

## Nov. 14, 2019: National Advocacy Update



### **HHS proposes to stop enforcing sexual orientation and gender identity anti-discrimination terms in grant conditions**

The U.S. Department of Health and Human Services (HHS) has released a proposed rule that would modify the Uniform Administrative Requirements, Cost Principles and Audit Requirement for HHS Awards (i.e., grant conditions for HHS grants). These grants provide \$500 billion in funding annually for programs including STD/HIV prevention and care, early childhood education, adoption and foster care, community health centers, community mental health and opioid treatment programs and youth homelessness programs, among others.

The proposal seeks to modify several current grant conditions, including one that prohibits discrimination on the basis of sexual orientation and gender identity (SOGI), because HHS states that it has heard concerns that the current regulations violate the Religious Freedom Restoration Act and the Constitution. Specifically, HHS proposes to replace the SOGI anti-discrimination provision with one that prohibits discrimination against classes named by federal statute, such as discrimination based on sex. Many federal agencies and courts have interpreted "sex discrimination" as including discrimination based on SOGI, and the Supreme Court has held that discrimination based on stereotypical notions of appropriate behavior, appearance, or mannerisms for each gender (i.e., "sex stereotypes") constitutes sex discrimination. However, there is not a federal statute explicitly prohibiting discrimination based on SOGI. The proposal is clearly intended to embolden grantees to refuse services to clients or patients who the grantee finds objectionable—for example, grantees could refuse to place foster children with gay parents or refuse to provide care to transgender individuals. HHS also stated (PDF) that as of Nov. 1, it will no longer enforce the current SOGI anti-discrimination grant conditions.

The proposal is open for comment for only 30 days. The AMA will submit comments reiterating its strong opposition to discrimination based on an individual's sex, sexual orientation, gender identity, race, religion, disability, ethnic origin, national origin or age and any other such policies.

### **Judge vacates "conscience rule" that sought to create rights to refuse care**



On Nov. 6, a federal district court judge in the Southern District of New York vacated (PDF) the so-called "conscience rule" that revised existing regulations and created new regulations to interpret and enforce more than 20 federal statutory provisions related to conscience and religious freedom. The rule would have permitted individuals, health care organizations and other entities to refuse to provide or participate in medical treatment, services, information and referrals to which they have religious or moral objections. The regulation would have impacted services related to abortion, contraception (including sterilization), vaccination, end-of-life care, mental health, global health support and health care services provided to patients who are lesbian, gay, bisexual, transgender and queer/questioning (LGBTQ).

The AMA opposed the rule (PDF) and urged HHS to withdraw it. While the AMA supports the legitimate conscience rights of individual health care professionals, the exercise of these rights must be balanced against the fundamental obligations of the medical profession and physicians' paramount responsibility and commitment to serving the needs of their patients. As advocates for our patients, AMA strongly supports patients' access to comprehensive reproductive health care and freedom of communication between physicians and their patients, and opposes government interference in the practice of medicine or the use of health care funding mechanisms to deny established and accepted medical care to any segment of the population. The AMA will continue to monitor the issue, including whether the government appeals the ruling.

## **CMS to apply extreme circumstance policy to clinicians affected by Hurricane Dorian**

In response to the Federal Emergency Management Agency (FEMA) designation of Hurricane Dorian as a national disaster, CMS has determined that the automatic extreme and uncontrollable circumstances policy will apply to Merit-based Incentive Payment System (MIPS) eligible clinicians in FEMA-identified North Carolina and South Carolina areas.

MIPS eligible clinicians in these areas will be automatically identified and receive a neutral payment adjustment for the 2021 MIPS payment year. During the data submission period for the 2019 performance period (Jan. 2, 2020 to March 31, 2020), all four performance categories for these clinicians will be weighted at 0%, resulting in a score equal to the performance threshold. However, if MIPS eligible clinicians in these areas choose to submit data on two or more performance categories, they will be scored on those categories and receive a 2021 MIPS payment adjustment based on their 2019 MIPS final score.

The automatic extreme and uncontrollable circumstances policy will not apply to MIPS eligible clinicians in MIPS Alternative Payment Models (APMs) who are subject to the APM scoring standard



for the 2019 performance period, or to those participating in MIPS as groups or virtual groups.

For More Information visit the Extreme and Uncontrollable Circumstances Overview section on the MIPS > About Exception Applications page or contact the Quality Payment Program Service Center at (866) 288-8292/TTY (877) 715-6222, Monday through Friday, 8:00 a.m. ? 8:00 p.m. Eastern Time or by email at [qpp@cms.hhs.gov](mailto:qpp@cms.hhs.gov). To receive assistance more quickly, consider calling during non-peak hours—before 10 a.m. and after 2 p.m. ET

## DEA launches the Suspicious Orders Report System for controlled substances

On Oct. 23 the Drug Enforcement Agency launched the Suspicious Orders Report System (SORS) which is a new centralized database required by the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act). The SUPPORT Act requires that all DEA registrants that distribute controlled substances to report suspicious orders to the DEA. Reporting a suspicious order to the centralized database established by DEA (SORS Online) constitutes compliance with the reporting requirement under 12 U.S.C 832(a)(3). The term 'suspicious order' may include an order of a controlled substance of unusual size, an order of a controlled substance deviating substantially from a normal pattern and orders of controlled substances of unusual frequency. Reporting to SORS Online satisfies the requirement to report such orders to the Administrator of the DEA and the Special Agent in Charge of the Division Office of the DEA for the area in which the registrant is located or conducts business.

DEA registrants that are already ARCOS Online and ARCOS EDI reporters should use their current ARCOS log on information to access the system. DEA registrants who are not currently ARCOS reporters will need to register on the website in order to report to SORS. The registration process is as follows:

1. Go to <https://apps2.dea diversion.usdoj.gov/arcos-online> and click on "**SORS Registration (for Non-ARCOS Reporters)**" hyperlink.
2. After completing the initial registration, a confirmation e-mail will be sent to the e-mail address provided.
3. Once DEA approves the registration, another e-mail will be sent with a temporary password.
4. Go to <https://apps2.dea diversion.usdoj.gov/arcos-online> and type in your username and the temporary password. The system will require you to change the temporary password.
5. Upon successfully changing the password, the account will be fully registered to report to the SORS Online system.



For more information, contact [deadiversionwebmaster@usdoj.gov](mailto:deadiversionwebmaster@usdoj.gov)

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