



A Passionate Voice for Compassionate Care

March 3, 2023

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

Attention: Conscience NPRM (RIN 0945-AA18)

**RE: Safeguarding the Rights of Conscience as Protected by Federal Statutes:
Proposed Rule, 88 Fed. Reg. 820, January 5, 2023**

Dear Sir or Madam:

I am writing on behalf of the Catholic Health Association of the United States (CHA), the national leadership organization of more than 2,200 Catholic health care systems, hospitals, long-term care facilities, sponsors, and related organizations. Our ministry is represented in all 50 states and the District of Columbia, and one in every seven patients in the United States is cared for in a Catholic hospital each year. CHA appreciates the opportunity to comment on the Department of Health and Human Services' (the Department) proposal to partially rescind the May 21, 2019 final rule "Protecting Statutory Conscience Rights in Health Care: Delegations of Authority" (2019 Rule).

The Catholic health ministry in the United States began in 1727 when French Ursuline sisters arrived in New Orleans to serve the city's sick and poor and to educate its children. For over two hundred years, individual and institutional Catholic health care providers have served the common good of our nation and its citizens by caring for persons of all ages, races and religious faces, consistent with our ethical standards in health care rooted in and inseparable from the Catholic Church's teachings about the dignity of each and every human person, created in the image of God.

These values form the basis for CHA's long history of insisting on and working for the right of everyone to affordable, accessible health care. Our members are committed to the provision of quality health care services to any person in need of care, without regard to race, color, national origin, sex, age, or disability, or any other category, including gender identity, sexual orientation,

financial means or immigration status. That is why CHA and our members fought hard for the passage, preservation and improvement of the Affordable Care Act.

These same values set the limit on our participation in certain procedures that contradict our commitment to honoring the life and dignity of every person from conception to natural death. We firmly believe that organizations and individuals should not be required to participate in, pay for, provide coverage for or refer for services that directly contradict their deeply held religious or moral beliefs and convictions. For this reason, CHA has long supported and worked for the enactment of statutory conscience protection laws such as the Church Amendments, Section 245 of the Public Health Service Act, the Weldon Amendment and provisions of the Affordable Care Act.

Legal protections such as these are essential for the continuation of both our own ministry and our nation's commitment to freedom of religion and of conscience. The past several decades has demonstrated this, as we have seen increasing attempts to force Catholic and other health care providers to perform or refer for abortions and sterilizations, including national advocacy campaigns targeting Catholic hospitals; efforts by state governments to undermine the conscience rights of health care providers; lawsuits challenging hospitals that do not perform abortions, sterilizations or assisted suicide; and professional medical organizations proposing to redefine the standards for ethical practice to force the provision of, referral for or training in abortions or sterilizations.

While federal conscience laws and the protections they provide do not depend upon regulations for their force or validity, regulations do serve an important and necessary purpose: to increase awareness of and compliance with federal conscience protections and ensure appropriate enforcement of protected rights. As recounted in the preamble, this proposed rule is round four in the attempt to craft implementing regulations for federal statutory conscience protections. CHA has previously written in support of the two proposals to create a regulatory framework and opposed the rescission of the first final rule 2011 (the 2011 Final Rule). We continue to prefer a more robust approach to implementing conscience protections but also understand the legal challenges to the 2019 Final Rule, which never took effect due to nationwide court orders vacating the rule and rendering it effectively moot. The 2011 Final Rule has been and is currently the operative regulatory law. With that in mind, we would like to offer the following comments.

Complaints, Investigations and Enforcement

Compared to the 2011 Final Rule, the current proposal contains a more detailed description of how the Office of Civil Rights will receive and investigate complaints. We appreciate and support this improvement over the 2011 Final Rule, and trust that it signals a genuine commitment by the Department to seriously pursue and resolve claims of violations of health provider conscience rights.

