

November 24, 2017

Jane E. Norton
Director, Office of Intergovernmental & External Affairs
Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Request for Information on Removing Barriers for Religious and Faith-Based Organizations to Participate in HHS Programs and Receive Public Funding

Dear Director Norton,

On behalf of the majority of the more than 70 million Catholics in the United States—six in 10 of whom believe that hospitals receiving taxpayer dollars should not be permitted to refuse medical care on the basis of religious belief¹—I write to express our deep concern that the Department of Health & Human Services (HHS or Department) is considering expanding religious exemptions in HHS programs and activities. The Request for Information (RFI) entitled “Removing Barriers for Religious and Faith-Based Organizations to Participate in HHS Programs and Receive Public Funding” frames its inquiry around protecting religious freedom. However, the vision of religious freedom presented by HHS and other executive agencies narrowly focuses on the alleged rights of institutions and excludes the incontrovertible rights of the patients, program beneficiaries and recipients of services.

Catholics for Choice seeks to shape and advance sexual and reproductive ethics that are based on justice and reflect a commitment to women’s wellbeing. We represent the lived reality of everyday Catholics and offer our expertise, rooted in the foundational Catholic teaching that every individual must follow his or her own conscience and respect others’ right to do the same. As a faith-based organization, it is our informed view that there are no “regulatory or other barriers” that HHS needs to remove nor actions it needs to take to “affirmatively accommodate” faith-based organizations that partner with the federal government.¹ In fact, we believe agency regulations already contain religious exemptions that are too expansive and which often make it harder for individuals, especially women, to access the services they need.

HHS programs exist to benefit patients and the recipients of human services, not to subsidize the religious or moral ideologies of contractors or grantees which seek to use religion as a reason to refuse to provide select services or serve certain people.

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Allowing taxpayer-funded providers to use a religious litmus test to determine whom they serve and which services they will provide would further entrench discrimination in healthcare and undermine the HHS mission “to enhance and protect the health and wellbeing of all Americans.”ⁱ In light of our commitment to social justice and true religious liberty, we urge the Department to implement protocols that respect the human dignity of all people and prevent faith-based social service providers, healthcare facilities or other entities from using religion to engage in taxpayer-funded discrimination.

Religious Liberty and Conscience Protections Are Meant for Individuals, Not Organizations.

The Department states that this RFI is intended to “seek input...on potential changes that could be made to existing HHS regulations or guidance to ensure that faith-based organizations and their religious beliefs and moral convictions are properly accommodated.”ⁱⁱ The beliefs and moral convictions of the individuals who receive care and services through HHS programs receive no mention, though they are the ones who stand to suffer when their personal autonomy is compromised. We find the Department’s exclusive focus on entities, to the detriment of patients, beneficiaries and recipients, shocking. Individuals, after all, have consciences and religious liberty. Institutions do not.

Granting entire institutions the right of conscience that should be left to individuals is an affront to the Catholic ideals of conscience, workers’ rights, social justice and religious freedom. Neither the freedom of conscience nor the freedom from religion should be misconstrued as extending these protections to institutions. To do so would ignore the moral agency of the many individuals served by HHS programs who may not share the same beliefs espoused by their healthcare or service provider.

HHS, in concert with the Office of the Presidentⁱⁱⁱ and the Department of Justice,^{iv} rely on a misinterpretation of the Religious Freedom Restoration Act (RFRA) by suggesting that a healthcare entity or service provider’s religious objections should be permitted to trump the beliefs of the very real people they care for. In fact, such an accommodation is prohibited by RFRA, which was intended to protect individuals from suffering a “substantial burden”^v on their personal beliefs and practices through government action.

The proper role of government is to protect the freedom of conscience for all Americans, no matter what their beliefs may be. By directing taxpayer dollars to institutions that engage in such discriminatory activity—for instance, refusing to provide an abortion for a woman in an acute medical crisis,^{vi} firing an employee for having a same-sex partner^{vii} or overriding patient preferences for end of life care^{viii}—HHS sanctions interference in the religious and moral decision making of patients, beneficiaries and social service recipients.

