

March 6, 2023

Office for Civil Rights  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 509F  
200 Independence Avenue, SW  
Washington, D.C. 20201

Submitted Electronically

**Attention: Comments in Response to Proposed Partial Rescission - RIN 0945-AA18**

Dear Secretary Becerra:

The 39 undersigned organizations write to comment on the Department of Health and Human Services' ("the Department") and the Office for Civil Rights' ("OCR") notice of proposed rulemaking, "Safeguarding the Rights of Conscience as Protected by Federal Statutes" ("Proposed Rule"). We represent a variety of different organizations that believe that a health care provider's personal beliefs should never determine the care a patient receives. That is why we broadly support the Proposed Rule, which largely rescinds the unlawful rule finalized in 2019, "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" ("2019 Rule").

The 2019 Rule was illegal, unnecessary, and emboldened discrimination. By making it easier for institutions and individuals to refuse to provide health care because of their personal beliefs not the patient's needs, the 2019 Rule endangered the health and lives of women and lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people across the country, as well as the ability of individuals to make decisions about their end-of-life journey. We appreciate that the Proposed Rule reverses several of the 2019 Rule's most harmful provisions, including the unlawful enforcement provisions. Removing these elements of the 2019 Rule is critically important for patients across the country; however, the undersigned organizations believe further clarification is needed regarding OCR's enforcement authority and the scope of the voluntary notice provision.

The undersigned organizations commend the Department for rescinding parts of the rule that in particular emboldened refusals of care, including § 88.2 Definitions. By redefining terms included in several federal refusal provisions, the 2019 Rule created broad exemptions that would have allowed a broad swath of health care providers and other individuals—from clinicians to receptionists to ambulance drivers—to deny patients basic health care services and information, including in emergencies. The 2019 Rule would have even allowed such individuals to refrain from informing patients about treatment options that they find objectionable—violating principles of medical ethics and informed consent—and to refrain from referring the patient to a medical professional who has no such objection to providing the patient with needed care. In addition, the 2019 Rule abandoned the long-standing balancing framework under Title VII of the Civil Rights Act of 1964 by requiring health care employers to provide absolute accommodation

to individuals who refuse to provide certain information and services, including abortion, even when these services are a primary part of their job or in an emergency.

The 2019 Rule was dangerous and targeted those most likely to face refusals of care—those seeking reproductive health care, particularly abortion care and miscarriage management, and LGBTQ individuals. Refusals of care force patients to delay or forgo necessary care, which can pose a threat to their health, including future fertility, and also their lives. This is particularly true for patients with limited resources and options for care. For many patients, such refusals do not impose inconveniences but can result in a patient receiving delayed, or even fully denied, necessary or emergency care. These refusals are particularly dangerous in situations where individuals have limited options for care, such as in emergencies, when they need specialized services, or live in rural areas or areas where religiously-affiliated hospitals are the primary or sole hospital serving a community. These harms fall hardest on those already facing barriers to health care, including Black, Indigenous and other people of color, those struggling to make ends meet, young people, LGBTQ individuals, and individuals seeking gender-affirming care. The rule also targeted people seeking legal and authorized options at the end-of-life and hindered an individual's ability to give informed consent.

The 2019 Rule's extreme enforcement mechanisms were unlawful, and we appreciate the critical changes made by the Department. However, additional clarification would ensure the enforcement mechanisms are not unduly coercive. The Department should clarify the terms "relevant funding"<sup>1</sup> and "appropriate action" when describing the measures OCR can take against an entity in violation of the Proposed Rule.<sup>2</sup> It should be clear to entities that must comply with the Proposed Rule the potential limits OCR can put on their funding. OCR should articulate a limiting principle for determining "relevant funding" and make clear that it can never include all funding that the entity receives from the Department. Similarly, OCR should make clear "appropriate action" is limited to enforcement tools encompassed in existing regulations.

Finally, we appreciate the Department's decision to modify the language in the voluntary notice. The language of the notice in the 2019 Rule was one-sided, only requiring information regarding the right to refuse care. It did not inform patients of potential refusals of care and their right to receive full information about all of their options for care. While the Department has suggested removing the objectionable language in the Proposed Rule and has streamlined the notice,<sup>3</sup> the language should be further amended so that a patient is clear about the ways their care may be impacted by providers or institutions who refuse to provide the care they need.

In conclusion, the undersigned organizations appreciate the opportunity to comment on this Proposed Rule. We thank the Department for its decision to largely rescind the 2019 Rule and return to the 2011 Rule framework.

---

<sup>1</sup> Safeguarding the Rights of Conscience as Protected by Federal Statutes, 88 Fed. Reg. 820, 830 (proposed Jan. 5, 2023) (to be codified at 45 C.F.R. pt. 88).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

Sincerely,

American Atheists  
American Cancer Society Cancer Action Network  
American Humanist Association  
Americans United for Separation of Church and State  
Bayard Rustin Liberation Initiative  
Catholics for Choice  
Center for American Progress  
Community Catalyst  
Compassion & Choices  
Equality California  
Forward Allies  
Freedom From Religion Foundation  
Interfaith Alliance  
Ipas  
Jacobs Institute of Women's Health  
Justice in Aging  
Los Angeles LGBT Center  
MomsRising  
NARAL Pro-Choice America  
National Abortion Federation  
National Black Justice Coalition  
National Center for Transgender Equality  
National Council of Jewish Women  
National Disability Rights Network  
National Immigration Law Center  
National Latina Institute for Reproductive Justice  
National Network to End Domestic Violence  
National Organization for Women  
National Partnership for Women & Families  
National Women's Health Network  
National Women's Law Center  
PFLAG National  
Physicians for Reproductive Health  
Planned Parenthood Federation of America  
Positive Women's Network-USA  
Power to Decide  
Protect Our Care  
Silver State Equality  
The Leadership Conference on Civil and Human Rights