



# THE NATIONAL CATHOLIC BIOETHICS CENTER

*Upholding the Dignity of the Human Person in Health Care and Biomedical Research since 1972*



March 5, 2023

U.S. Department of Health and Human Services Office for Civil Rights,  
Office of the Secretary, HHS.  
Attention: Conscience NPRM, [RIN 0945-AA18]  
Hubert H. Humphrey Building  
200 Independence Avenue, SW Washington, DC 20201

**RE: Public Comment Opposed to Some of the Provisions in “Safeguarding the Rights of Conscience as Protected by Federal Statutes” [RIN 0945-AA18]<sup>1</sup>**

To Whom It May Concern:

On behalf of The National Catholic Bioethics Center, the National Association of Catholic Nurses, U.S.A., and the Catholic Medical Association we wish to submit the following comments to the U.S. Department of Health and Human Services (HHS) in opposition to some of the proposed changes to conscience protections to the 2019 *Final Rule* entitled “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority.”<sup>2</sup> We are a diverse group of faith-based ministries supportive of religious freedom and conscience rights in healthcare. Our members represent thousands of health care providers, and patient and provider advocates, committed to the ethical provision of care to those being served. The ethical provision of care, by its very nature, requires that persons of conscience not be required to violate their statutorily protected religious freedom and conscience rights in providing such care. Persons willing to violate their own consciences in the delivery of health care, which this *Proposed Rule* would require, cannot be relied upon to provide ethically driven care.

The provisions of this proposal will undo some of the essential protections provided for by the 2019 *Final Rule*. These protections are critical to maintain the wellbeing of patients and the integrity of the profession. Doctors, nurses, and other healthcare professionals must be free to practice their professions in accordance with their professional judgment and ethical beliefs. Without religious freedom and conscience protections such as were provided for in the 2019 *Final Rule*, healthcare professionals throughout the country risk discrimination for refusing to perform,

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

<sup>2</sup> Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170 (May 21, 2019) (to be codified at 88 C.F.R. pt 88).

facilitate, or refer for procedures that they believe will violate their professional judgment and the best interest of their patients.

The *2019 Final Rule* did not create new law but was designed to implement twenty-five currently existing federal statutory religious freedom and conscience rights, including the Church Amendments,<sup>3</sup> the Coats-Snow Amendment,<sup>4</sup> the Weldon Amendment,<sup>5</sup> and Section 1553 of the Affordable Care Act.<sup>6</sup> These statutes primarily provide conscience protections for those who hold religious or moral objections to abortion, sterilization, or euthanasia. However, there continue to be additional areas of health care in which religious freedom and conscience rights have been threatened. It is imperative that the existing laws protecting healthcare providers are implemented and enforced by the Department. We write to emphasize the importance of maintaining the provisions of *2019 Final Rule* in preventing discrimination against healthcare providers. It is the responsibility of the Department to ensure that existing religious freedom and conscience protections are enforced. Violations of such rights in healthcare are increasing and enforcement of these statutory protections is imperative.

### **The Department’s Responsibility to Ensure Religious Freedom and Conscience Protections are Implemented.**

Conscience protection in our country has been in the public sphere since the late 1960s. One of the first, if not the first, in recent memory was under Section 232 of the Social Security act of 1968.<sup>7</sup> The lawmakers provided religious exemptions for undergoing screening, diagnosis, and treatment under Medicaid. Through the Division on Conscience and Religious Freedom and its regulations, HHS had been a part of the initiative to ensure that healthcare entities comply with the anti-discrimination policies set forth in the aforementioned federal statutes. However, recent executive orders and regulations have threatened to contradict and rescind these protections. For example, in August of 2022, President Biden issued an executive order in response to the *Dobbs v. Jackson* decision.<sup>8</sup> This order directed HHS “to take action to protect access to reproductive healthcare services.”<sup>9</sup> This order, in conjunction with the guidance provided by President Biden pertaining to the Emergency Medical Treatment and Labor Act,<sup>10</sup> and a letter from HHS Secretary Becerra,<sup>11</sup> claims that this federal law preempts state law restricting access to abortion in emergency situations. Such guidance undermines the statutory protections that were enacted to prevent circumstances in which individuals are compelled to act in ways that are objectionable to

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<sup>3</sup> 42 U.S.C. § 300a-7.

