E.O. 12866 Meeting
Final Rule "Securing Updated and Necessary Statutory Evaluations Timely; Proposal To Withdraw or Repeal"
RIN: 0991-AC24
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Thank you for the chance to provide comments on OIRA's review of the final rule "Securing Updated and Necessary Statutory Evaluations Timely; Proposal To Withdraw or Repeal" (RIN 0991-AC24) from the U.S. Department of Health and Human Services (HHS).[1]

Overview

1. The government should promote the common good and dignity of all people, while upholding the constitutional freedoms of all Americans. Doctors, patients, and families deserve no less. The government thus should not impose burdensome mandates, such as policies that seek to force doctors to offer or participate in abortions or in gender intervention procedures. Abortion does not save life but takes it. Gender interventions are controversial and dangerous, especially when it involves children and adolescents. HHS regulations thus harm patients. HHS regulations also go against doctors' deeply held medical and ethical convictions, as well as against doctors' constitutional and statutory rights. This government overreach must be stopped.
2. Under the Regulatory Flexibility Act, HHS has an important role to play in reviewing and rescinding burdensome and outdated mandates like its past and future coercive abortion and gender rules.
3. HHS should retain the SUNSET rule, which provides scheduled regulatory review of these mandates, a process that in turn can lead to their rescission and to the promotion of sound medicine, conscience protections, and religious freedom.
4. The proposed rule rescinds the SUNSET rule and removes all prospect of scheduled regulatory review. It thus deprives healthcare providers of a procedural opportunity to be relieved of HHS's burdensome mandates. HHS should thus not finalize this proposed rescission.
5. HHS should instead consider a host of alternative approaches to its proposal.

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[1] HHS, *Securing Updated and Necessary Statutory Evaluations Timely; Proposal To Withdraw or Repeal*, 86 Fed. Reg. 59,906 (Oct. 29, 2021).

6. HHS must also identify and measure costs accurately, especially the forgone benefits of regulatory review, given that review could lift the continued harms that HHS's burdensome and outdated regulations inflict on the public.
7. HHS must expressly consider small businesses, nonprofit providers, the Religious Freedom Restoration Act, and federalism.

REGULATORY ANALYSIS

No Need for Federal Regulatory Action

- There is no need for this regulatory action.
  - The SUNSET rule accurately and adequately addresses HHS's responsibilities because it (1) complies with the statute; (2) provides for regular review of burdensome or outdated rules with public participation; and (3) ensures regulatory review, which can promote respect for conscience protections and religious freedom—all important goals.
  - The SUNSET rule is HHS's first serious attempt to comply with the Regulatory Flexibility Act (RFA) and cure its 40-year delinquent performance.
  - No evidence shows that the SUNSET rule has caused or would cause any harms or inappropriate burdens. HHS's own willful non-compliance with the RFA has created the need to catch-up on its regular regulatory review. Expending time and effort to comply with the RFA is a benefit, not a burden, and directing resources back to the RFA is a statutorily requirement, not an inappropriate interference in agency business.
  - The agency thus should identify specific reasons why the SUNSET rule causes inappropriate or unlawful harms or burdens.
  - HHS lacks a justification for rescinding the SUNSET rule other than (1) a desire not to defend the SUNSET rule in litigation; (2) a desire to disregard regulatory review duties that Congress imposed; and (3) a desire to impose controversial and dangerous new mandates, contrary to good medicine, conscience, and religious freedom.
- Far from needing to issue this new rule, HHS needs to halt this regulatory action. HHS should not repeal the SUNSET rule with no replacement RFA plan.
  - HHS must have some plan to comply with the RFA.
  - Without the SUNSET rule, HHS will have no plan. HHS will thus revert to its past, non-compliant practices, and HHS's current regulatory corpus will continue and exacerbate patient harms, loss of life, discrimination, intolerance, and marginalization of religious healthcare providers.

