

Why the HHS conscience-rights rule was blocked in court

DEC 11, 2019

Tanya Albert Henry

Contributing News Writer

In a win for physicians and their patients, a federal court blocked a Trump Administration-backed conscience rights rule the AMA and other medical associations opposed in an amicus brief because the change would “radically disrupt medical care and endanger the health and lives of patients.”

In a 147-page ruling, a judge in the U.S. District Court of the Southern District of New York vacated the entire Department of Health and Human Services’ (HHS) “Protecting Statutory Conscience Rights in Health Care” rule that was supposed to take effect Nov. 22. Judge Paul Engelmayer called the rule that would have expanded health care workers ability to refuse to provide care because of religious or moral reasons “arbitrary and capricious.” (The U.S. District Court for the Northern District of California Judge William Alsup also vacated the rule in a separate November ruling.)

Engelmayer’s ruling in *State of New York et al. v. Department of Health and Human Services* said the department didn’t have rule-making authority to make the substantive changes it attempted to make and that the rule conflicted with other federal laws, including the Emergency Medical Treatment and Labor Act (EMTALA) and Title VII, which forbids workplace discrimination.

The decision covered a lawsuit that New York state and more than 20 states and municipalities filed. It also covered two other lawsuits challenging the rule, one from Planned Parenthood and joint lawsuit from the National Family Planning and Reproductive Health Association and Public Health Solutions Inc.

Ruling reflects physician concerns

Parts of the decision echoed concerns the AMA, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the American College of Emergency Physicians and other associations expressed in the brief they filed in the case.

The brief tells the court that the conscience rule “completely disregards” physicians’ ethical obligations found in the *AMA Code of Medical Ethics*, and dramatically expands the rights of religious or moral objectors to “refuse medically appropriate care even when their refusal jeopardizes another’s life and safety In every conceivable context—from infancy through end-of-life, in rural clinics and urban hospitals, from preventative care to life-or-death emergencies.”

“Where professional ethics recognize that the patient is paramount, the rule prioritizes an individual’s personal beliefs. It permits objectors to hold their beliefs secret and to refuse care without prior notice, without disclosing their refusal and without arranging or referring for alternative care,” the brief says.

Engelmayer referenced a scenario the AMA brief laid out, explaining how the rule could hinder a patient with an ectopic pregnancy from receiving medically necessary and lifesaving care. He said when HHS was confronted with comments raising concerns about emergency scenarios like this one, the agency didn’t provide an adequate answer to the legitimate concerns health care providers raised.

“The comments received by HHS in response to the draft rule—many in detail, many from medical personnel with duties to emergency patients—should have yielded a thoughtful response from the federal agency responsible for health care, one that engaged with these important questions. HHS did not provide such a response,” Engelmayer wrote in his opinion. “HHS’s ‘generalized conclusions’ and inadequate responses to these professionals virtually define the [Administrative Procedure Act] APA term “arbitrary and capricious.”

Balancing care, conscience rights

The AMA first opposed the conscience rights rule last year with a letter to HHS during the measure’s comment period. The letter notes that the rule covered a wide array of existing federal laws that provide conscience protections, including ones related to abortion, vaccines, end-of-life care, and LGBTQ patients.

The letter says the AMA is committed to conscience protections for physicians and other health professionals, but that the protections must “be balanced against the fundamental obligations of the medical profession and physicians’ paramount responsibility and commitment to serving the needs of their patients.

Engelmayer recognizes in his opinion that conscience provisions “recognize and protect anundeniably important right,” saying that his decision “leaves HHS at liberty to consider and promulgate rules governing these provisions.” But he cautioned that “the agency must do so within the confines of the APA and the Constitution.”

The AMA brief, too, touches on the importance of striking the right balance, saying that “one individual’s personal convictions cannot and should not be used to deprive another person—a patient—of medically sound treatment, information and services.”