<sup>4</sup> 2 U.S.C. § 238(n).

<sup>5</sup> Consolidated Appropriations Act of 2009, Pub. L. No. 111-117, 118 Stat. 2809 § 508(d) (2005).

<sup>6</sup> Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 § 1553 (2010).

<sup>7</sup> 42 U.S.C. 432.

<sup>8</sup> Protecting Access to Reproductive Healthcare Services, Exec. Order No. 14076, 87 Fed. Reg. 42053 (Jul. 13, 2022); Securing Access to Reproductive and Other Healthcare Services, Exec. Order No. 14079 87 Fed. Reg. 49505 (Aug. 3, 2022).

<sup>9</sup> *Id.*

<sup>10</sup> U.S. Dept. of Health and Human Resources, *Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss* (QSO-21-22-Hospitals- UPDATED JULY 2022). Available at <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/reinforcement-emtala-obligations-specific-patients-who-are-pregnant-or-are-experiencing-pregnancy-0>.

<sup>11</sup> Xavier Becerra (July 11, 2022), Letter to Health Care Workers. Available at <https://www.hhs.gov/sites/default/files/emergency-medical-care-letter-to-health-care-providers.pdf>.

their moral or religious beliefs.<sup>12</sup> While healthcare entities and professionals may be aware of the statutory protections as they relate to abortion, the full scope of the religious freedom and conscience protections are not as widely known. Further, even as awareness about conscience protections increases, these statutory protections have been increasingly violated. Therefore, these statutory protections alone are insufficient and administrative regulations that incorporate and enforce these are necessary to ensure compliance with the laws and the protection of religious freedom and conscience rights.

### **Constitutionality of the Proposed Rule**

After the rulings in *Roe v. Wade*,<sup>13</sup> and *Planned Parenthood v. Casey*,<sup>14</sup> entities and individuals became subject to discrimination and were compelled to choose between adhering to their religious beliefs or maintaining employment. In acknowledgement of the religious freedom and conscience rights protected under the Free Exercise Clause, several federal statutes, such as the Church Amendment,<sup>15</sup> the Coats-Snow Amendment,<sup>16</sup> the Weldon Amendment,<sup>17</sup> and Section 1553 of the Affordable Care Act,<sup>18</sup> were enacted to protect the freedom to act consistently with one's faith and refuse to perform procedures or provide certain treatment. Religious freedom and conscience rights are protected in a similar manner as other civil rights, and the regulations enforcing the protections of the religious freedom and conscience statutes operate similar to regulations that implement the anti-discrimination protections of the Civil Rights Act of 1964. Also, pursuant to 5 U.S.C. 301, "The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property."<sup>19</sup> Such rules and regulations must be consistent with the statutory protections of conscience and religious freedom, and not be eroded by them.

### **Maintaining the Definitions that Appeared in § 88.2 of the 2019 *Final Rule* is Necessary for the Full Protection of Religious Freedom and Conscience Rights**

In addition to the recent regulations, in the *Proposed Rule* published on January 5, 2023, HHS proposed to rescind definitions of the pertinent terms included in § 88.2 of the 2019 *Final Rule*. The rescission of these definitions threatens the religious freedom and conscience rights of healthcare entities, employers and employees. In its 2008 *Final Rule*, "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices In Violation of Federal Law" the Department asserted that broader interpretation of its terms and protections is necessary to implement the protections Congress intended when the

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12. Examples of such violations of conscience/religious freedom to follow.

13 *Roe v. Wade*, 410 U.S. 113 (1973).

14 *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

15 *Supra* note 3.

16 *Supra* note 4.

17 *Supra* note 5.

18 *Supra* note 6.