As Catholics, we cannot and do not presume to tell others how best to listen to their own consciences as they make important decisions. Our Catholic tradition calls on us to celebrate

religious liberty, which honors individuals' rights to both the freedom of religion and the freedom from being forced to live by another's beliefs. Religious freedom at base is an expansive rather than a restrictive idea. It is not about telling people what they can and cannot believe or practice but giving people the ability to follow their own conscience in what they believe or practice. These protections extend to one's personal religious beliefs and practices, but they do not give entire institutions or individuals license to obstruct or coerce the exercise of another's conscience.

We urge the Department to shift its focus away from deference to faith-based grantees and contractors and toward the conscience rights of individual patients, beneficiaries and recipients.

Faith-Based Organizations Are an Integral Part of the Social Safety Net, but That Does Not Entitle Them to Special Treatment.

Faith-based providers play a substantial role in the provision of health and human services across the country, often serving as pillars of the community, trusted to provide necessary care and essential services to underserved groups. As the RFI notes, one in six patients received treatment in a Catholic hospital in 2015, and nearly 60 percent of emergency homeless shelter beds were located in a religiously affiliated facility in 11 major cities in 2016.^x Faith-based groups provide services to people of all backgrounds when they are most in need and, through their extensive networks and infrastructure, can play a pivotal role in improving patients' health and wellbeing.

At the same time, some faith-based providers use conservative interpretations of religious teachings to deny access to critical services, including family planning, abortion, gender affirming care and HIV & AIDS prevention. This has obvious implications for women and girls in relation to sexual and reproductive rights and health. Faith-based providers also may use their religious interpretation to discriminate against populations that need particular care and support, including LGBT individuals, unaccompanied minors in need of reproductive healthcare services and immigrants and refugees seeking shelter and sanctuary. Denying individuals these services based on religious objections undermines the very purpose of taxpayer-funded services and programs meant to help those in need.

Expanding religious exemptions for faith-based entities will fall hardest on those who already face barriers to accessing care and services. Women have been charged more for healthcare on the basis of sex and have continually been denied health insurance coverage for services that only women need.^x Religiously affiliated organizations that receive federal grants to care for unaccompanied immigrant minors, many of whom are sexually assaulted before they reach HHS custody, have argued they are entitled to refuse to provide them critical reproductive healthcare, including access to or even referrals for abortion and contraception, as required by law.^{xi} Far too many LGBT people are denied the care they need because of their sexual orientation or gender identity.

HHS grantees and contractors should not be allowed to discriminate against those they serve or employ. Guidance issued on religious liberty concerns by the Department of Justice has indicated this administration intends to allow government-funded organizations to refuse to

hire someone who does not act in accordance with particular religious beliefs—this could include someone who does not regularly attend religious services, is married to a person of the same sex, gets divorced, uses birth control or is pregnant and unmarried. For example, the United States Conference of Catholic Bishops (USCCB) has asked to contract with the federal government but not abide by the employment protections other federal contractors must follow. Specifically, the USCCB demanded broad exceptions in order to discriminate against employees because of their gender identity or sexual orientation. But nondiscrimination laws and program conditions are not barriers or discrimination based on religion. They are fundamental legal requirements from which there can be no accommodation.

Requiring all HHS grantees, faith-based or not, to comply with federal civil rights law and the highest medical standards does not infringe on anyone’s conscience, demand anyone change her or his religious beliefs, discriminate against any woman or man, put any additional economic burden on the poor, interfere with any person’s medical decisions or compromise anyone’s health.

No person should experience judgment, shame or discrimination when seeking care or services, nor should employees working to deliver those services, care and support—especially from a provider delivering government-funded programs. Faith-based entities that engage in these practices should not receive greater deference from HHS simply because they claim a right to special treatment based on their religiously based objections. Further accommodation of religious entities threatens to increase discrimination against these communities and thereby worsen healthcare disparities that the Department should be working to reduce, increase barriers to care and services for the most vulnerable of our community and threaten the freedom of conscience of patients, beneficiaries and individuals in their employ.