- Repealing the SUNSET Rule would return HHS to noncompliance with the RFA, and that noncompliance is now being litigated.[2]
  - Alliance Defending Freedom (ADF) is challenging HHS's delay of the SUNSET rule in court.
  - In challenging the delay, ADF represents the American College of Pediatricians; the Catholic Medical Association; and an OB-GYN doctor who specializes in caring for adolescents.
  - ADF and its clients submitted detailed comments on this rescission, explaining why HHS's position rests on unlawful premises.
  - Procedural laws like the RFA promote freedom by restraining agencies who burden the freedom of small and nonprofit healthcare providers.
  - HHS should thus hold off on this regulatory action and acknowledge the impropriety of the delay, for the reasons given in our comments, which are attached here.
- HHS's ordinary rulemaking process does not fulfill the purposes of the RFA and the SUNSET Rule.
  - The RFA requires federal agencies to publish in the Federal Register "a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities" in order "to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant impact of the rules upon a substantial number of small entities."[3]
  - In conducting this retrospective review, agencies must consider many factors, including the continued need for the rule, legal issues, public input, overlap, and duplication with other federal or State and local governmental rules, and technological, economic, or other changes.[4]
  - This RFA process has a different focus than ordinary rulemaking, because the process for making new rules is meant to add on even more new mandates, not to evaluate the experience of past mandates. Retrospective review would help inform HHS about past burdens, leading to fewer mandates and better outcomes, not to more rules and worse burdens.
  - The RFA also sweeps in long-term review of future rules. Congress required agencies to conduct an initial review within ten years of the

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[2] *Am. Coll. of Pediatricians v. Becerra,* 1:21-cv-00195-TAV-SKL (E.D. Tenn.) (motion for summary judgment pending). For more information, see ADF, *Am. Coll. of Pediatricians v. Becerra*, https://adflegal.org/case/american-college-pediatricians-v-becerra, and ADF, *The Biden Administration Reinterpreted Federal Law...Now Doctors Are Paying the Price*, https://adflegal.org/blog/biden-administration-reinterpreted-federal-lawnow-doctors-are-paying-price.
[3] 5 U.S.C. § 610(a).
[4] 5 U.S.C. § 610(b).

effective date of the RFA, as well as later reviews "within ten years of the publication of" future final rules.[5]

- HHS will only make its regulatory burdens worse without the SUNSET rule. If HHS finalizes all rules as-is, no definite avenue for periodic review will exist, and new mandates will indefinitely burden providers in small and nonprofit practices, especially in religious institutions like Christian hospitals.
- Without universal regulatory review, HHS will likely never review its most significant burdens—those on conscience and religious freedom. HHS claims that the SUNSET rule is not preferable to more targeted review. But because HHS targets and coerces pro-life and Christian healthcare providers with old and new regulations, HHS will be unlikely to prioritize review of its regulatory burdens on conscience and religious freedom, unless forced to do so in a comprehensive, universal plan that admits of no exceptions—and in a way that requires HHS to specifically focus on these rules' retrospective burdens for small providers. Letting the agency pick and choose what, if any regulations, to review allows the agency to omit any meaningful review of the most serious and coercive burdens.

- HHS's SUNSET rule is not foreclosed by any final judgments.
  - No court order prevents HHS from continuing the SUNSET rule.
  - To the contrary, HHS is currently obliged to follow the SUNSET Rule.
  - Because there is no final adverse judgment, no court order prevents HHS from promulgating the same or similar provisions, in whole or in part.
  - HHS has a duty to defend its laws and regulations. Failure to litigate and to appeal would result (at best) from an incorrect view of the law, but an incorrect view of the law is not enough to justify rescinding enforcement of statutory protections.
  - Nor can a policy disagreement with the RFA justify continued non-compliance or non-defense.
- HHS's proposed regulatory action is not compelled by statute. To the contrary, HHS lacks any specific authority or discretion to ignore the RFA.
  - The RFA requires HHS to have a review plan to review all its regulations.[6]
  - HHS has never had any meaningful or successful plan to do so. This was unlawful. And HHS admitted as much in the SUNSET rule.
  - HHS now proposes to repeal the SUNSET rule's more robust review plan, with no replacement plan.
  - But, before HHS can do in 2022 what it said in 2020 and 2021 was insufficient and unlawful, HHS has a duty to provide a reasoned analysis of

[5] 5 U.S.C. § 610(a).
[6] 5 U.S.C. § 610.

why its new non-compliance would not create these same practical and legal problems again.