19 5 U.S.C. 301.

federal religious freedom and conscience statutes were enacted.<sup>20</sup> The terms that the 2008 *Final Rule* sought to broaden included “assisted in performance,” “health care professional,” and “health service program.” The 2011 *Final Rule* erroneously held that the breadth of the religious freedom and conscience protections implemented by the 2008 *Final Rule* caused confusion and undermined patients access to necessary health care, when, if anything, the definitions needed to be expanded consistent with the intent of statutory protections of conscience and religious freedom. The 2019 *Final Rule* expanded upon the protections implemented in the 2008 rule. For example, the 2019 *Final Rule* expanded 2008 definition of “assist in performance” to include “counseling, referral, training, or otherwise making arrangements for the procedure or a part of a health service program....” However, the 2023 *Proposed Rule* rescinds this definition of the 2019 *Final Rule* returning to the framework of the 2011 *Final Rule*.<sup>21</sup> In conjunction with recent regulations and executive orders, this *Proposed Rule* will deny healthcare entities and employees the conscience and religious freedom rights to which they are entitled. For example, requiring a health care provider to refer a patient, counsel for a procedure, or train another provider for a procedure that violates the religious freedom or conscience of the provider makes the provider complicit in the very act found to be objectionable. Furthermore, clearly, to “assist in the performance” of an objectionable act is more than being complicit but engages the objecting provider with the principal agent of the act in accomplishing the completion of that act. In criminal law that provider would be considered an accomplice in the act to be performed. The protections of the 2019 *Final Rule* should be retained to protect the consciences and honor the faith-based objections that are required by existing statutes as referenced earlier, such as the Church Amendment,<sup>22</sup> the Coats-Snow Amendment,<sup>23</sup> the Weldon Amendment,<sup>24</sup> and Section 1553 of the Affordable Care Act.<sup>25</sup>

### *Assist in Performance*

The Church Amendment’s protections under subsection (d) were incorporated into both the 2008 *Final Rule* and the 2019 *Final Rule*.<sup>26</sup> The 2019 *Final Rule* included further protections for individuals with religious freedom or conscience objections.<sup>27</sup> The rules implementing protections were not outside the scope of the Department’s authority because such protections are provided for in the federal statutes. Further, these rules did not undermine the Department’s interest in maintaining a balance between conscience protection and patient rights. The 2019 *Final Rule* upholds this balance because it added a provision that states that an individual may not be required to “take an action that has a specific, reasonable, and articulable connection” to furthering a procedure that is contrary to his beliefs or moral convictions.<sup>28</sup> Stipulating the existence of a reasonable connection to a procedure prevents the occurrence of conscience or religious objections

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<sup>20</sup> Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law, 73 Fed. Reg. 78072 (Dec. 19, 2008) (to be codified at 45 C.F.R. at pt. 88).

<sup>21</sup> Supra note 1.

<sup>22</sup> Supra note 2.

<sup>23</sup> Supra note 3.

<sup>24</sup> Supra note 4.

<sup>25</sup> Supra note 5.

<sup>26</sup> Supra note 6.

<sup>27</sup> Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170 (May 21, 2019) (to be codified at 88 C.F.R. pt 88).

<sup>28</sup> *Id.*

that are based on irrational or attenuated allegations, and ensures that the balance between religious freedom and conscience rights and patients' access to care.<sup>29</sup> Also, the description of “assist in performance” as “an action...that has a specific, reasonable and articulable connection...” provides for the inclusion of services such as referrals and counseling because such services are related to healthcare programs and research.<sup>30</sup> Thus, there is no justification for rescinding the definitions and provisions relating to “assist in performance” that were provided for in the 2019 *Final Rule*.

### *Health Care Professional*

As mentioned, the 2023 *Proposed Rule* seeks to retain the framework created by the 2011 *Final Rule*.<sup>31</sup> However, the 2011 *Final Rule* provided for a narrower reading of the federal statutes and jeopardized religious freedom and conscience protections.<sup>32</sup> The *Proposed Rule* seeks to maintain the rescission of the 2008 *Final Rules*' definition of “health care professional” and “health care personnel.”<sup>33</sup> Under the prior definition, the mentioned terms include pharmacists, psychologists, counselors, and technicians.<sup>34</sup> Rescinding the prior definition would deprive individuals in the health care professions their religious freedom and conscience rights. Protections such as those provided in the 2008 and 2019 *Final Rules* are necessary because, in the absence of such protections, employees of federally funded health entities, and the entities themselves have been subjected to discriminated against or coerced into acting contrary to their religious and/or moral convictions, as identified, below.

