ippf.org/NR/rdonlyres/6649ED84-2EA1-4C88-8A86-CA19BBB19463/0/AbortionLawToolkit.pdf.

39 CEDAW Committee, 37th Sess. (2007), "Report on Poland," ¶ 25.

40 CEDAW Committee, 42nd Sess. (2008), "Report on Portugal," ¶¶ 42-43.

41 Report of the United Nations Committee on the Elimination of Discrimination Against Women, 17th Sess., to the General Assembly of the United Nations, 52nd Sess. (1997), "Report on Italy," Document #A/52/38/Rev. 1, ¶ 353 and ¶ 360.

42 CEDAW Committee, Combined second, third and fourth periodic report of Slovakia(2008), CEDAW/C/SVK/4.

43 *Available at* http://www.plannedparenthood.org/files/AMA_et__al__Comments.pdf

44 http://www.azag.gov/press_releases/sept/2008/provider%20conscience%20regulation.pdf.

45 http://www.guttmacher.org/media/resources/2008/09/24/Guttmacher-Institute-re-ConscienceRegulation.pdf.

46 *Conn. Attorney General Blumenthal Plans To Challenge HHS 'Conscience'*

Rule, Medical News Today, Dec. 23, 2008, http://www.medicalnewstoday.com/articles/133983.php.

47 Public Act 07-24, Conn. Gen. Stat. § 19a-112e.

48 http://www.ct.gov/ag/cwp/view.asp?A=2341&Q=432008.

49 *See supra* note 43.

50 http://www.aclu.org/reproductiverights/gen/38342prs20090115.html.

51 Federal Register / Vol. 74, No. 45 / Mar. 10, 2009 / Proposed Rules 10207, available at http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=090000648090229f.

52 *Id.*, "Summary."

53 *Id.* at 10207, "Rulemaking."

54 For comments in favor the recession, see the comments by the American Medical Association et al. http://www.texmed.org/uploadedFiles/Public_Health_And_Science/Alerts_And_Updates/Conscience%20rule%20letter.pdf.

55 http://www.freedom2care.org/about/page/participating-organizations.

56 http://www.freedom2care.org/about/.

57 http://www.nwlc.org/pdf/nwlc%20rescission%20comments%20final.pdf.

58 http://washingtontimes.com/news/2009/apr/19/duin-pro-life-doctors-face-consequences/.

59 "Key Findings on Conscience Rights Polling," Apr. 8, 2009 *available at* http://www.freedom2care.org/docLib/20090407_090408SurveyPressPacket.pdf.

60 It should be noted that the summary of the Regulations only speaks to the performance of abortion and not the referral for abortion as well. It is possible that this skewed the results in favor of the Regulations. The text of the description is as follows: "Just two months ago, a federal law known as 'conscience protection' went into effect after reports of doctors being discriminated against for declining to perform abortions. It protects doctors and other medical professionals who work at institutions that receive federal money from performing medical procedures to which they object on moral or religious grounds."

61 It is also possible that the Weldon amendment will be eliminated during negotiations over appropriations. *See supra* note 3.