

# LEGAL EAGLE EYE NEWSLETTER

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*For the Nursing Profession*

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## Morally Coercive Or Discriminatory Practices: New Regulations Take Effect January 20, 2009.

### Excerpts From The New Regulations 45 CFR Part 88

(c) Entities to whom [these regulations] apply shall not:

(1) Discriminate against any physician or other health care professional in the employment, promotion, termination, or extension of staff or other privileges because he performed or assisted in the performance, or refused to perform or assist in the performance of a lawful sterilization procedure or abortion on the grounds that doing so would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions concerning abortions or sterilization procedures themselves;

(d) Entities to whom [these regulations] apply shall not:

(1) Require any individual to perform or assist in the performance of any part of a health service program or research activity funded by the Department if such service or activity would be contrary to his religious beliefs or moral convictions.

(2) Discriminate in the employment, promotion, termination, or the extension of staff or other privileges to any physician or other health care personnel because he performed, assisted in the performance, refused to perform, or refused to assist in the performance of



***The word "entity" in the new regulations applies to any recipient of Federal funds.***

***Expressly included are hospitals, provider-sponsored organizations, health maintenance organizations, health insurance plans, laboratories, any other health care organizations or facilities, including components of State or local governments.***

FEDERAL REGISTER December 19, 2008  
Pages 78071-78101

any lawful health service or research activity on the grounds that his performance or assistance in performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of the religious beliefs or moral convictions concerning such activity themselves.

### **Certification Requirements**

Health care entities will be informed of their specific compliance-certification requirements at the time of grant or provider agreement renewal, the Department says.

### **Who Is Protected?**

The Department's official comments indicate an intent to widen as broadly as possible the application of the regulations. That was the rationale for using the phrase "other health care personnel" instead of listing specific professions and occupations, as that might give the impression that those not expressly listed are not protected by the new regulations.

The Department's official comments, rather than the regulations themselves, state for purposes of clarification that the phrase "other health care professionals" as used in the regulations refers to nurses, pharmacists, occupational therapists, public-health workers and technicians, psychiatrists, psychologists, counselors and other mental health workers.

*(Continued on page 4.)*

Inside this month's  
Issue...

**January 2009**

New Subscriptions  
See Page 3

Perioperative Nursing/Shoulder Chair Attachment/Fall  
End-Stage COPD/Morphine Overdose/Death - Skin Care  
Psychiatric Care/Homeless Patient/No Discharge Plan/Suicide  
Labor & Delivery/Nurse As Patient Advocate - Emergency Room  
Arbitration Agreement/Nurses Not Protected From Civil Lawsuits  
No Restraints/Fall From Bed - Life Partner As Family Member  
Deaf Patient/Sign Language Interpreter/Disability Discrimination  
Invasive Surgery/Informed Consent/Nursing Documentation

## Morally Coercive/Discriminatory Practices/Regulations (Continued.)

(Continued from page 1.)

In the preamble to the new regulations, the US Department of Human and Health Services states that the Department is concerned about the development of an environment in sectors of the health care field that is intolerant of individual objections to abortion or other individual religious beliefs or moral convictions.

Such developments, the Department says, may discourage individuals from entering health care professions. Such developments also promote the mistaken belief that rights of conscience and self-determination extend to all persons, except health care providers.

Additionally, religious and faith-based organizations have a long tradition of providing medical care in the US, and they continue to do so today--some of these are among the largest providers of health care in this nation, the Department points out.

According to the Department, such institutions may have traditions of issuing guidance to inform the members of their workforces of the parameters under which they should operate in accordance with the organization's overall mission and ethics. A trend that excludes some among various religious, cultural and/or ethnic groups from participating in the delivery of health care is especially troublesome when considering current and anticipated shortages of health care professionals in many medical disciplines and regions of the country.

### **Availability of Reproductive Services Is Not Affected**

According to the Department, the ability of patients to access health care services, including abortion and reproductive health services, is long-established and is not changed in this rule.

Instead, the new regulations implement Federal laws protecting health care workers and institutions from being compelled to participate in, or from being discriminated against for refusal to participate in, health services or research activities that may violate their consciences, including abortion and sterilization, by entities that receive certain funding from the Department.

FEDERAL REGISTER, December 19, 2008  
Pages 78071-78101

***We have placed the full text of the DHHS announcement on our website at <http://www.nursinglaw.com/DHHS121908.pdf>.***

***The regulations themselves appear at the end of the document starting at Federal Register page 78096, which is pdf page 26.***

***DHHS has provided the following contacts:***

***For further information regarding this rule, contact:***

***Brenda Destro  
(202) 401-2305***

***Office of Public Health and Science,***

***Department of Health and Human Services,***

***Room 728E, Hubert H. Humphrey Building,***

***200 Independence Avenue, SW.,***

***Washington, DC 20201.***

***For information regarding how to file a complaint with the Office for Civil Rights contact:***

***Vernell Lancaster  
(202) 260-7180***

***Office for Civil Rights,  
Department of Health and Human Services,***

***Room 533F, Hubert H. Humphrey Building,***

***200 Independence Avenue, SW.,***

***Washington, DC 20201.***

FEDERAL REGISTER, December 19, 2008  
Pages 78071-78101

## Skin Care: Substandard Care Did Not Cause Death.

The Court of Appeals of Texas ruled that the medical expert's opinion filed in support of the family's wrongful-death lawsuit outlined a correct statement of the legal standard of care for an elderly patient admitted to long-term care with existing breakdown in skin integrity.

However, the evidence was lacking that substandard long-term nursing care had anything to do with his death from atherosclerotic heart disease and COPD.

### **Standard of Care for Patient With Breakdown of Skin Integrity**

First, the nursing staff must develop a care plan to address issues with existing pressure ulcers and altered nutritional and hydration status.

Next, the care plan must be implemented and its implementation fully documented.

The care plan called for the patient to be turned every two hours, but records of actual turning could only be found in the chart for one nursing shift on one particular day during his final admission.

No use of pressure-relief devices could be found documented, except one progress note of waffle boots being put on.

The patient was supposed to receive complete assistance when eating as part of the comprehensive care plan to address his needs for nutrition and hydration and nutritious snacks were supposed to be made available on a consistent basis.

Staff caregivers were also supposed to monitor and record his intake and output, weigh him regularly and review the results of any lab work that might be ordered by his physician.

Again, almost none of this necessary care could be corroborated from the documentation in the chart.

Many of the ADL flow charts were missing, implying either that forms left blank were deleted after the fact or that proper documentation was never started in the first place. ***Regent Health v. Wallace*, \_\_\_ S.W. 3d \_\_\_, 2008 WL 4982433 (Tex. App., November 25, 2008).**