### *Healthcare Sponsor*

Lastly, the 2023 *Proposed Rule* intends to rescind the protections given to employers and health care agencies under the 2008 and 2019 *Final Rules* definition of the terms “health sponsor” and “health service program.” Under the 2008 *Final Rule*, “health service program” was defined to include any plan or program that provides health benefits whether directly, through insurance, or otherwise....” Under the 2019 *Final Rule*, the “health entity” as provided for in the federal statutes was interpreted to include health plan sponsors that provide health insurance coverage. These provisions would protect faith-based organizations that fund health plans from being forced to fund measures or procedures that violate their religious beliefs.<sup>35</sup> Such protective provisions are consistent with Section 508(a)(2)(d) of the Weldon Amendment that provides protections for health care entities that refuse to provide coverage for abortions.<sup>36</sup> The definition of health care entity in this section warrants the inclusion of plan sponsors. Therefore, these former provisions

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Safeguarding the Rights of Conscience as Protected by Federal Statutes, 88 Fed. Reg. 820 (Jan. 5, 2023) (to be codified at 45 C.F.R. at pt. 88); Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 76 Fed. Reg. 9968 (Feb. 23, 2011) (to be codified at 88 C.F.R. pt 88).

<sup>32</sup> Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 76 Fed. Reg. 9968 (Feb. 23, 2011) (to be codified at 88 C.F.R. pt 88).

<sup>33</sup> *Supra* note 26.

<sup>34</sup> *Supra* note 20.

<sup>35</sup> *Supra* note 26; Safeguarding the Rights of Conscience as Protected by Federal Statutes, 88 Fed. Reg. 820 (Jan. 5, 2023) (to be codified at 45 C.F.R. at pt. 88).

<sup>36</sup> *Supra* note 5.

of the Department’s religious freedom and conscience protection rules are valid and should not be rescinded.

### **The Department’s Interest in Ensuring Informed Consent Does Not Negate the Conscience Right to Refuse to Refer Certain Treatments or Procedures**

As mentioned, the protections under the 2008 and 2019 *Final Rules* related to “assist in performance” include referrals.<sup>37</sup> In both rules, the Department stated that health care employees and providers are not required to counsel patients about, or refer for, treatment options that contradict their moral or religious beliefs.<sup>38</sup> Since the 2023 *Proposed Rule* intends to return to the 2011 framework, these protective provisions will be rescinded. This rescission has been supported by assertion that it is necessary to ensure that patients are fully informed of available treatment options and are able to grant informed consent.<sup>39</sup> However, there is no evidence that the 2011 framework is necessary to ensure that providers obtain informed consent from their patients. Allowing providers and employees to object to referring or counseling patients about treatment options that are objectionable to the employee’s religious beliefs or conscience does not prevent patients from obtaining information needed to understand the health care options available to them or preclude these patients’ ability to give informed consent for medical treatment. Further, in the 2019 *Final Rule*, the Department included the provision that a provider may refuse to provide a referral if the “reasonably foreseeable” outcome is objectionable to the provider’s conscience or religious beliefs.<sup>40</sup> This provision requirement of a stronger connection between the referral and objectionable activity preserves the balance between the interest in obtaining informed consent and protecting religious freedom and conscience rights.

### **Compliance and Conditional Payment of Federal Funds**

The Department has proposed to rescind the §88.4 and §88.6 of the 2019 *Final Rule*, as they relate to assurance and compliance requirements.<sup>41</sup> Section 88.4 of the 2019 *Final Rule* provides as a condition of the approval, renewal, or extension of federal funds: every entity that applies for federal funds must provide “assurance that the applicant or recipient will comply with the applicable Federal conscience and anti-discrimination laws...”<sup>42</sup> Section 88.6 provides that the Department may impose funding restrictions if a recipient of federal funds violates federal conscience laws.<sup>43</sup> The 2023 Rules propose to rescind these provisions based on the assertion that such provisions lack statutory authority.<sup>44</sup> However, the Department had the authority to implement the 2019 *Final Rule* pursuant to 5 U.S.C. 301, which provides that it has the authority to impose terms and conditions to ensure that a recipient of federal funds complies with the applicable federal religious freedom and conscience laws and anti-discrimination laws.<sup>45</sup>

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<sup>37</sup> *Supra* note 26.

<sup>38</sup> *Id.*

<sup>39</sup> *Supra* note 32.

<sup>40</sup> *Supra* note 2.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Supra* note 1.

