



August 21, 2025

West Virginia Health Departments Participating in the Vaccines for Children Program

Re: Vaccines for Children Program, 42 U.S.C. § 1396s

Dear Colleagues:

The U.S. Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience, and also enforces the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security and Breach Notification Rules.

OCR enforces 26 conscience statutes applicable to various funding streams as well as 21 religious non-discrimination provisions in other federal statutes and regulations, which include a number of grant and block grant programs.¹ Conscience statutes protect the exercise of conscience from discrimination by federal programs, state or local governments, or health care entities that receive certain streams of federal funding. These statutes protect a variety of individuals and entities, including health care workers, health care providers, and health insurance plans. These protections are applicable to specific health programs and cover a range of topics depending on the statute, including abortion, sterilization, assisted suicide, advanced directives, vaccines, and compulsory health services.

These conscience statutes include the federal Vaccines for Children Program (VCP), which requires that State plans for medical assistance include “a pediatric vaccine distribution program (which may be administered by the State department of health).”² The VCP ensures that children who are uninsured, Medicaid-eligible, or otherwise meet the eligibility criteria receive qualified pediatric vaccines. Providers participating in the VCP must comply “with applicable State law, including any such law relating to any religious or other exemption.”³ By specifically mandating that a State’s plan for administering Medicaid must respect State laws regarding religious exemptions, Congress recognized the importance of Americans’ religious convictions regarding vaccines and laws protecting such.

West Virginia’s Compulsory Vaccination Law, W. Va. Code § 16-3-4, which came into effect in June 2015, provides for medical exemptions but it does not contain an express religious exemption. However, West Virginia’s Equal Protection for Religion Act (EPRA), W. Va. Code § 35-1A-1, which came into effect in May 2023, provides that

[n]otwithstanding any other provision of law, no state action may:

(1) Substantially burden a person’s exercise of religion unless applying the burden to that person’s exercise of religion in a particular situation is essential to further a

¹ See 45 C.F.R. § 88.1; U.S. Dep’t Health & Human Servs., Office for Civil Rights (OCR), *Your Protections Against Discrimination Based on Conscience and Religion*, <https://www.hhs.gov/conscience/your-protections-against-discrimination-based-on-conscience-and-religion/index.html>.

² 42 U.S.C. § 1396s(a)(1).

³ 42 U.S.C. § 1396s(c)(2)(B)(ii).

compelling governmental interest; and is the least restrictive means of furthering that compelling governmental interest; nor

(2) Treat religious conduct more restrictively than any conduct of reasonably comparable risk; . .

W. Va. Code § 35-1A-1(a). On January 14, 2025, West Virginia Governor Patrick Morrisey issued Executive Order 7-25, directing West Virginia's Commissioner of the Bureau for Public Health and the State Health Officer to establish an exemption process for those who want to send their children to public school, and who have religious or moral objections to receipt of one or more vaccines otherwise required by the State's compulsory immunization law.⁴ The Executive Order explains that these exemptions are compelled by EPRA. The Governor's interpretation of EPRA was recently affirmed by Judge Froble of the Circuit Court of Raleigh County.⁵ Accordingly, EPRA is a State law that "relat[es] to" religious exemptions from West Virginia's compulsory immunization law. 42 U.S.C. § 1396s(c)(2)(B)(ii).

West Virginia is a participant in the VCP⁶ and receives \$1.37 billion from the Centers for Medicare & Medicaid Services each year as the federal Medicaid contribution.⁷ Therefore, West Virginia is obligated to ensure that its VCP providers comply with applicable state laws like EPRA, which requires recognition of religious exemptions from West Virginia's Compulsory Vaccination Law.⁸

OCR is available to lend assistance and provide support as West Virginia makes good faith efforts to ensure it and its health care providers comply with our nation's robust protections for religion and conscience. OCR's website has more information about conscience protection statutes and regulations. The website also has more information about the various religious nondiscrimination authorities OCR enforces. To learn more about the conscience statutes or religious nondiscrimination statutes, view OCR's webpage here: <https://www.hhs.gov/conscience/your-protections-against-discrimination-based-on-conscience-and-religion/index.html>.

Additionally, OCR issued a final rule in January 2024 to clarify OCR's authorities and process for enforcing the conscience statutes. This rule provides a more detailed summary of the conscience statutes and explains OCR's process by which it may enforce these authorities. The rule is available at <https://www.federalregister.gov/documents/2024/01/11/2024-00091/safeguarding-the-rights-of-conscience-as-protected-by-federal-statutes>.

OCR is tasked with enforcement of many of our nation's laws that protect the rights of

⁴ W.Va. Exec. Order No. 7-25, <https://apps.sos.wv.gov/adlaw/executivejournal/readpdf.aspx?DocID=97525>.

⁵ See Order Granting Mot. for Prelim. Inj., *Guzman v. West Virginia Bd. Ed.*, No. CC-41-2025-C-240 (Raleigh County W.Va. Cir. Ct. Aug. 12, 2025). We note that West Virginia courts look to federal interpretation of analogous federal statutes, see, e.g., *Stone v. St. Joseph's Hosp. of Parkersburg*, 208 W. Va. 91, 102, 538 S.E.2d 389, 400 (2000), and that Judge Froble's decision is consistent with federal interpretation of the Religious Freedom Restoration Act (42 U.S.C. §§ 2000bb-1, et seq.).

⁶ *Vaccines for Children (VFC) Program*, West Virginia Office of Epidemiology & Prevention Services, https://oepe.wv.gov/immunizations/Pages/vfc_program.aspx (last visited Aug. 14, 2025).

⁷ 2024 MHT Annual Report – Fiscal Year July 1, 2023–June 30, 2024, Bureau for Medical Services, W. Va. Dep't Human Servs. (Sept. 26, 2024) at 10, <https://dhhr.wv.gov/bms/Members/Managed%20Care/MCOreports/Documents/WV%20MHT%20SFY24%20Annual%20Report%2009.26.2024.pdf> (last visited Aug. 14, 2025).

⁸ See 42 U.S.C. § 1396s(c)(2)(B)(ii).

conscience and religious nondiscrimination. It is a priority of the Department to enforce these laws and help health care entities and health care providers understand these laws. OCR is available to provide technical assistance related to conscience protections, or receive complaints related to conscience. If you have questions, please contact OCR at OCRMail@hhs.gov.

Sincerely,

/s/ Paula M. Stannard

Paula M. Stannard

Director, Office for Civil Rights