- HHS cannot carry that burden, and so there is no authority for this proposed rule. HHS is incorrect that the RFA does not require it to have a replacement plan.
- Even if HHS were correct about its view of the law, which it is not, HHS would not be justified in ignoring the significant concerns with removing avenues for regular regulatory review with public participation, including significant reliance interests and other policy considerations.[7]
- In the SUNSET rule, HHS already considered and rejected the policy reasons advanced for rescission. HHS has advanced no reasons now for a change that were not already considered and rejected, nor has HHS identified why its prior reasons for regular review were not compelling. The proposed rule does not address how HHS will ever comply with the RFA with no plan or incentives. HHS claims "upon further consideration" to have changed its mind about the rule, but it offers no evidence, let alone new evidence or intervening developments, to support its reasoning. And HHS ignores the public benefits of regulatory review.

<u>Alternative Regulatory Approaches</u>

- The agency should consider multiple alternative approaches, and it should specify why each alternative approach cannot be maintained.
  - The agency should identify why each alternative is feasible or not, and it should give specific reasons for its conclusions.
  - The agency should perform cost-benefit analyses for each alternative, so that HHS can select the most cost-effective option.
  - If HHS is serious at all about the RFA, it could conduct retrospective reviews in some way. As another commenter said, "If it does not like the approach taken by the previous administration, it should offer its own alternative."[8]
- The agency should consider the alternative of leaving the SUNSET rule in place, in whole or in part.
  - The SUNSET rule ensures that the agency does not ignore its statutory duties.

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[7] The agency must consider significant issues in reasoned decision making even where it has statutory authority. *Biden v. Texas*, No. 21A21, 2021 WL 3732667, at *1 (U.S. Aug. 24, 2021) (citing *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1909–15 (2020)). Plus, a decision involving denying or providing affirmative government protections is far "more than a non-enforcement policy" left to unreviewable agency discretion. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1907 (2020). Courts will thus review HHS's rule for compliance with its duty to consider these serious reliance interests.

[8] Comment from James Broughel, Mercatus Center, Doc.HHS-OS-2020-0012-0545, RIN: 0991-AC24, at 17.

- By providing for regular review and public participation, the SUNSET rule reduces regulatory burdens on healthcare providers and improves patient freedom of choice, personal dignity, and personal freedom.
- By providing for regular review and public participation, the SUNSET rule helps burdened providers seek to remove unlawful mandates, which in turn can help eliminate government-condoned religious discrimination and intolerance in healthcare.
- Even if part of the rule is rescinded, the agency should consider retaining individual portions of the rule.
  - For example, the agency should consider retaining the rule's protections for public participation, even if the regulatory timeline is changed.
  - Likewise, the agency should consider retaining the current timeline, rather than deferring its duties indefinitely, even if it reduces avenues for public participation.
  - Or the agency could keep the timeline and avenues for public participation, but just omit automatic expiration dates.
- The agency thus should consider each individual portion of the rule, in each possible combination, to ensure that it has considered all possible regulatory alternatives to full repeal.

- The agency should consider several other important alternative approaches, too.
  - *First*, the agency should consider omitting the categories of civil rights, abortion, and family planning rules from this rescission, leaving them subject to the SUNSET Rule. This category creates significant burdens on conscience and religious freedom, and so these rules should be prioritized for regulatory review on a definite time frame with opportunities for public participation.
  - *Second*, HHS could review only certain rules for other categories. It could review only a particular section of the U.S. Code of Federal Regulations, rules from a particular subagency within HHS, or rules associated with a particular statute. Or HHS could review only those rules identified as having a significant economic impact on a substantial number of small entities at time of enactment. Or HHS could commit to retrospective review of new regulations going forward by including plans for retrospective review in future individual rulemakings but forgo mandating reviews of existing regulations for now.[9] There are many options for middle ground short of full repeal.
  - *Third*, the agency should consider implementing the SUNSET rule for a temporary time to gain data on its true feasibility, including costs and benefits. Just noting that HHS would be burdened by having to catch up on its neglected duties is not an evidence-driven approach. Of course, HHS will be burdened by complying with the RFA, but Congress decided that this

[9] Comment from James Broughel, Mercatus Center, Doc. No. HHS-OS-2020-0012-0545, RIN: 0991-AC24, at 4.

burden is justified because yields a public benefit. And the agency has been wrongfully diverting resources away from Congress's priority for years. So the proper question is instead how much catch-up is feasible how quickly. Just because HHS ignored the law in the past does not mean that HHS should continuing ignoring the law. Even if past administrations left a backlog, the fair thing for the public is for the agency to catch up as fast possible. A trial run of the SUNSET rule would inform the answer to this question with relevant data.

