



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ***Rescission of Guidance on Nondiscrimination Protections under the Church Amendments***

**AGENCY:** Office for Civil Rights (OCR), Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice; rescission of guidance

**SUMMARY:** Pursuant to Section 1 of Executive Order (“E.O.”) 14182, “Enforcing the Hyde Amendment,” to end the forced use of Federal taxpayer dollars to fund or promote elective abortion, and the direction under E.O. 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department Of Government Efficiency’ Deregulatory Initiative,” to rescind or modify “regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition,”<sup>1</sup> the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) hereby rescinds “Guidance on Nondiscrimination Protections under the Church Amendments” issued September 17, 2021.

**DATES:** This action is effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** David Christensen, Supervisory Policy Advisor, HHS Office for Civil Rights, (202) 741-8460 or (800) 537-7697 (TDD), or by email at [conscience@hhs.gov](mailto:conscience@hhs.gov).

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

On September 17, 2021, HHS OCR issued “Guidance on Nondiscrimination Protections under the Church Amendments” (2021 OCR Guidance) to remind recipients of certain federal funding of conscience protections for healthcare personnel related to abortion and sterilization.

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<sup>1</sup> Per Sec. 6 of E.O. 14219, the term “regulation” includes the term “guidance document” as defined in E.O. 13422 of January 18, 2007, Further Amendment to Executive Order 12866 on Regulatory Planning and Review (“‘Guidance document’ means an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.” E.O. 13422, Sec. 3(g) (Jan. 18, 2007).)

The 2021 OCR Guidance addressed the federal conscience statute known as the Church Amendments, 42 U.S.C. 300a-7, which consists of several provisions, but only focused on provision (c)(1) that protects the conscience rights of both providers who are willing to participate in abortion and providers who are unwilling to participate in abortion. The 2021 OCR Guidance stated: “The purpose of this document is to remind recipients of grants, loans, contracts, or loan guarantees under the PHS Act of their nondiscrimination obligations under section (c)(1) of the Church Amendments with regard to health care personnel who perform or assist in the performance of abortion or sterilization.”

The Church Amendment (c)(1) prohibits health care entities receiving funds under the Public Health Service Act from discriminating in employment or staff privileges against physicians or health care personnel who perform or assisted in the performance of lawful sterilization procedure or abortion, or who object to performing or assisting in the performance of a lawful sterilization procedure or abortion that would be contrary to religious beliefs or moral convictions.

The 2021 OCR Guidance addressed what a lawful abortion is in three ways. First, it stated a lawful abortion is any abortion legal under *Planned Parenthood v. Casey*, which made it illegal for a state to prohibit abortion prior to viability. *See Planned Parenthood v. Casey*, 505 U.S. 833, 879 (1992), *overruled in part by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). Second, it described a lawful abortion as an abortion under the Hyde Amendment provision in the Labor, Health and Human Services, and Related Agencies Appropriations Act that restricts Federal funding for abortion except in the case where the pregnancy threatens the life of the woman, or in the case that the pregnancy is the result of rape or incest. Last, it defined a lawful abortion to include those performed to stabilize a patient when required under the Emergency Medical Treatment & Labor Act (EMTALA), 42 U.S.C. 1395dd. The 2021 OCR Guidance cited guidance from the Centers for Medicare & Medicaid Services (CMS) on EMTALA obligations and resources for filing complaints, issued on September 17, 2021 (2021

CMS EMTALA Guidance). The 2021 CMS EMTALA Guidance was updated on July 11, 2022 (2022 CMS EMTALA Guidance) and was accompanied by a letter sent the same day by HHS Secretary Becerra following the *Dobbs* decision, which was issued on June 24, 2022. The 2022 CMS EMTALA Guidance and accompanying Secretary letter was preliminarily and partially enjoined on August 23, 2022,<sup>2</sup> and it was rescinded on May 29, 2025.

## **II. Basis for Rescission**

HHS OCR rescinds the 2021 OCR Guidance under Executive Order (“E.O.”) 14182, “Enforcing the Hyde Amendment” for several reasons.

First, Section 1 of E.O. 14182 provides that “Congress has annually enacted the Hyde Amendment and similar laws that prevent Federal funding of elective abortion.” Section 1 further provides it is the policy of the United States, consistent with the Hyde Amendment, to end the forced use of Federal taxpayer dollars to fund or to “promote elective abortion.” The 2021 OCR Guidance had the effect of promoting abortion by focusing solely on part of provision (c)(1) of the Church Amendments to remind entities receiving funds of their nondiscrimination obligations with respect to providers who perform or assist in the performance of abortion.

By focusing on one aspect of provision (c)(1) of the Church Amendments, the 2021 OCR Guidance narrowly focused on the rights of providers employed by certain federally funded health care entities who perform lawful abortions but failed to clarify the conscience rights of providers who are unwilling to perform abortion.

Second, the 2021 OCR Guidance cited various court cases to argue “decades of precedent make clear that it is unconstitutional for a state to prohibit a patient from ending pregnancy prior to fetal viability.” Those claims are no longer accurate after *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), which overturned *Roe v. Wade*, 410 U.S. 113 (1973), and its progeny of cases, thereby allowing state legislatures to determine the legality of abortion. The

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<sup>2</sup> *Texas v. Becerra*, 623 F. Supp. 3d 696 (N.D. Tex. 2022), *judgment entered*, No. 5:22-CV-185-H, 2023 WL 2467217 (N.D. Tex. Jan. 13, 2023), and *aff’d*, 89 F.4th 529 (5th Cir. 2024).

2021 OCR Guidance predates *Dobbs* and thereby relies on case law that is now invalid or overruled.

Third, the 2021 OCR Guidance promoted a misreading of EMTALA relating to abortion, relying on guidance that has since been rescinded. On June 3, 2025, HHS and the CMS announced the rescission of the 2021 and 2022 CMS EMTALA Guidance, QSO-21-22-Hospitals, and QSO-2222-Hospitals (both rescinded on May 29, 2025) and a related letter from the then-Secretary of HHS. The CMS post-rescission announcement on June 3, 2025, stated that the rescission of this erroneous guidance will not affect its continued enforcement of EMTALA to protect “all individuals who present to a hospital emergency department seeking examination or treatment, including for identified emergency medical conditions that place the health of a pregnant woman or her unborn child in serious jeopardy.” On June 13, 2025, Secretary Kennedy sent a letter to health care providers which also made clear this commitment. CMS further clarified it would “work to rectify any perceived legal confusion and instability created by the former administration’s actions.” The 2021 OCR Guidance’s reliance on this since-rescinded guidance furthered this legal confusion and instability.

The 2021 OCR Guidance is rescinded.

### **III. Collection of Information Requirements**

This Notice creates no legal obligations and no legal rights. Because this Notice imposes no information collection requirements, it need not be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: January 21, 2026

**Paula M. Stannard**

Director,

Office for Civil Rights

Department of Health and Human Services

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