



September 17, 2021

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

Guidance on Nondiscrimination Protections under the Church Amendments for Health Care Personnel

The Office for Civil Rights (OCR) of the U.S. Department of Health and Human Services enforces the Church Amendments, codified at 42 U.S.C. 300a-7. Among these provisions, the Church Amendments protect health care personnel from discrimination related to their employment or staff privileges because they refused to perform or assist in the performance of abortion, sterilization, and biomedical or behavioral research activities because of their religious beliefs or moral convictions.¹ For example, a hospital that receives funds under the Public Health Service Act (PHS Act) cannot have a policy of refusing to hire a health care professional at a hospital on the basis that they currently or in the past have refused to perform an abortion because of their religious beliefs or moral convictions.

These same protections from discrimination related to employment or staff privileges also extend to health care personnel who perform or assist in the performance of a lawful abortion or sterilization.

Protections Against Discrimination

Section (c)(1) of the Church Amendments, in part, prohibits entities that receive a grant, contract, loan, or loan guarantee under the PHS Act (hereafter referred to as “covered recipients”) from discriminating in the employment, promotion, or termination of employment of any physician or other health care personnel because the physician or other health care personnel performed or assisted in the performance of a lawful sterilization procedure or abortion. It also prohibits discrimination in the extension of staff or other privileges to any physician or other health care personnel because the individual performed or assisted in the performance of a lawful sterilization procedure or abortion. These provisions also provide protection for those who refuse to perform or assist in the performance of abortion, sterilization, and biomedical or behavioral research activities because of their religious beliefs or moral convictions. PHS Act covered recipients include but are not limited to recipients of funds under the Ryan White

¹ 42 U.S.C. 300a-7(c)

HIV/AIDS Program, the Title X Program, and Health Resources and Services Administration-funded health centers.

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.

Defining Lawful Abortion

In specifying its nondiscrimination protections, Section (c)(1) of the Church Amendments refers to the “performance of a lawful sterilization procedure or abortion,” and this includes abortions that are “lawful” under federal law. Decades of precedent make clear that it is unconstitutional for a state to prohibit a patient from ending a pregnancy prior to fetal viability. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 879 (1992); *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768 (8th Cir. 2015); *McCormack v. Herzog*, 788 F.3d 1017 (9th Cir. 2015); *Jane L. v. Bangerter*, 102 F.3d 1112 (10th Cir. 1996); *Sojourner T v. Edwards*, 974 F.2d 27 (5th Cir. 1992). Further, the U.S. Supreme Court has recognized that, under the federal Constitution, a state statute that “has the effect of placing a substantial obstacle in the path of a woman's choice [to have a lawful abortion] cannot be considered a permissible means of serving its legitimate ends.” *June Med. Servs, LLC v. Russo*, 140 S. Ct. 2103, 2120 (2020), quoting *Whole Women's Health v. Hellerstedt*, 136 S. Ct. 2292, 2310 (2016), quoting *Casey*, 505 U.S. at 877 (1992) (plurality opinion).

A lawful abortion may also include an abortion for which federal funds may be used to end pregnancies that are the result of rape or incest, or those necessary to save the life of the pregnant person. This includes abortions for which federal funds can be provided in the Medicaid and Children's Health Insurance (commonly referred to as CHIP) programs under the Hyde Amendment. See Consolidated Appropriations Act, 2021, Division H, Title II, § 507, Pub. L. 116-260, 134 Stat 1182, 1622 (Dec. 27, 2020). It may also include those for which federal funds can be provided through federally operated programs, including the Indian Health Service and the Veterans Health Administration. See, e.g., 25 U.S.C. § 1676.

Lawful abortions under the Church Amendments also include abortions performed in order to stabilize a patient when required under the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. 1395dd(e)(1). Under EMTALA, hospitals with a dedicated emergency department that receive Medicare funds must, as a condition of participation in the Medicare program, provide a medical screening examination to individuals who request such an examination to determine if a patient has an emergency medical condition. If the patient has an emergency medical condition, the hospital must provide medical care to stabilize the individual within the capability of the hospital, or provide for an appropriate transfer to another facility with the capabilities to stabilize the medical condition. Emergency medical conditions involving pregnant patients may include, but are not limited to, ectopic pregnancy, miscarriage, or pre-eclampsia. Stabilizing treatment for these conditions may include, but are not limited to, dilation

and curettage, laparoscopic procedures involving fallopian tubes or uterus, or a hysterectomy. See [this guidance](#) from the Centers for Medicare & Medicaid Services for more information about EMTALA obligations. To file a complaint under EMTALA, please contact the appropriate state survey agency: <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/ContactInformation>.

Examples of Church Amendment Section (c)(1) Prohibitions Regarding Personnel Participating in Lawful Abortions:

- Covered recipients, such as a hospital in State A that receives funding under the Ryan White Act, cannot deny or withdraw admitting privileges to a physician on the basis that the physician performs lawful abortions in State B or any other state.
- A covered hospital cannot terminate a doctor who performs an abortion before viability on the basis that the abortion violated state law, if the state law at issue violates the Federal Constitution. An abortion that violates an unconstitutional state law may be a lawful abortion under the Church Amendments.
- A HRSA-funded health center cannot refuse to hire, or terminate from employment, a nurse on the basis that the nurse assisted in the performance of an abortion for which federal Medicaid funds were lawfully provided.
- A state university medical center that receives federal funds from the National Institutes of Health for research cannot deny employment privileges to a physician employed by the university because the physician performed lawful abortions at a previous job.

Enforcement of the Church Amendments

If OCR receives a complaint alleging a violation of the Church Amendments, it will coordinate the handling of complaints with the Departmental funding component(s) from which the entity, to which a complaint has been filed, receives funding.²

If you believe that you or another party has experienced discrimination under the Church Amendments, visit the OCR complaint portal at <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf> to file a complaint with OCR online. To read more about the Church Amendments and other laws that OCR enforces, please visit our website at <https://www.hhs.gov/ocr>.

DISCLAIMER: The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or the Departments' policies.

² 45 C.F.R. 88.2.