

April 5, 2018: Advocacy spotlight on Physicians ask HHS to withdraw proposed rule on conscience rights in health care

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In response to the Notice of Proposed Rulemaking on "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority," the AMA sent a letter (PDF) to Alex Azar, Secretary of the U.S. Department of Health and Human Services (HHS) to express opposition to the measure, citing concern for vulnerable patient populations and asserting that conscience rights for physicians are not unlimited.

The proposed rule would dramatically expand the discretion that religious or moral objectors have to refuse care without meaningful safeguards to ensure that the rights of those receiving care are protected. The rule is part of a broader White House effort to protect religious rights and follows the announcement in late January of the creation of a new office within the Office of Civil Rights (OCR), the Conscience and Religious Freedom Division.

The rule would require health care providers who participate in Medicare (except those who receive payments only from Part B) and Medicaid to create a set of standards and procedures to protect the religious and moral rights of their employees. The rule covers a wide array of existing federal laws that provide conscience protections including those related to abortion, contraception, sterilization, vaccines, end-of-life care, and care of marginalized groups like LGBTQ patients.

The AMA fears that if implemented, the rule would function as a shield for people asserting objections on religious or moral grounds and could permit them to withhold care from already vulnerable groups and create confusion in health care institutions.

"The proposed rule would undermine patients' access to medical care and information, impose barriers to physicians' and health care institutions' ability to provide treatment, impede advances in biomedical research, and create confusion and uncertainty among physicians, health care professionals, and institutions," AMA Executive Vice President and CEO James L. Madara, MD, wrote in the letter.

While the AMA is committed to conscience protections for physicians and other health professional

personnel, the letter states that the exercising of those rights must "be balanced against the fundamental obligations of the medical profession and physicians' paramount responsibility and commitment to serving the needs of their patients."

Thusly, the AMA affirms its position against government interference in the practice of medicine or the use of health care funding mechanisms to deny established and accepted medical care to any segment of the population.

According to the *AMA Code of Medical Ethics*, the freedom to act according to conscience is not unlimited. Physicians are expected to provide care in emergencies, honor patients' informed decisions to refuse life-sustaining treatment, and respect basic civil liberties and not discriminate against individuals in obligation to patients with whom they have a patient-physician relationship.

This principle is in keeping with many AMA's policies protecting access to care, especially for vulnerable and underserved populations, and its anti-discrimination policy, which opposes any discrimination based on an individual's sex, sexual orientation, gender identity, race, religion, disability, ethnic origin, national origin, or age. Moreover, the letter points out that the proposed rule appears to conflict with OCR's own mission which states that "The mission of the Office for Civil Rights is to improve the health and well-being of people across the nation; to ensure that people have equal access to and the opportunity to participate in and receive services from HHS programs without facing unlawful discrimination."

Similarly the letter expressed concern that the proposed rule could interfere with numerous existing state laws that protect women's access to comprehensive reproductive care, and the rule fails to address how conscience rights of individuals and institutions might apply when emergency situations arise (e.g., under the Emergency Medical Treatment and Labor Act, or EMTALA). Given these concerns and others the AMA recommends that HHS withdraw the proposed rule.

The letter was sent out on March 27, the deadline for the comment period. Since then HHS has received nearly 70,000 letters, with several other medical associations and advocacy organizations like Human Rights Watch joining the AMA in opposition.

Implementation of the rule is expected to cost \$312 million in the first year and \$125 million annually over the next four years. HHS' Office for Civil Rights said it has seen an increase in religious-related complaints in the past year and a half, logging 34 since November 2016, while only 10 were filed during the entirety of the Obama administration.

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