- *Fourth*, the agency should consider staggering or expanding the time periods for regulatory review by more years beyond current time frames, which would allow flexibility in terms of the costs of compliance, without removing the benefits of the rule in full. It is better to extend the deadlines modestly if they are not feasible, or to make them admit of more extensions, than to remove the rule completely without replacement.
- *Fifth,* the agency should also consider whether to leave the past Administration's internal processes in place for the RFA, rather than deciding that no compliance or enforcement mechanisms for any of those provisions will be maintained, such as the informational website.
- *Sixth,* the agency should consider and say what its new scheduled review plan will be, including what provisions will hold the agency accountable, and including ways to measure compliance publicly. Failing to plan is planning to fail.
- *Seventh,* so that regulated entities have recourse for HHS's foreseeable future neglect of the RFA, the agency should consider creating an explicit and prompt new mechanism for requests for regulatory review. This avenue should not foreclose the ability of a regulated entity to seek judicial relief.
- *Eighth,* to ensue accountability, HHS should include express failure standards in its rule, so that HHS has a benchmark to measure its RFA compliance against. Anything in this area would be better than nothing. Failure standards would help identify what counts as non-compliance. HHS thus should promulgate standards that answer: (1) What constitutes failure to comply with the RFA? (2) Does HHS stand by its prior lack of action as statutory compliance? (3) What is HHS's new standard for success? For example, if HHS has not reviewed a certain percent of its regulatory corpus by a certain date, will HHS admit that it violates the RFA?
- *Ninth,* the agency should consider tying RFA performance standards to budgets, compensation, and promotions, so that the components and employees responsible for RFA compliance will suffer defined consequences for any future failure to follow the law in any timely manner.
- *Tenth,* as a replacement plan, the agency should consider freezing all new rulemakings (unless required by law or a bona fide emergency) until all overdue regulatory reviews are compete.
- *Eleventh*, the agency should consider allowing regional variations to reflect the differences in state and local regulations and burdens, including by

directing less burdened HHS offices in less busy parts of the country to handle regulatory reviews for other busier programs by lending staff and resources.
    - *Twelfth*, the agency should consider closing new task forces and offices, and not opening new ones, so that these efforts can go to the agency's RFA compliance, rather than to discretionary new initiatives not required by statute. This redirection of staff could include, for instance, the HHS Reproductive Healthcare Access Task Force; the HHS Office of Climate Change and Health Equity; and the Health Equity Task Force. HHS should expressly consider and quantify the increased rate of regulatory review by dedicating these and other components to RFA compliance.
- Because HHS ignored these (and other) obvious alternatives to repeal of the SUNSET rule without replacement, its proposal not only failed its duty to consider alternatives; it failed to allow the public to comment on them. HHS thus should return to the beginning of the process to correct these basic errors.
- Anything less suggest that the outcome was preordained: that HHS never intends to review any regulations in any serious way, with or without expiration dates. Much middle ground exists, short of full rescission without replacement.

<u>Analytical Approaches</u>

- Both a benefit-cost analysis and a cost-effectiveness analysis must be provided.
    - This rule is a major rulemaking with a significant economic impact for which the primary benefits or costs bear on public health and safety as well as protections of conscience, religious freedom, and life.
    - A valid effectiveness measure can and must be identified to represent expected outcomes. The agency needs to identify what the measure of its goals are.
    - The cost-effectiveness analysis needs to explain how the public health goals will be achieved based on likely behavior in response to the regulation.
    - HHS should also identify the breakeven point at which the new regulation's costs are justified.
- HHS must provide detailed reasoning on the likely distributional effects of this proposed rule. Just assuming that HHS will never review and remove burdens is not enough: *HHS must quantify the forgone benefits of lost regulatory review*.
    - HHS has disregarded the benefits of the SUNSET rule.
    - The agency should identify the forgone benefits of the SUNSET rule, including the fact that if the SUNSET rule were followed, regulatory review could have important deregulatory benefits for the public. For instance, conscientious practitioners of medicine might not be forced to leave federal programs or the practice of medicine because of burdensome mandates to provide abortion or gender interventions. HHS should place a high value on these benefits of regulatory review.

