March 6, 2023

VIA ELECTRONIC SUBMISSION

Secretary Xavier Becerra  
Director Melanie Fontes Rainer  
Office for Civil Rights  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Room 509F, HHH Building  
Washington, DC 20201

RE: Safeguarding the Rights of Conscience as Protected by Federal Statutes, RIN 0945-AA18

Dear Secretary Becerra and Director Fontes Rainer:

Physicians for Reproductive Health and providers at Planned Parenthood affiliates, joined by individual health care providers across the country, are pleased to have the opportunity to submit this comment to the Department of Health and Human Services (the Department) regarding its Notice of Proposed Rulemaking “Safeguarding the Rights of Conscience as Protected by Federal Statutes,” published in the Federal Register on January 5, 2023.

The more than 300 below signatories write in support of the Department’s proposal to rescind the most harmful components of the Trump Administration’s May 2019 Final Rule, “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority” (2019 Rule). The 2019 Rule attempted to drastically expand the scope and reach of existing federal health care refusal statutes beyond what was intended by Congress. The Rule sought to allow virtually anyone—from a hospital’s Board of Directors to the individual who schedules a patient’s appointment—to deny health care services and information based on their religious or personal beliefs, without regard for patient wellbeing, even in emergencies. The 2019 Rule was discriminatory, violated multiple federal statutes, ignored congressional intent, fostered confusion, and would have harmed the health and well-being of patients across the country, contrary to the Department’s stated mission.

As health care providers, we have witnessed first-hand the harm health care refusals have on our patients and communities. We share in this comment just some of the countless stories of patients who have been denied medically appropriate and often lifesaving care because of the objections of their provider or health care facility. In 2010, Tamesha Means began miscarrying and went to a religiously affiliated hospital in Muskegon, Michigan. The hospital refused to end her pregnancy because of its religious policies, did not inform her that terminating her pregnancy was the safest course of action, and sent her home twice. When she returned to the hospital for a third time in excruciating pain, the hospital only began treating her when she began delivering, and her baby died within hours.1 Another woman experiencing pregnancy loss was denied care for ten days at a

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religiously affiliated hospital outside Chicago, Illinois. In 2015, Jionni Conforti scheduled a gender-affirming surgery at a Catholic hospital in Paterson, New Jersey and was denied the procedure because of the hospital’s religious affiliation. In Arkansas, Jennafer Norris endured a number of dangerous pregnancy complications and could not risk becoming pregnant again. She requested a sterilization procedure at the time of her Cesarean delivery, but her Catholic hospital provider refused to give her the procedure. In 2016 in Albuquerque, New Mexico, a 13-year-old girl was prescribed an IUD to treat menstrual complications and the hormone misoprostol to make the IUD insertion easier. But when her mother went to fill her prescription at Walgreens, the pharmacist refused to fill the misoprostol because of his “personal beliefs,” telling her to try another pharmacy. And just last month the National Catholic Bioethics Center put out statements questioning the mechanism of action for emergency contraception and arguing that religious providers should not be forced to dispense or provide this essential care. Refusals of care based on personal beliefs undermine open communication between providers and patients, interfere with providers’ ability to provide care according to medical standards, and ignore the reality that as providers we want to provide care that is aligned with our professional, ethical, and moral convictions.

Health care refusals force patients to delay or forgo the care they seek, threatening their health and their lives. A refusal itself is a stigmatizing and harmful experience, and the delay in treatment while a patient locates another provider or institution, if they are able to do so, can result in worse health outcomes. For patients who live in rural areas or in areas with a high proportion of religiously affiliated health systems, they may have no alternative providers to which they can turn. Moreover, patients that are uninsured, whose insurance networks do not include providers that will meet their needs, or who are unable to afford to pay out of pocket for services or travel to another location, may also effectively be blocked from necessary care. For patients in medical emergencies, these refusals can have dire consequences.

This reality is especially troubling because individuals who already face multiple and intersecting forms of discrimination are more likely to encounter refusals. Research shows that Black, Indigenous, and other people of color disproportionately give birth at Catholic hospitals and are more likely to be denied necessary care. Furthermore, in 2022, nearly a third of transgender or nonbinary respondents to a nationally representative survey, including almost half of transgender

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4 Julia Kaye et al., “Health Care Denied.”
or nonbinary respondents of color, reported that they experienced at least one kind of refusal by a health care provider in the past year.\(^8\)

These existing harms are being further compounded by the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization* and state efforts to ban access to abortion and gender affirming care. Due to the constantly shifting legal landscape patients are being forced to leave their communities and travel further and further distances to get necessary care. It is critical that patients do not face refusals in the shrinking areas where such care is available.

The relationship between a patient and a provider is predicated on trust. As health care providers, we have a duty to provide high-quality, medically appropriate care and information to our patients. When a provider refuses to treat or provide information to a patient based on a personal objection, they violate this trust, disregard their ethical and legal duty to provide informed consent, and abuse the inherent power differential between patient and provider, which harms a patient and may ultimately discourage them from seeking care elsewhere. Indeed, health care is not a commodity, whereby if a patient cannot obtain a service from one provider they can simply seek it from the next. It is deeply problematic that many federal refusal statutes only seek to protect the morals of providers who refuse care, when as providers, we consider our duty to serve patients and provide them the care they need a deeply personal and moral responsibility.

We are grateful the Department recognizes the harm caused by refusals and is moving to rescind the most harmful parts of the 2019 Rule. As states continue to restrict access to sexual and reproductive health care, it is critical that the Administration continues to act to protect patients from discrimination based on the personal beliefs of individuals and institutions. Access to comprehensive sexual and reproductive health care, including abortion, miscarriage care, gender affirming care, and contraception, is essential to the dignity and well-being of all. We look forward to continuing to work with you to make this a reality.

Sincerely,

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\(^8\) Caroline Medina and Lindsay Mahowald, “Advancing Health Care Nondiscrimination Protections for LGBTQI+ Communities” (Center for American Progress, September 8, 2022), https://www.americanprogress.org/article/advancing-health-care-nondiscrimination-protections-for-lgbtqi-communities/.
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