<sup>45</sup> *Supra* note 19.

Therefore, the provisions of the 2019 *Final Rule* are proper and should not be rescinded. In fact, they provide the assurance that the rights of religious freedom and conscience, as dictated by statutes, are protected.

### **Examples of Widespread Discriminatory Conduct Violating Conscience Rights in Healthcare**

The Department wrote that it is seeking information, including any facts, surveys, audits, or reports, about the occurrence or nature of coercion, discriminatory conduct, or other violations of the Federal health care conscience and associated anti-discrimination laws. We would like to provide the following examples of discrimination against the consciences or deeply held religious beliefs of health care practitioners in response to the Department's request.

- A nurse at Mount Sinai Hospital in New York was forced to participate in a late-term abortion against her conscience and religious convictions. She was threatened with severe penalties including termination and loss of license if she refused to participate in the abortion. Following a request from her attorneys, the U.S. Department of Health and Human Services investigated the hospital for civil rights violations. Mount Sinai Hospital now has a policy that no person can be forced to participate in an abortion against that person's conscience.<sup>46</sup> However, it took years for that correction to occur.
- In 2016, Illinois amended its Health Care Right of Conscience Act to require doctors and other healthcare personnel to explain the benefits of abortions, contraceptives, and sterilizations, even if such procedures are contrary to his or her conscience. Several doctors and clinics in Illinois filed a lawsuit challenging the new law.<sup>47</sup>
- The American Civil Liberties Union ("ACLU") sued Trinity Health Corp., a Catholic hospital group with eighty-six hospitals in twenty-one states, because the Catholic hospitals would not violate their religious beliefs by performing abortions. A federal judge dismissed the lawsuit, holding that the ACLU had no standing to sue the Catholic hospitals.<sup>48</sup>
- The Department's rule implementing Section 1557 of the Affordable Care Act declined to include a religious or conscience exemption and instead required religious practitioners to sue in order to vindicate their religious freedom and conscience rights. The rule interpreted sex discrimination to include discrimination based upon "termination of pregnancy" or "gender identity," which could be interpreted to require doctors to perform abortions or gender transitions, even if they do not believe them to be in the best interest of the patient and even if doing so would violate the doctor's religious beliefs. A group of religious health care systems and states filed a lawsuit, which resulted in an injunction against the rule. The United States District Court for the Northern District of Texas granted the religious practitioners an injunction in 2021.<sup>49</sup> The decision was upheld by the U.S. Court of Appeals for the Fifth Circuit in 2022.<sup>50</sup>

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<sup>46</sup> *Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695 (2d Cir. 2010).

<sup>47</sup> *The Pregnancy Care Center of Rockford v. Rauner*, No. 2016-MR-741 (Ill. Ckt. Ct., Dec. 20, 2016); *Nat. Inst. of Family & Life Advocates v. Rauner*, No. 3:16-cv-50310 (N.D. Ill. July 19, 2017).

<sup>48</sup> *Am. Civil Liberties Union v. Trinity Health Corp.*, No. 15-cv-12611 (E.D. Mich., Apr. 11, 2016).

<sup>49</sup> *Franciscan All., Inc. v. Becerra*, 553 F. Supp. 3d 361

<sup>50</sup> *Franciscan. All., Inc. v. Becerra*, 47 F.4th 368, 371 (5th Cir. 2022).

