

U.S. Health and Human Services Creates New Division in Office of Civil Rights Indicating Major Shift in OCR Priorities

OVERVIEW

January 31, 2018—The Trump Administration announced rule changes to the Office of Civil Rights (OCR) within the U.S. Department of Health and Human Services (HHS), to add an investigative arm called the “[Conscience and Religious Freedom Division](#).”

This new office aims to broaden protections for healthcare professionals who opt out of providing certain services to patients on the basis of conscience, religious, or moral grounds. The Conscience and Religious Freedom Division will address complaints from these healthcare professionals who believe their employers have discriminated against them after refusing to perform certain medical procedures such as abortion or treatment of transgender individuals on the basis of these beliefs.

In 2011, the Obama Administration [issued a rule \(81 CFR 45720\)](#) that barred medical providers from discriminating against patients on the basis of sexual orientation, gender identity and expression.

WHAT YOUR COMPANY NEEDS TO KNOW

The decision rolls back the 2011 rule and clears a path for the discriminatory refusal of medical services—under the auspices of protecting moral and religious convictions.

If this looks familiar, it is. The protection of religious freedom is a widely contested subject. In fact, the court system is currently reviewing many cases similar to this one. At the heart of the matter is the argument that public services, like healthcare, must be offered on equal terms, with everyone taken and treated equally. Religious institutions and religiously-affiliated service providers are already constitutionally protected via the First Amendment from acting in ways that violate their religious beliefs. What is currently being battled out in the courts is exactly where those lines of protection are drawn for each side.

WHY THIS DECISION MATTERS

- LGBTQ inclusive efforts, such as providing transgender health benefits, cannot make a difference if LGBTQ employees do not have equal access to healthcare. This rule may affect your LGBTQ employees' ability to access medical care, especially those living in rural areas who often face limited options for healthcare services and providers. According to a recent study conducted by the [Center of American Progress](#) (CAP), 41% of LGBTQ individuals living in rural areas already find it difficult to access alternate healthcare services.
- The creation of the Division of Conscience and Religious Freedom highlights the need for federal non-discrimination policies that protect LGBTQ individuals in all areas of life—from healthcare to employment. Measures like these harm workplace equality initiatives and threaten the advancement of company-wide efforts to provide LGBTQ inclusive healthcare.
- In the CAP study, 29% of transgender individuals reported that a doctor or other health care provider refused to treat them because of their actual or perceived gender identity. Delays in treatment—or the denial of treatment altogether—puts the lives of LGBTQ individuals at risk.

WHAT YOUR COMPANY CAN DO

- Review your company's health insurance provider policies and ensure it matches your organization's pledge to LGBTQ non-discrimination.
- If you discover that the commitment to non-discrimination doesn't exist or doesn't match your own robust policies, ask if they are willing to add it to meet your standards.
- If their philosophy simply doesn't match your own, or your organization's needs, a larger discussion of changing providers altogether is an option. You may also consider adding additional plans to cover affected employees.

WHO SHOULD ENGAGE AT YOUR COMPANY

- C-Suite Leadership
 - HR
 - D&I
 - Legal
- Employee/Business Resource Groups—a survey of employee healthcare experiences may yield unexpected data and results.