

HEALTH LAW CONNECTIONS

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Top Ten: Health Law Forecast 2026

DOJ and HHS Civil Rights Enforcement in Health Care

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In May 2025, Deputy Attorney General Todd Blanche announced a new Civil Rights Fraud Initiative aimed at using the FCA to “aggressively pursue” what the Trump administration deems to be violations of federal civil rights laws.¹ According to the memo,² “[o]ne of the most effective ways to [enforce federal civil rights law] is through vigorous enforcement of the False Claims Act . . . against those who defraud the United States by taking its money while knowingly violating civil rights laws.”

This initiative is to be jointly led by DOJ’s Civil Rights Division and the Civil Division’s Commercial Litigation Branch. And each of the 93 U.S. Attorney’s Offices throughout the country must designate an Assistant U.S. Attorney to advance these cases. As with other FCA enforcement, DOJ is actively soliciting whistleblowers to bring cases under this initiative through the qui tam provisions.

In 2026, it is virtually certain that this coordinated enforcement effort will create new risks for the health care industry. Potential examples include:

Religious Conscience Protections. Consistent with the first Trump administration’s efforts, HHS announced in January 2025 that it would once again be a priority to “strengthen enforcement” of religious conscience protection laws.³ Likewise, in announcing the appointment of the new OCR Director Paula M. Stannard, HHS made clear that “the Office for Civil Rights will drive forward President Trump’s bold civil rights agenda with clarity, energy, and purpose.”⁴ OCR has announced multiple investigations of hospitals and health care systems for their alleged failures to accommodate the conscience preferences of individual clinicians.

Sex Discrimination Related to Gender-Affirming Policies. One of the Trump administration’s early executive orders (presently halted by multiple injunctions) indicated an intent to terminate federal financial assistance from medical institutions providing gender-affirming care to minors. And in July 2025, DOJ issued multiple subpoenas to hospitals concerning their provision of gender-affirming care.⁵ HHS has also published new guidance⁶ on protections for whistleblowers in health care and announced the launch of a new web portal where whistleblowers can submit complaints regarding the provision of certain gender-affirming procedures for minors.⁷

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DEI Programs. In March 2025—even before the Blanche Memo was issued—the Trump administration announced an investigation under Title VI and Section 1557 into four medical schools and hospitals that were alleged to have been operating programs with race-based criteria, including those relating to medical-residency placement and medical school enrollment.⁸

Undoubtedly, the Trump administration’s new Civil Rights Fraud Initiative has increased the risk facing the health care industry by injecting new energy into theories of “falsity” under the FCA premised on violations of federal nondiscrimination law. Covered health care entities should therefore conduct rigorous reviews of nondiscrimination compliance programs and initiatives and create a proactive defense strategy for FCA investigations or litigation to be borne out of the Blanche Memo.

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¹ DOJ, News Release, *Justice Department Establishes Civil Rights Fraud Initiative* (May 19, 2025), <https://www.justice.gov/opa/pr/justice-department-establishes-civil-rights-fraud-initiative>.

² Memorandum from Todd Blanche, Deputy Att’y Gen., U.S. Dep’t of Justice, Civil Rights Fraud Initiative (May 19, 2025), <https://www.justice.gov/dag/media/1400826/dl?inline>.

³ Statement from Dr. Dorothy Fink, Acting Secretary of the U.S. Department of Health and Human Services (Jan. 27, 2025), <https://www.hhs.gov/press-room/dr-fink-statement.html>.

⁴ HHS, Press Release, *HHS Announces Paula M. Stannard as Director of the Office for Civil Rights* (June 4, 2025), <https://www.hhs.gov/press-room/ocr-announces-director.html>.

⁵ DOJ, Press Release, *Department of Justice Subpoenas Doctors and Clinics Involved in Performing Transgender Medical Procedures on Children* (July 9, 2025), <https://www.justice.gov/opa/pr/department-justice-subpoenas-doctors-and-clinics-involved-performing-transgender-medical>.

⁶ HHS, *Guidance for Whistleblowers on the Chemical and Surgical Mutilation of Children*, <https://www.hhs.gov/protect-kids/whistleblower-guidance/index.html>.

⁷ HHS, Press Release, *HHS Takes Action to Protect Whistleblowers who Defend Children and Launches First Conscience Investigation* (Apr. 14, 2025), <https://www.hhs.gov/press-room/hhs-launches-whistleblower-form-to-protect-kids.html>.

⁸ HHS, Press Release, *HHS' Civil Rights Office Clarifies Race-Based Prohibitions for Medical Schools to Advance Values of Initiative, Hard Work, and Excellence* (May 6, 2025), <https://www.hhs.gov/press-room/guidance-med-schools-dear-colleague-letter.html>.