



# WHITMAN-WALKER HEALTH

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## **Statement of Whitman-Walker Health on the November 6 and 7 Federal Court Decisions Striking Down the HHS Denial of Care Rule**

Whitman-Walker is gratified that last week, two federal judges, in opposite parts of the country, issued separate rulings that struck down HHS’s rule that would encourage widespread discrimination against LGBTQ people, women needing reproductive health care, and other vulnerable and marginalized people. The rule, mischaracterized by HHS as “conscience protection,” would give anyone working in health care the right to deny needed care or any health-related service to anyone, even in an emergency, based on their personal beliefs or feelings. This could include not only doctors and nurses, but medical assistants, care navigators, ambulance drivers and EMTs, front desk staff, and individuals staffing the phone line. Hospitals, clinics, health care centers and other employers that require staff to adhere to the organization’s mission and professional ethics would be faced with termination of federal funding.

In a lengthy, carefully reasoned decision on November 6, the U.S. District Court for the Southern District of New York ruled that the HHS rule was so riddled with legal defects that no part of it could survive. He vacated the rule, which means that it will not take effect anywhere in the country. (Previously, the rule had been slated to become effective on November 22.) The judge found that among many other defects, the rule went much further than the federal laws that HHS was claiming to interpret; that HHS disregarded the substantial harms to patient care that would likely result; that HHS had fabricated or mischaracterized evidence to try to support the rule; and that the agency exceeded its power under the Constitution by tying federal funding to conditions that are unrelated to the purposes of those funds.

The lawsuit in the New York federal court was brought by a large coalition of states and municipal governments. We are grateful and proud that the District of Columbia, the State of Maryland, and the Commonwealth of Virginia joined in the lawsuit.

The next day, November 7, a judge in the U.S. District Court for the Eastern District of Washington State concluded that the rule was so defective that it should be struck down immediately – even before he issued his written decision. The judge observed that the rule was “discrimination by another name.”

Whitman-Walker is party to a separate lawsuit that is pending in federal court in San Francisco (the U.S. District Court for the Northern District of California). The federal judge in that case held a hearing last week in which he raised questions about many of the same problems that were noted in yesterday’s decision by the New York federal judge. We are hopeful that the judge in our case will reach the same conclusions as the federal judges in New York and Washington State. In the meantime, unless and until higher courts rules otherwise, last week’s rulings mean that the HHS rule will not take effect.

Whitman-Walker remains committed to welcoming care of the highest quality for everyone in our community, and we will continue to fight for our values, and for our community, at every level.

Naseema Shafi, CEO  
November 11, 2019