



American
Public Health
Association

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Protect, Prevent, Live Well

April 6, 2009

Office of Public Health and Science
U.S. Department of Health and Human Services
Attn: Rescission Proposal Comments
Hubert H. Humphrey Building
200 Independence Avenue, SW
Room 716G
Washington, DC 20201

Re: RIN 0991-AB49

On behalf of the American Public Health Association (APHA), the oldest and most diverse organization of public health professionals and advocates in the world, and the undersigned affiliated organizations, I write to express our support for the Department of Health and Human Services' (HHS) proposal to rescind in its entirety the December 19, 2008 final rule entitled "Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law." Patients' health and well-being must come first in health care delivery and in the formulation of health policy. The rule in question should be rescinded because it threatens public health by allowing health care institutions and individuals to deny health information and services while providing no protections for the rights of patients to access the full range of health information and services.

The rule claims to interpret three existing federal refusal clauses that protect the rights of institutions and individuals to deny abortion and sterilization services to patients on moral or religious grounds—the Church Amendments (42 USC 300a-7), the Public Health Service Act § 245 (42 USC 238n) and the Weldon Amendment (Consolidated Appropriations Act 2008, PL 110-161, Div. G, 508d). The purpose of the rule is to clarify these existing laws and educate recipients of HHS funds and their employees about the legal obligations and protections afforded under the laws. However, the rule contains expansive and ambiguous language that will threaten patients' access to critical health care services and information and will lead to confusion among health care providers, state and local governments, and research institutions faced with the uncertain interaction between the rule and existing federal and state laws.

The rule broadly defines the institutions that may refuse to provide abortion and sterilization services and even extends the laws' applicability to foreign and international organizations that receive U.S. funding, such as the United Nations. It also fails to define the term abortion, opening the door for insurers, hospitals and other entities to define the term in ways that could include common forms of contraception, including birth control. Use of contraceptives is not only widely accepted in the U.S., they also reduce unintended pregnancies and the need for abortions. In addition, the rule greatly expands the scope of services to which individuals can object to "any activity with a reasonable connection to a

procedure, health service or health service program, or research activity,” including “counseling, referral, training, and other arrangements for the procedure, health service, or research activity.”

While the rule provides greater protections to health care institutions, individual providers and other employees of health care entities, it fails to consider the needs of patients and poses a serious risk to patients’ health by limiting their right to receive complete and accurate health information and services. The expansive and ambiguous language may make it more difficult for patients to access family planning and reproductive health services – including birth control, counseling and information – as well as HIV/AIDS care, end-of-life care, fertility care, and other services. For example, HIV prevention counseling for at-risk patients may be restricted by institutions that refuse to provide contraceptive counseling and services. The effects of the rule may be especially acute in time sensitive and emergency situations. Rape survivors could be denied emergency contraception, which is most effective when taken within the first 24 hours after unprotected intercourse and has no demonstrated efficacy after 120 hours. Moreover, patients might not even learn which services, information or referrals they may have been denied, eliminating their right to fully informed consent, which involves a discussion on all medically recommended treatments and alternative treatment methods.

The rule does not include any mechanism to ensure that health services will be available elsewhere in the community or that the community will continue to have access to a full range of health services. This will be especially problematic in medically underserved areas that have fewer health resources, such as rural and inner city communities. Low-income, uninsured and under-insured Americans will also be disparately impacted because they are more likely to rely on HHS-funded programs for health information and services. These groups face additional challenges to obtaining services that a particular provider or health facility does not offer, such as financial barriers, lack of private insurance, geographic isolation, and lack of both public and personal modes of transportation. Moreover, the rule does not prohibit using “conscience claims” to justify discriminatory attitudes towards certain patients, such as people with HIV/AIDS or lesbian, gay, bisexual or transgender individuals.

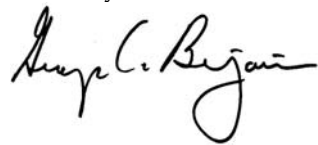
The rule ignores existing federal laws that strike a careful balance between respecting employees’ moral and religious beliefs and protecting employers’ ability to provide patients access to health care services currently maintained under Title VII of the Civil Rights Act of 1964. Under Title VII, an employer must reasonably accommodate an employee’s or prospective employee’s moral or religious beliefs unless doing so places an “undue hardship” on the employer’s business. The rule also leaves unclear whether employers will be permitted to change an employee’s job to one where he or she would not be expected to provide the service he or she finds objectionable. In addition, the rule could conflict with the requirements of other HHS-funded programs, like Medicaid and the Title X family planning program that guarantee women access to contraceptive counseling and services. The rule also disregards state laws protecting and expanding access to certain health care services, such as laws ensuring contraceptive equity in insurance, access to emergency contraception for victims of sexual assault and access to birth control at pharmacies. Because the rule ignores existing federal and state laws, it could cause confusion among health care employers, employees and patients regarding their rights.

The impact analysis for the rule greatly underestimates the costs associated with expanding the rights of any individual member of a health care entity’s workforce to refuse to perform any part of a health service program or research activity on moral or religious grounds. The previous administration assessed the cost of implementing the rule to be \$43.6 million a year, which covers the cost of HHS-funded entities collecting and maintaining records certifying their compliance with the rule. However, this analysis fails to consider the cost and hardship of hiring and retaining workers who refuse to perform an activity, even

if the activity is among the duties for which they were hired to perform. In fact, the rule gives as an example an employee whose job it is to clean surgical equipment can refuse to do so because they object to the procedure for which the equipment was used. Similarly, an employee whose job it is to schedule patient appointments will be permitted to refuse to schedule patients seeking services that they oppose, such as contraceptives counseling. Scientific research also will be adversely affected under this rule, including federally funded stem cell research, research involving animal testing and defense research on things like biological weapons. Small entities in particular will face undue hardship because they employ smaller workforces. For example, pharmacies that do not have more than one pharmacist available at all times will have difficulty upholding the rights of a pharmacist who objects to filling certain prescriptions and the rights of patients to obtain those prescribed medications in a timely manner.

According to HHS, the rule will impact over 584,000 health care entities, including hospitals, health centers and private physicians' offices. The rule will have a debilitating effect on these health care entities and will put at risk the health of the millions of individuals and families that rely on them for complete and accurate health care services and information. APHA and the undersigned affiliated organizations strongly support your proposal to rescind this rule in its entirety.

Sincerely,



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Executive Director
American Public Health Association

Arkansas Public Health Association
California Public Health Association-North
Connecticut Public Health Association
Georgia Public Health Association
Hawaii Public Health Association
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Indiana Public Health Association
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Maine Public Health Association
Massachusetts Public Health Association
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