- The agency should use the best available information in its analyses.
  - The agency should document all the assumptions and methods used in the analysis, discuss the uncertainties associated, and publicly provide the supporting data and underlying analysis. It is important that a third party be able to identify and evaluate studies supporting each conclusion, and that HHS acknowledge any uncertainties. The proposed rule's economic analysis lacks this information.
  - Merely denying that the repeal will have any costs, or claiming statutory authority for this policy, is not enough. HHS's proposal was one-sided, ignored the cost savings for the public from regulatory review, and ignored the factor and costs of rent-seeking.
  - For a true cost-savings analysis, HHS must identify what staff would do without the SUNSET Rule and why those tasks provide a greater benefit to the public than other uses of HHS resources. HHS has presented accounting costs, not opportunity costs.
  - To ensure quality control in quantifying the effects on healthcare and conscience, as well as reduce the role of agency bias, the agency should consider subjecting its data and analytic models to peer review by political economists before finalization.

<u>Assessing the Baseline</u>

- The agency should assess the baseline properly. *The proper baseline is a textual and good-faith understanding of the RFA in which HHS provide on-time regulatory review for its full regulatory corpus.* Put another way: the agency should consider the past, present, and future costs and forgone benefits of ignoring its duty to review its regulations.
  - This baseline is the proper baseline because it is the true status quo of the SUNSET Rule. The SUNSET rule provides for statutory compliance, and HHS never properly delayed or repealed the SUNSET Rule.
  - If the agency purports not to use this baseline under a claim of statutory authority for its new rule, or under a claim that the SUNSET rule never went int effect, the agency will evade a proper and accurate calculation of its rescission's real-world costs.

<u>Identifying Benefits and Costs</u>

- *No benefits:* This proposed rule lacks benefits.
  - The SUNSET rule already provides the important benefits of regulatory review protections in healthcare. *So the new rule should not be given credit for these baseline compliance benefits.*
  - The expected proposed rule would instead change the regulatory status quo by removing any likelihood of meaningful compliance.
  - The only benefits HHS identifies are (1) saving itself compliance costs that it currently improperly redirects as resources for other programs, and (2) not reviewing any regulations.

- But HHS would spend this time and money anyway, so it is not a true cost savings. HHS does not identify what staff would do without the SUNSET Rule and explain why those tasks provide a greater benefit.
- And the loss of regular and prompt regulatory review is not a benefit to HHS or the public. Leaving current and future HHS regulations in place unreviewed is not a benefit, especially mandates coercing doctors to provide dangerous and controversial procedures that harm patients, such as gender interventions and abortions. It is also not a benefit to save the agency the burdens of complying with the RFA, especially when the RFA is mandatory and when regulatory review is a public benefit for small and nonprofit healthcare providers.
- It is not a benefit to eliminate the possibility of automatic expiration of provisions. The RFA contemplates rescission as a possible result of regulatory review.
- HHS's fear of expiration dates is a pretext to avoid the work of regulatory review, a fear that rests on an inappropriate and unlawful premise: that the agency will never comply with its own regulations, even under sunset deadlines. But the agency cannot use its own egregious reluctance to review regulations as good reason never to review regulations.

- Costs: HHS must quantify a series of costs to its new rule, starting with the forgone benefits of the SUNSET Rule.
  - HHS must quantify the cost of the loss of public participation, rather than assuming that the rule only imposes monitoring costs on the public. Democratic participation is an important intangible value for the public.
  - HHS must quantify the value of the lost regulatory review in terms of lifting burdens from the public. This analysis must be comprehensive and specific. Just as HHS claims that leaving various rules in place will promote positive outcomes, HHS must undergo a similar (but rigorous) analysis to estimate the burdens that its regulations put or leave in place. Denying or ignoring that its regulations burden anyone would be one-sided, self-serving, and inadequate.
  - Just as implementing the SUNSET "would significantly alter the operations of HHS with considerable repercussions for a diverse array of stakeholders,"[10] so, too, rescinding it would have the same effects. "The rule is expansive in scope and impact."[11] So HHS must account for and quantify these various lost benefit for healthcare as a whole.
  - HHS proposed and past rules harm religious freedom, diversity, free speech, and pro-life nondiscrimination, and the SUNSET Rule would promote these interests through regulatory review, so the agency should calculate the cost of losing those benefits if the SUNSET rule is fully rescinded.

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[10] 86 Fed. Reg. at 59,907.
[11] *Id.*

  - The agency must estimate the effects of all of the above to federal, state, and local healthcare programs like Medicaid.
- The proposed rule considers none of these costs to the public, which is why the rulemaking process should return to the drawing board.