We urge the Department to effectively enforce nondiscrimination laws in all of its programs and require all contractors and grantees to provide the services and care required of the program regardless of affiliation with compassion, tolerance and equity.

American Catholics Reject the Practice of Religious Refusals for Care and Services.

Faith-based organizations have a long and successful history of partnership with HHS, playing an important role in delivering health and social services to communities in need. Yet some faith-based organizations have also used HHS funds to discriminate and withhold needed services—and HHS regulations have allowed this to happen. Religion has been invoked in countless ways to deny individuals access to healthcare, including birth control, sterilization, certain infertility treatments, abortion,^{xii} transition-related medical care for transgender patients,^{xiii} reproductive healthcare for trafficking victims^{xiv} and end of life care.^{xv}

American Catholics overwhelmingly agree that an employer’s beliefs should not determine the job an employee can do, nor should a healthcare provider’s religious beliefs determine the care a patient receives, nor should the services available to beneficiaries be determined by a provider’s beliefs. Seven in 10 US Catholics believe that companies and institutions should not be allowed to use the owners’ religious beliefs as a reason to deny services to employees or customers.^{xvi} Ninety percent of US Catholics disapprove of a company firing an unmarried employee who is pregnant based on the owner’s religious beliefs, and 86 percent disapprove

of a counselor refusing to counsel a gay student based on the counselor's beliefs. When asked about healthcare providers, 77 percent of US Catholic voters oppose permitting an entity to refuse to provide certain procedures, 76 percent oppose permitting pharmacists to withhold prescriptions and 68 percent oppose a religiously affiliated hospital refusing to perform an abortion necessary to protect a woman's health.^{xvii}

This support for the full range of comprehensive health and social services without discrimination is unsurprising, as religiously based restrictions affect Catholics just as often as non-Catholics. In fact, 99 percent of sexually active Catholics have used a modern form of contraception that the Catholic hierarchy prohibits.^{xviii} More than half a million individuals of all faiths work in Catholic healthcare facilities; many Catholics serve and work in entities that deliver social services to communities in need. While faith-based organizations may argue that their employees, patients or program beneficiaries hold the same religious convictions that their leadership espouses, this is simply inconsistent with the beliefs and lived practices of the individuals they employ, treat and serve.

The Catholic faith holds conscience to be the final arbiter in moral decision making, including in deeply personal healthcare choices. Our faith also demands respect for real religious liberty, ensuring that each person can follow their conscience according to their own beliefs. In keeping with these ideals, we ask that any HHS regulations, guidance or funding decision protect individual decision making and prohibit discrimination in the delivery of healthcare and the provision of human services through government-funded contracts.

Conclusion

The RFI on removing barriers for religious and faith-based organizations signals a singular focus on expanding opportunities for publically funded entities to enact a particular set of beliefs on patients and recipients. HHS programs should instead assist individuals in need of critical services and supports by increasing access to healthcare, supporting individual decision making and informed consent and prohibiting discrimination in the provision of health and human services.

Given the significant threat posed to the health and wellbeing of millions of vulnerable individuals, we ask that the Department refrain from granting entities a free pass to trample the consciences of patients, beneficiaries and program recipients and impede their religious freedom. Catholics for Choice is committed to the respect and protection of each individual's God-given conscience and their inalienable right to religious liberty, regardless of their faith or station. We implore the Department not to allow faith-based service providers, healthcare organizations or other entities to use religion to engage in taxpayer-funded discrimination. It is an affront to our commitment to self-determination and social justice rooted in the true sense of religious liberty.

Instead, we hope that you will demonstrate a commitment to the common good by protecting the individuals who stand to lose the most—those who depend on your grantees for critical healthcare, social services and shelter in times of need. We urge the Department to turn its focus to addressing health disparities and ensuring equal access to services regardless of race, color, national origin, religion, sex, gender identity, sexual orientation, age or disability.