As we noted in our comment letter when the 2019 rule was proposed, we continue to believe that the lack of effective and reasonable enforcement mechanisms is an obstacle to ensuring that the conscience protections intended by Congress in laws such as the Church Amendments, Section 245 of the Public Health Service Act, the Weldon Amendment and the Affordable Care Act are fully realized. We urge the Department to consider what additional regulatory language or subsequent guidance it can provide consistent with its authority under these laws to ensure that the laws are fully and effectively enforced when violations of conscience rights are found. For our part, we will continue to pursue legislative opportunities to strengthen and improve these laws and their enforcement, including the permanent codification of Weldon protections with explicit enforcement provisions.

Voluntary Notice

As noted above, regulations play an important role in education and awareness of the underlying laws. We support the retention of a voluntary notice provision in the proposal. We also support two aspects that we believe are improvements over the 2019 Final Rule's proposed Model Text: listing the relevant statutes and dropping the implication that posting the notice would be some evidence of substantive compliance with the underlying statute. However, we urge you to include in the notice a general description of the types of protections these statutes provide. This would assist in promoting awareness of federal conscience protections.

Covered Statutes

The Department proposes to maintain the 2019 Final Rule's expansion of the federal health care provide conscience protection statutes to be covered by the rule. While the Church Amendments, Section 245 of the Public Health Service Act, the Weldon Amendment and provisions of the Affordable Care Act are the primary focus of CHA and our members, we support this expansion as another indication of the Department's commitment to protecting the right of health care providers to provide services in conformity with their religious or moral values.

Assisted Suicide and Euthanasia

We strongly support laws that protect our ability to decline to participate in assisted suicide and euthanasia. CHA's members do not provide services related to assisted suicide or euthanasia because of our respect for the value of human life and our belief that all individuals are created in the image and likeness of God and, thus, are worthy of our respect and every protection we can provide. We believe that a caring community devotes more attention, not less, to members facing the most vulnerable times in their lives. When people are tempted to see their own lives as diminished in value or meaning, they most need the love and assistance of others to assure them of their inherent worth.

That is why the Catholic health ministry, informed by our faith and values, advances excellence in hospice and palliative care services to address the physical, emotional, social and spiritual needs of patients to optimize human dignity and comfort during serious illness and at the end of

U.S. Department of Health and Human Services
Office for Civil Rights
March 3, 2023
Page 4 of 4

life. We promote a culture in which all persons living with or affected by a serious illness receive compassionate, holistic and coordinated care starting at the time of diagnosis.

We support the proposal to maintain the 2019 Final Rule's inclusion of the Affordable Care Act's provision banning discrimination by the federal government, state or local government or health care providers receiving ACA funding, or health care plans created under the ACA, against health care entities that do not provide services related to assisted suicide or euthanasia.

Balancing of Interests

In the preamble the Department makes an admirable endorsement of the importance of laws protecting health care providers and entities with religious or moral objections to providing certain procedures. "Respecting such objections honors liberty and human dignity. It also redounds to the benefit of the medical profession." (88 Fed. Reg. at 826.) We wholeheartedly agree. We also agree that patients' autonomy and religious and moral convictions must be respected.

We offer two observations on the Department's reference to Federal health conscience protection statutes and nondiscrimination statutes as an effort by Congress to achieve a balance between interests. First, laws protecting health care providers and entities with religious or moral objections to certain procedures are themselves a subset of nondiscrimination law. Second, Congress can and has passed laws that seek to achieve a balance between religious and other interests, such as the Religious Freedom Restoration Act. However, the language of the Church Amendments, Section 245 of the Public Health Service Act, the Weldon Amendment and conscience provisions of the Affordable Care Act do not invite a balancing of interests. They contain clear and straightforward prohibitions against discriminating in any way against health care entities or providers because of their inability to perform abortions, sterilizations or assisted suicide or euthanasia given their religious beliefs or moral convictions. We urge the Department to clarify this point in the final rule and to bear it mind in the investigation of complaints it may receive.

In conclusion, we appreciate the proposed improvements to the current conscience regulations as set forth in the 2011 Final Rule and urge the Department to use the fullness of its authority to finalize and apply a robust compliance and enforcement regimen. Thank you for considering our comments. If you should have any questions about these comments or would like additional information, please do not hesitate to contact Kathy Curran, Senior Director, Public Policy, at 202-296-3993.

Sincerely,



Sr. Mary Haddad, RSM
President and CEO