



A Passionate Voice for Compassionate Care

March 27, 2018

Department of Health and Human Services
Office for Civil Rights
Attn: Conscience NPRM
RIN 0945-ZA03
Room 509F Herbert H. Humphrey Building
Washington, DC 20201

REF: RIN 0945-ZA 03

**Protecting Statutory Conscience Rights in Health Care; Delegations of Authority:
Proposed Rule, 83 Fed. Reg. 3880, January 26, 2018**

Dear Sir or Madam:

The Catholic Health Association of the United States (CHA) is pleased to submit these comments in support of the referenced proposed rule to implement, enforce and promote awareness of existing Federal laws protecting conscience rights in the context of health care.

CHA is the national leadership organization of the Catholic health ministry, representing more than 2,000 Catholic health care sponsors, systems, hospitals, long-term care facilities and related organization across the continuum of care. CHA represents the largest not-for-profit provider of health care services in the nation:

- 1 in 6 patients in the United States is cared for in a Catholic hospital each year
- More than 5 million admissions to Catholic hospitals each year, including one million Medicaid admissions
- All 50 states and the District of Columbia are served by Catholic health care organizations
- Approximately 750,000 individuals are employed in Catholic hospitals

As a Catholic health ministry, our mission and our ethical standards in health care are 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. Access to health care is essential to promote and protect the inherent and inalienable worth and dignity of every individual. These values form the basis for our steadfast commitment to the compelling moral implications of our health care ministry and have driven CHA's long history of insisting on and working for the right of everyone to affordable, accessible health care. As lawmakers were developing the health care reform package that culminated in the passage of the Affordable Care Act, we made clear that our vision

for health care demanded that everyone receive the same level and quality of care, without limits or variation based on age, race, ethnicity, or financial means, or one's health, immigration or employment status. Our members are committed to providing 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 or status. Every individual seeking health care should always be treated with kindness and respect, and failure to do so because of discomfort with or animus against an individual on any basis is unacceptable. At the same time, 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 over two hundred years, individual and institutional Catholic health care providers have carried out this mission in a manner consistent with our religious and moral convictions, the source of both our work and the limits on what we will do. For the past several decades we have had the explicit protection of federal laws which defend our right to provide health care in accord with our convictions. CHA has long supported and worked for the enactment of conscience clause protections such as the Church Amendments, Section 245 of the Public Health Service Act, the Weldon Amendment and 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 lack of implementing regulations and of clarity concerning enforcement mechanisms for these laws has stymied their effectiveness. We welcome the proposed rule, which effectively reflects the intent and content of the underlying laws, and offer the following comments.

- **Definition of “health care entity” and “referral”**

We support the proposed definition of “health care entity.” Including the terms “sponsor” and “third party administrator” clarifies that the Weldon amendment protections for provider-sponsored organizations, health maintenance organizations and health insurance plans are not limited only to the issuers of such plans but extend to the plan sponsors and third-party administrators. We also welcome the definition of “referral or refer for,” which makes clear that providers cannot be compelled in any way to assist in the procurement of services which their religious and moral convictions would prevent them from performing.

- **Minimizing Administrative Burden**

The proposed rule would require certain recipients to submit written assurances and certifications of compliance with federal health care conscience and anti-discrimination laws. We believe this is appropriate and consistent with the requirements of other civil rights laws. The preamble notes that this requirement would be implemented through “modified versions of the applicable civil rights clearance forms ... or similar forms that may be developed and implemented in the future.” (83 Fed.Reg. 3896). We urge OCR to implement this requirement by amending the

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existing forms relevant recipients are already required to submit, in order to minimize the administrative burden on recipients.

- **Compliance and Enforcement**

As indicated above, the lack of effective and reasonable enforcement mechanisms has been 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 have been fully realized. We support the broad range of enforcement options included in the proposed rule. We endorse the expressed preference for informal settlement among the parties when there appears to have been a failure to comply. When the withholding of federal funds is an appropriate enforcement option, we agree that there should be flexibility to suspend funding in whole or in part. We also believe it is important to establish meaningful due process measures, including forms of notice, hearing and appeal, when OCR finds a compliance violation that cannot be resolved informally.

- **Further clarification**

We suggest that the final rule provide further clarification in two areas.

We support the requirement to post notices concerning Federal health care conscience and associated anti-discrimination laws, and request clarification on what language translation requirements apply to such notices.

Certain conscience laws, such as the Weldon amendment, forbid States receiving federal funds from discriminating against health care entities because they decline to participate in certain services or procedures. The final rule should clarify that once a State receives federal funds, the non-discrimination requirement applies to all agencies and offices of the State whether or not the specific agency or office in question itself receives federal funds.

Thank you for the opportunity to provide comments on the proposed rule implementing key Federal conscience protections. 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,

A handwritten signature in black ink, reading "Sr. Carol Keehan". The signature is fluid and cursive, with the first name "Sr." and last name "Keehan" clearly legible.

Sr. Carol Keehan, DC
President and CEO