Specialized Analytical Requirements

Religious Freedom Restoration Act (RFRA)

- HHS regulations are not in compliance with the Religious Freedom Restoration Act (RFRA). But regulatory review is an avenue to lift these burdens and bring HHS into compliance with RFRA.[12]
  - Any substantial burden on religious exercise cannot be imposed absent a compelling interest imposed by the least restrictive means of regulation. 42 U.S.C. § 2000bb-1.
  - Many HHS rules lack a compelling interest. There is no compelling government interest in particular in coercing doctors and nurses to end human life or to perform harmful gender interventions, especially on kids.
  - Failure to respect the religious rights of nonprofit religious entities as entities needs to be justified under RFRA specifically.[13] The agency thus must consider whether its existing and proposed rules comply with RFRA under present conditions in 2022.
  - The Free Exercise Clause imposes similar requirements, also requiring HHS to justify its burdens on religious exercise through specific consideration of costs and benefits on specific regulated entities, instead of simply relying on general interests.[14]
- HHS must provide specific means by which it will follow RFRA.
  - HHS has acknowledged that it must and will follow RFRA.[15]
  - The secretary must consider RFRA directly in this rulemaking because regulatory review would promote agency-wide compliance with RFRA.
  - Given HHS's recent announcement withdrawing the delegation for OCR to enforce RFRA within the agency, HHS cannot rely on mere hortatory language saying that it will comply with RFRA, but must specify how that is possible under OCR rules when OCR's delegation has been withdrawn.[16]

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[12] *See Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1754 (2020) ("RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII's commands in appropriate cases.").
[13] *See, e.g.*, *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020) ("If the Departments did not look to RFRA's requirements or discuss RFRA at all when formulating their solution, they would certainly be susceptible to claims that the rules were arbitrary and capricious for failing to consider an important aspect of the problem.").
[14] *Fulton v. City of Philadelphia*, 141 S. Ct. 585 (2021).
[15] "In enforcing Section 1557, as stated above, OCR will comply with the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq., and all other legal requirements." 86 Fed. Reg. at 27,985.
[16] HHS, Delegation of Authority, 86 Fed. Reg. 67,067 (Nov. 24, 2021).

HHS must say whether OCR or anyone else has RFRA and First Amendment authority to evaluate violations and receive complaints under an OCR rule.
- HHS thus should review its rules for RFRA compliance as part of its RFA retrospective review.

Federalism
- The rule has significant effects on federalism.
  - Healthcare regulation is a traditional state police power.
  - HHS claims that its regulations can preempt state heath laws or malpractice suits, even if they are unlawful, unreviewed, burdensome, and outdated.
  - Nearly all of federal conscience protections are connected to federal spending programs in which states participate or to other federal programs that displace state laws.
  - Regulatory review would lift burdens on state-operated or state-funded medical facilities.
- If HHS embarked on regulatory review, HHS could promote federalism across its rules.
- But the proposed rule improperly omits a federalism analysis.

Small Businesses and Non-Profits
- The agency needs to assess and certify the impact on small businesses and all non-profits under the Regulatory Flexibility Act, using the above analysis on costs and explaining its reasoning.[17]
  - Nonprofit organizations count as small entities for this purpose, since most do not dominate their field, and this would include many religiously affiliated hospitals and health care facilities, where the entities themselves and their employees are protected by many laws encompassed by this rule.
  - Likewise, the agency must estimate the impact on small healthcare practitioners based on the likelihood that religious and other conscientious health care practitioners that would be protected by this rule are in small practices.
- Again—rescinding the SUNSET Rule, without adequate replacement, places the agency in violation of Section 610.
  - Another commenter summed it up properly: "The basic idea behind the SUNSET rule is simple: Every 10 years, each HHS rule should be reviewed and assessed, at which point it could be repealed, revised, or kept in place, as appropriate. Not exactly rocket science; just commonsense good government that HHS is now proposing to drop entirely."[18]

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[17] 5 U.S.C. §605(b).
[18] Douglas Holtz-Eakin, *Don't Let the Sun Go Down on the Sunset Rule*, American Action Forum (December 23, 2021), https://www.americanactionforum.org/daily-dish/dont-let-the-sun-go-down-on-the-sunset-rule/.