



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ISSUE: DISCRIMINATION IN THE PROVISION OF HEALTH CARE SERVICES

**POLICY DESCRIPTION:** The Department of Health and Humans Services (HHS) has proposed a new regulation that would apply to all entities receiving HHS funds. The proposed regulation, while aimed at abortion care, services and referrals, could easily impact LGBT healthcare.

The proposed regulations are designed to allow employees to refuse, on religious or moral grounds, to provide lawful medical services. It is unclear how individual employees, health care institutions and/or the federal government will interpret and use these regulations, but the regulations seem to invite employees to engage in “religious and moral refusals” of more types of care and service in more settings than occurs now. This threatens civil rights protections in at least two ways.

First, in states with civil rights laws that protect the LGBT community (with California, Massachusetts, New Jersey and New York as just four large examples), the regulations invite confusion and conflict about health care institutions’ legal duty not to discriminate against LGBT patients, and grant employees to pick and choose which care they will provide, when, and to whom. The opportunities for discrimination are obvious. Federally funded research programs are likely to face the same confusion and conflict.

Second, the federal employment non-discrimination law, called “Title VII,” already forbids discrimination based on an employee’s religion. Current law requires that employers “accommodate” workers’ religious objections to aspects of their jobs as long as the accommodation does not unduly burden the employer by imposing too much cost or disruption. Many court cases have interpreted and applied this federal standard, creating a body of law that strikes a fair and workable balance between the wishes of religious employees and their employers’ business needs. These vague new regulations seem designed to up-end this sensible balance by inviting broad, limitless refusals by



employees. Whether or not the law actually allows such refusals, the apparent invitation to refuse and inevitable confusion will threaten both patient care and the ability of health care institutions and research projects to function effectively.

This policy would impact all agencies that are grantees or sub grantees of HHS; these comprise over half a million entities including state and local governments.

**RECOMMENDATIONS FOR CHANGE:** We recommend removing these regulations. The aforementioned Title VII already safeguards religious protections.