Respectfully,



Jon O'Brien
President

ⁱ Strategic Plan FY 2014–2018, U.S. Department of Health and Human Services, <https://www.hhs.gov/about/strategic-plan/introduction/index.html#mission>.

ⁱⁱ HHS, *supra* note ii.

ⁱⁱⁱ Promoting Free Speech and Religious Liberty, Exec. Order No. 13798, 82 Fed. Reg. 21675 (May 4, 2017), <https://www.federalregister.gov/documents/2017/05/09/2017-09574/promoting-free-speech-and-religious-liberty>.

^{iv} US Dept. of Justice, Memorandum for All Executive Departments and Agencies: Federal Law Protections for Religious Liberty (October 6, 2017), <https://www.justice.gov/opa/press-release/file/1001891/download>.

^v Religious Freedom Restoration Act, 42 U.S.C. § 2000bb, *et seq.*, <http://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter21B&edition=prelim>.

^{vi} American Civil Liberties Union, *Health Care Denied* (May 2016), https://www.aclu.org/sites/default/files/field_document/healthcaredenied.pdf.

^{vii} Francis DeBernardo, “Fired for Being Gay: Turning Catholics Away from Our Church,” *Conscience*, Vol. 36, No. 2 (2014).

^{viii} U.S. Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (5th ed. 2009) (Directive 24 denies respect for advance medical directives.), <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf>.

^{ix} HHS, *supra* note ii.

^x Nat’l Women’s Law Center, *Turning to Fairness: Insurance Discrimination Against Women Today and the Affordable Care Act* (March 2012), <https://nwlc.org/resources/turning-fairness-insurance-discrimination-against-women-today-and-affordable-care-act/>.

^{xi} Anna Merlan, *Religious Aid Groups: Raped Migrant Kids Should Not Get Plan B*, Jezebel (March 5, 2015), <https://jezebel.com/religious-aid-groups-raped-migrant-kids-should-not-get-1689602157>. *See also*, American Civil Liberties Union, *Religious Organizations Obstruct Reproductive Health Care For Unaccompanied Immigrant Minors* (April 3, 2015), <https://www.aclu.org/news/religious-organizations-obstruct-reproductive-health-care-unaccompanied-immigrant-minors>.

^{xii} Nat’l Women’s Law Ctr., *Health Care Refusals Harm Patients: The Threat to Reproductive Health Care* (May 2014), http://www.nwlc.org/sites/default/files/pdfs/refusals_harm_patients_repro_factsheet_5-30-14.pdf.

^{xiii} Nat’l Women’s Law Ctr., *Health Care Refusals Harm Patients: The Threat to LGBT People and Individuals Living with HIV/AIDS* (May 2014), <https://nwlc.org/resources/health-care-refusals-harm-patients-threat-lgbt-people-and-individuals-living-HIVAIDS>.

^{xiv} *ACLU of Mass. v. Sebelius*, 821 F. Supp. 2d 474 (D. Mass. 2012), *vacated as moot sub nom., ACLU of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44 (1st Cir. 2013).

^{xv} U.S. Conference of Catholic Bishops, *supra* note x.

^{xvi} Beldon Russonello Strategies, *2016 Survey of Catholic Likely Voters*, Conducted for Catholics for Choice, September 2016.

^{xvii} Beldon Russonello Strategies, *Catholic Voters and Religious Exemption: A National Opinion Survey for Catholics for Choice, Call to Action, DignityUSA and Women's Alliance for Theology, Ethics and Ritual (WATER)*, October 2014.

^{xviii} Kimberly Daniels; William D. Mosher and Jo Jones, *Contraceptive Methods Women Have Ever Used: United States, 1982–2010*, Nat'l Health Statistics Reports, Vol. 62 (Feb. 14, 2013), <https://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>.