

§ 88.4

§ 88.4 Severability.

Any provision of this part held to be invalid or unenforceable either by its terms or as applied to any entity or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be severable from this part, which shall remain in full force and effect to the maximum extent permitted by law. A severed provision shall not affect the remainder of this part or the application of the provision to other persons or entities not similarly situated or to other, dissimilar circumstances.

APPENDIX A TO PART 88—MODEL TEXT: NOTICE OF RIGHTS UNDER FEDERAL CONSCIENCE AND NONDISCRIMINATION LAWS

[Name of entity] complies with applicable Federal health care conscience protection statutes, including the Church Amendments, 42 U.S.C. 300a-7; the Coats-Snowe Amendment, section 245 of the Public Health Service Act, 42 U.S.C. 238n; the Weldon Amendment, e.g., Consolidated Appropriations Act, 2023, Public Law 117-328, div. H, title V General Provisions, section 507(d)(1) (Dec. 29, 2022); Sections 1303(b)(1)(A), (b)(4), and (c)(2)(A), and 1411(b)(5)(A), and 1553 of the ACA, 42 U.S.C. 18023(b)(1)(A), (b)(4), and (c)(2)(A), 18081(b)(5)(A), and 18113; certain Medicare and Medicaid provisions, 42 U.S.C. 1320a-1(h), 1320c-11, 1395i-5, 1395w-22(j)(3)(B), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u-2(b)(3)(B), 1397j-1(b), and 14406; the Helms, Biden, 1978, and 1985 Amendments, 22 U.S.C. 2151b(f), *accord*, e.g., Consolidated Appropriations Act, 2023, Public Law 117-328, div. K, title VII, section 7018 (Dec. 29, 2022); 22 U.S.C. 7631(d); 42 U.S.C. 280g-1(d), 290bb-36(f), 1396f, 1396s(c)(2)(B)(ii); 5106i(a)); and 29 U.S.C. 669(a)(5). More information to help entities determine which statutes are applicable to them is available at <https://www.hhs.gov/conscience/conscience-protections/index.html>. You may have rights as a provider, patient, or other individual under these Federal statutes, which prohibit coercion or other discrimination on the basis of conscience, whether based on religious beliefs or moral convictions, in certain circumstances. If you believe that [Name of entity] has violated any of these provisions, you may file a complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at [## 45 CFR Subtitle A \(10-1-24 Edition\)](https://www.hhs.gov/ocr/com-</p></div><div data-bbox=)

[plaints/index.html](#) or by mail or phone at: U.S. Department of Health and Human Services, 200 Independence Avenue SW, Room 509F, HHH Building, Washington, DC 20201, 1-800-368-1019, 800-537-7697 (TDD) or by email at ocrmail@hhs.gov. Complaint forms and more information about Federal conscience protection laws are available at <https://www.hhs.gov/conscience>.

PART 89—ORGANIZATIONAL INTEGRITY OF ENTITIES IMPLEMENTING PROGRAMS AND ACTIVITIES UNDER THE LEADERSHIP ACT

Sec.

89.1 Applicability and requirements.

89.2 Definitions.

89.3 Organizational integrity of recipients.

AUTHORITY: Section 301(f) of the Leadership Act, Pub. L. 108-25, as amended (22 U.S.C. 7631(f)) and 5 U.S.C. 301.

SOURCE: 75 FR 18763, Apr. 13, 2010, unless otherwise noted.

§ 89.1 Applicability and requirements.

(a) This regulation applies to all recipients unless they are exempted from the policy requirement by the Leadership Act or other statute.

(b) The Department of Health and Human Services (HHS) components shall include in the public announcement of the availability of the grant, cooperative agreement, contract, or other funding instrument involving Leadership Act HIV/AIDS funds the requirement that recipients agree that they are opposed to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men, and children. This requirement shall also be included in the award documents for any grant, cooperative agreement or other funding instrument involving Leadership Act HIV/AIDS funds entered into with the recipient.

§ 89.2 Definitions.

For the purposes of this part:

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Leadership Act means the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003,

Public Law 108-25, as amended (22 U.S.C. 7601-7682).

Prostitution means procuring or providing any commercial sex act.

Recipients are contractors, grantees, applicants or awardees who receive Leadership Act funds for HIV/AIDS programs directly or indirectly from HHS.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

§ 89.3 Organizational integrity of recipients.

A recipient must have objective integrity and independence from any affiliated organization that engages in activities inconsistent with the recipient's opposition to the practices of prostitution and sex trafficking because of the psychological and physical risks they pose for women, men and children ("restricted activities"). A recipient will be found to have objective integrity and independence from such an organization if:

- (a) The affiliated organization receives no transfer of Leadership Act HIV/AIDS funds, and Leadership Act HIV/AIDS funds do not subsidize restricted activities; and
- (b) The recipient is, to the extent practicable in the circumstances, separate from the affiliated organization. Mere bookkeeping separation of Leadership Act HIV/AIDS funds from other funds is not sufficient. HHS will determine, on a case-by-case basis and based on the totality of the facts, whether sufficient separation exists. The presence or absence of any one or more factors relating to legal, physical, and financial separation will not be determinative. Factors relevant to this determination shall include, but not be limited to, the following:
 - (1) Whether the organization is a legally separate entity;
 - (2) The existence of separate personnel or other allocation of personnel that maintains adequate separation of the activities of the affiliated organization from the recipient;
 - (3) The existence of separate accounting and timekeeping records;

(4) The degree of separation of the recipient's facilities from facilities in which restricted activities occur; and

(5) The extent to which signs and other forms of identification that distinguish the recipient from the affiliated organization are present.

PART 90—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General

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- 90.1 What is the purpose of the Age Discrimination Act of 1975?
 - 90.2 What is the purpose of these regulations?
 - 90.3 What programs or activities does the Age Discrimination Act of 1975 cover?
 - 90.4 How are the terms in the regulations defined?

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- 90.14 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.
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- 90.44 Compliance reviews.
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