- A pharmacist was fined over \$20,000 and had restrictions placed on his license after he refused to dispense oral contraceptives because their use is against his religious beliefs as a Roman Catholic.<sup>51</sup>
- For six years, Walgreens accommodated Pharmacist Dr. Philip Hall’s deeply held religious beliefs, including his strong objection to the dispensing of abortion-inducing drugs. When customers asked for these drugs, policies provided that they be dispensed by another pharmacist or nearby pharmacy. However, in August 2013, Walgreens attempted to coerce Hall to violate his religious beliefs. After he was fired, Hall filed a lawsuit in federal court to protect his religious freedom. The case was settled.<sup>52</sup>
- Pharmacists Luke Vander Bleak and Glen Kosirog filed a lawsuit after Illinois Governor Rod Blagojevich issued an “Emergency Rule” stating that pharmacists cannot refuse to fill prescriptions for emergency contraceptives. After a five-year legal battle, an Illinois judge ruled that the “Emergency Rule” violated the First Amendment and the Illinois Religious Freedom Restoration Act.<sup>53</sup>
- A Washington statute that required the distribution of Plan B emergency contraception was enforced against pharmacists. The statute required the pharmacists to dispense Plan B despite their religious objections. The United States District Court for Western District of Washington granted the plaintiff pharmacists an injunction.<sup>54</sup>
- The Department promulgated *Final Rules* shortly after the passage of the Affordable Care Act in 2010 which required employers to provide coverage for contraceptives for their employees. Exemptions were later provided for employers who objected to the rules based on their religious or moral beliefs. The exemptions were contested. However, the Supreme Court held that the Department had the authority to grant these exemptions.<sup>55</sup> However, the Department is currently seeking to narrow those exemptions, despite at the same time demonstrating how the federal government can provide such access without violating the rights of conscience or religious freedom. Thus, there is no prevailing state interest for these violations. In 2023 HHS announced a proposed rule to narrow such exemptions, compromising the deeply held moral convictions of non-faith-based employers.<sup>56</sup>
- Maine’s Department of Health enforced a regulation requiring all licensed health care workers to receive a COVID-19 vaccine. Appellant health workers sought an injunction from the enforcement of the regulation against them because it contradicted their religious beliefs. The First Circuit Court of Appeals affirmed the denial of the injunction.<sup>57</sup>

## Conclusion

The 2011 *Final Rule* deleted the definitions of key statutory terms provided for in the 2008 *Final Rule*. Thus, the statutory protections of religious freedom and conscience were narrowed and less clear. Health care workers had to rely on whoever was providing interpretations in the federal

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<sup>51</sup> *Noesen v. Dep’t. of Regulation & Licensing*, 311 Wis. 2d 237 (Wis. Ct. App. 2008).

<sup>52</sup> *Hall v. Walgreen Company*, No. 2:14-cv-00015 (M.D. Tenn. Feb. 19, 2015).

<sup>53</sup> *Morr-Fitz, Inc. v. Blagojevich*, No. 2005-495 (Ill. Ck. Ct. Apr. 5, 2011).

<sup>54</sup> *Stormans Inc. v. Selecky*, 844 F. Supp. 2d 1172 (2009).

<sup>55</sup> *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

<sup>56</sup> *Coverage of Certain Preventive Services Under the Affordable Care Act*, 88 Fed. Reg. 7236 (Feb. 2, 2023) (to be codified at 26 C.F.R pt 54, 29 C.F.R pt 2590, 45 C.F.R pt 147, 45 C.F.R pt. 156).

<sup>57</sup> *Doe v. Mills*, 16 F.4th 20 (2021).



bureaucracy to decide whether their claims of conscience were protected, on a case-by-case basis. The 2019 *Final Rule* reinstated the 2008 *Final Rule* and expanded conscience protection. Significantly, this rule also added and defined statutory provisions to the *Rule*'s enforcement scheme, imposing assurance and certification requirements, and establishing enforcement provisions and penalties, thus reaffirming HHS' enforcement authority.<sup>58</sup> However, of the eight provisions the 2019 *Final Rule* sought to accomplish, the *Proposed Rule* will eliminate all but three and those with modifications. Enforcement mechanisms clearly are needed in any regulatory schema.

As the Department of Health and Human Services considers modifications to the 2019 *Final Rule*, we urge the Department to continue to provide broad protections for religious freedom and conscience rights. Healthcare agencies and practitioners must be free to work in a way that is consistent with their conscience or faith-based beliefs and professional judgments in order to be able to provide the best care for their patients. This *Proposed Rule* serves to undermine the protections of the First Amendment religious freedom rights, healthcare professionals' capacity to uphold the tenets of the Hippocratic Oath, and the ethical integrity of the health care professions.

The provisions of the 2019 *Final Rule* need to be maintained for the integrity of the professions and the wellbeing of those served. If only those, who blindly follow dictates that violate conscience and religious freedom, are allowed to engage in the healing professions, serving as vending machines without regard for professional judgment, there will be no assurances that the best interest of patients will be served.

Sincerely yours,

Electronically signed:

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<sup>58</sup> 84 FR 23170 (2019).