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# FEDERAL JUDGES VACATE CONSCIENCE RULE NATIONWIDE

On November 6, 2019, a federal judge sitting in the Southern District of New York voided the U.S. Department of Health and Human Services ("HHS") Final Conscience Rule ("Conscience Rule") set to take effect November 22, 2019.[1] In its ruling, the Court **vacated the Conscience Rule in its entirety nationwide**. A federal judge sitting in the Eastern District of Washington also indicated on November 7, 2019, that it too would vacate the Conscience Rule in a forthcoming opinion. This means that health care employers are **no longer required** to comply with the Conscience Rule by November 22, 2019. Both HHS and the U.S. Justice Department said they are reviewing the opinion from the Southern District of New York and declined to further comment. Therefore, it is uncertain whether the government intends to appeal the decision at this time. A similar legal challenge is still pending in California. Hall Render wrote about the Conscience Rule and its potential impact on health care employers in a previous article and provided an update when HHS delayed implementation.

## BACKGROUND

The Conscience Rule was published on May 21, 2019 and was originally set to take effect on July 22, 2019.[2] It was intended to strengthen the enforcement of the "Federal Conscience and Anti-Discrimination Laws" which protect certain health care providers who refuse to participate in health care services they find religiously or morally objectionable.[3] Such health care services include abortion, sterilization, compulsory health care services generally (such as vaccinations), performance of advanced directives and assisted suicide. The Conscience Rule was challenged in the Southern District of New York and the Central District of California, which resulted in a delay of the effective date until November 22, 2019.

The New York court in its ruling Wednesday held, among other things, that the agency did not have the authority to impose major portions of the rule and that it went against Title VII of the Civil Rights Act of 1964 and the Emergency Medical Treatment and Labor Act. The Court also held that HHS's promulgation was arbitrary and capricious, stating that the agency didn't adequately justify the rule.

## PRACTICAL TAKEAWAYS

- The New York court ruling on Wednesday vacated the Conscience Rule in its entirety nationwide.
- At this time, health care employers are not required to comply with the Conscience Rule.
- Health care employers who had invested resources on written assurances, policy development and staff training should now pause those efforts.
- The Federal Conscience and Anti-Discrimination Laws remain in effect after this ruling.
- Additional litigation is still pending in other districts and the government may decide to appeal, so stay tuned for additional updates.
- Title VII of the Civil Rights Act, as well as many state laws, continue to require that employers provide reasonable accommodation for the **religious beliefs and practices of applicants and employees**.

Hall Render will continue to follow any future developments to the Conscience Rule. If you have questions about these issues or would like to be updated on any further developments with the Conscience Rule, please don't hesitate to contact:

- Robin Sheridan at (414) 721-0469 or rsheridan@hallrender.com;
- Lindsey Croasdale at (414) 721-0443 or lcroasdale@hallrender.com; or
- Your regular Hall Render attorney.

Special thanks to Macauley Rybar, law clerk, for his assistance with drafting this article.

More information about Hall Render's Labor & Employment services can be found here.

[references]

[1] See *State of New York et al. v. United States Dep't of Health & Human Servs. et al.*, No. 1:2019cv04676 - Document 142 (S.D.N.Y. 2019).

[2] See Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2019).

[3] The "Federal Conscience and Anti-Discrimination Laws" refer collectively to provisions under the Church Amendments, the Coats-Snowe Amendments, the Weldon Amendment, the Social Security Act, the Patient Protection and Affordable Care Act and other anti-discrimination provisions in the context of providing health and mental health services.

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