

Religious Liberty Alert: Faith-Based Nonprofits and Forthcoming HHS Rules



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What to Know

Faith-based nonprofits will likely be required by forthcoming U.S. Department of Health and Human Services (HHS) rules to provide insurance coverage for procedures and treatments that contradict many faith-based nonprofits' religious beliefs. Specifically, HHS plans to finalize two rules that would pose serious religious liberty concerns.

The first is a proposed rule that would mandate insurance coverage for “gender transition” surgeries and treatments, including for minors. The rule classifies as a new “essential health benefit” for individual and small group plans (fewer than 51 employees) a range of transgender treatments, including: puberty blockers for children, cross-sex hormones, genital and non-genital surgical procedures (hysterectomy, penectomy, mastectomy), and a host of cosmetic facial and body modifications. Under certain circumstances, fully insured large group plans (above 50 employees) will also be required to provide coverage of those treatments. The proposed rule included a cursory note that HHS will comply with laws respecting conscience and religious freedom, but it is unclear whether or how HHS would recognize exemptions for faith-based organizations.

The second is an anticipated proposed rule under Section 1557 of Obamacare, which prohibits sex discrimination in HHS-funded health programs and activities. It is predicted that HHS will redefine “sex discrimination” to include “termination of pregnancy” as well as “sexual orientation” and “gender identity.” This would likely mean that insurance plans would be required to provide coverage of abortion and gender transition treatments, and employers would thus be required to provide and pay for such plans. It is unknown whether the proposed rule would recognize any religious exemptions. HHS anticipates publishing the proposed rule in April 2022.

For many faith-based nonprofits these rules, if and when finalized, will create a conflict with their religious convictions.

What to Do

1. **Connect.** If you are not already in contact with a faith-based healthcare organization, reach out now. The [Catholic Benefits Association](#) and [Christ Medicus Foundation CURO](#) are just two organizations that are actively monitoring these regulations and seeking to protect religious liberty. You can subscribe to [Christ Medicus updates here](#) to stay informed about developments in these regulations.

2. **Notify Your Board.** Alert your organization's leaders and team members of the upcoming issue. The board should consider whether providing and paying for insurance plans that cover abortion or gender transition surgeries and treatments would violate the organization's religious beliefs.
3. **Notify Your Human Resources Manager.** While the rules are not yet finalized, the insurance coverage mandates will likely go into effect for plan year 2023. The HR manager should carefully review the organization's insurance plan coverage and any plan updates.
4. **Submit a Public Comment on the Section 1557 Proposed Rule.** After HHS publishes the Section 1557 proposed rule, likely in April 2022, the public, including faith-based organizations, will have an opportunity to review the proposal and provide feedback. Through a formal public comment process, individuals and organization can inform HHS of their support, opposition, questions, or concerns with the proposed rule, including any issues related to religious freedom and conscience rights. If your organization could be impacted by the rule, you should consider submitting a public comment. The newly launched [Catholic Health Care Leadership Alliance](#) (CHCLA) will also be a powerhouse of leadership during these challenges and can provide a point of contact for organizations seeking to participate in notice-and-comment.
5. **Contact a Law Firm Promptly if the Rules Pose Religious Freedom Conflicts.** If your organization has religious objections to the anticipated insurance mandates in the forthcoming rules, you should contact a law firm. In some cases, pre-litigation steps, such as contacting HHS to request clarification or confirmation of any religious exemptions, might be appropriate. A law firm can best consider the organization's specific circumstances and provide legal advice on the most prudent course of action to protect religious freedom.