



December 19, 2019

Alex M. Azar II, JD, Secretary  
U.S. Department of Health and Human Services  
Attention: Office for Civil Rights  
Hubert H. Humphrey Building, Room 509F  
200 Independence Avenue SW  
Washington, DC 20201

**Re: Health and Human Services Grants Regulation RIN 0991-AC16**

Dear Secretary Azar:

The Catholic Medical Association (CMA) and The National Catholic Bioethics Center (NCBC) submit the following comments in support of the U.S. Department of Health and Human Services (HHS) proposed “Health and Human Services Grants Regulation.” The proposed regulation would revise the current regulation, codified at 45 C.F.R. § 75.300(c) and (d), 1 to read as follows:

(c) It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by federal statute.

(d) HHS will follow all applicable Supreme Court decisions in administering its award programs.<sup>1</sup>

While our members are not directly engaged in child adoption and foster care ministries as addressed by this proposed regulation, they are engaged in health care ministries that require them to exercise professional judgments that support the best interests of those they serve, while at the same time respecting informed consent. Obstructive regulations, that do not respect the rights of conscience

---

<sup>1</sup> U.S. Dept of Health and Human Services, “Health and Human Services Grants Regulation,” 84 *Federal Register* 63831 (Nov. 19, 2019). Available at <https://www.federalregister.gov/documents/2019/11/19/2019-24385/office-of-the-assistant-secretary-for-financial-resources-health-and-human-services-grants>.

enshrined in the First Amendment of the U.S. Constitution and the federal *Religious Freedom Restoration Act*, violate the sacred trust between a health care provider and those they serve. Thus, these proposed regulations will reverse a trend in regulation to violate these fundamental rights.

The CMA and the NCBC represent over 4,000 members, committed to promoting health care that is driven by the highest standards of scientifically based practice and consistent with the natural moral law, which can be clearly defended by human reason. Both organizations recognize the inherent and inviolable dignity of the human person and strive within the discipline of medical ethics to promote that dignity. Members are comprised of physicians and other health care professionals, ethicists, educators, clergy and vowed religious, as well as consumers of health care. Their members are active in all fields of health care and academics and have been consistent advocates for the dignity of human persons regardless of how they identify sexually, as well as the rights of health care providers to exercise care that promotes that dignity as well as the best interest of all recipients of health care. To be able to do so, and to enable health care providers to be patient advocates, require the exercise of a free conscience and religious liberty, as enshrined in the aforementioned First Amendment and *Religious Freedom Restoration Act*.

NCBC and CMA strongly support the prohibition of unjust discrimination based on race, color, national origin, sex, age, disability, as well as religion. The proposed regulatory revision specifically would avert injustices against religious liberties, already in evidence against faith-based providers. This proposed revision to the 2016 Rule by the U.S. Department of Health and Human Services (HHS) creates no new law. Specifically, by the proposed rule HHS would re-promulgate most of the provisions of the 2016 rulemaking.<sup>2</sup> However, it would:

revise two provisions of the 2016 rulemaking to require grantees to comply with applicable nondiscrimination provisions passed by Congress and signed into law, including legislation ensuring the protection of religious liberty, and to provide that HHS complies with all applicable Supreme Court decisions in administering its grant programs....The proposed rule would better align its grants regulations with federal statutes, eliminating regulatory burden, including burden on the free exercise of religion.<sup>3</sup>

The Catholic Church has been engaged in adoption ministries for centuries, long before any government agency was involved. In the U.S., Catholic Charities agencies have long provided adoption and foster care services to the neediest of children, taking on the most difficult placements, including older, abused children and children with special needs. When placing children with couples, Catholic Charities attempt to provide those children the advantage of having a married mother and a father. However, in 2006 Catholic Charities of Boston which had been one of the nation's oldest adoption agencies, in attempting to focus on the best interest of children to have a mother and a father, was deemed to be engaging in "sexual orientation discrimination." They were denied by the state of Massachusetts a religious exemption to respect their right to religious freedom; and thus, they closed their doors. Similar violations of religious freedom led to the end to the adoption and foster care ministries in San Francisco, Washington, DC, and in Illinois. No social service or health care agency or professional should be forced to provide interventions that they have determined not to be in the best interest of those served.

---

<sup>2</sup> 45 C.F.R. § 75.300(c) and (d), 1.

<sup>3</sup> The U.S. Department of Health and Human Services, "HHS Issues Proposed Rule to Align Grants Regulation with New Legislation, Nondiscrimination Laws, and Supreme Court Decisions," Media Release (November 1, 2019). Available at <https://www.hhs.gov/about/news/2019/11/01/hhs-issues-proposed-rule-to-align-grants-regulation.html>.

There are over 400,000 children in foster care and every agency is needed to meet the needs of these children.<sup>4</sup> To restrict faith-based agencies' efforts to address these needs by infringing on religious freedom, not only violates constitutionally protected rights, but serves no one, and abandons the children most in need of services. Just as in faith-based health care, when care is transferred in response to a provider who deems that the wishes of a patient violate the conscience or religious freedom of the provider, same-sex parents and parents seeking to have a child adopted by a same sex couple can be transferred to an agency willing to arrange such an adoption.

This trend to trample on religious freedom must be reversed. All one has to do is to examine how the courts enjoined implementation of the "Conscience Rule," of 2019, which would have protected the religious freedom of hundreds of thousands of health care providers seeking to deliver care consistent with the best interest of their patients.<sup>5</sup> When patient autonomy, regardless of the provider's assessment of the best interest of the patient, trumps constitutionally protected religious freedom, society at large is at risk. The same is true when adoption and foster care agencies cannot focus on the best interest of a child, and the claimed rights of prospective parents take precedence over the rights of children to have a mother and a father: society at large also is at risk. This all is occurring at a time when it has been demonstrated that Americans are "uncomfortable with the idea of government penalizing groups and individuals for living out their religious beliefs."<sup>6</sup>

There is no need for this conflict to occur. Exemptions consistent with existing federal religious freedom laws should be implemented, while at the same time accommodations exist through other adoption agencies that can meet the requests of same-sex couples. Respecting existing civil rights protections for faith-based agencies would have avoided the significant interruption in the services for the thousands of children in need of being adopted or placed in foster care.

CMA and NCBC recognize the parallel in the violations of religious freedom experienced by faith-based adoption and foster care agencies and health care providers and urge promulgation of the "Health and Human Services Grants Regulation."

Sincerely yours,



Co-chair, Ethics Committee  
The Catholic Medical Association  
550 Pinetown Rd., Suite 205  
Fort Washington, PA 19034  
Tel: 484-270-8002

And Senior Fellow,  
The National Catholic Bioethics Center  
6399 Drexel Road  
Philadelphia, PA 19151  
Tel: 215-877-2660

---

<sup>4</sup> AdoptUsKids, "About the children" (2019). Available at <https://www.adoptuskids.org/meet-the-children/children-in-foster-care/about-the-children>.

<sup>5</sup> U.S. Department of Health and Human Services, "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority," 84 FR 23170 (May 21, 2019). Available at <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>.

<sup>6</sup> Becket Fund for Religious Liberty, "2019 INDEX FINDINGS" (2019). Available at <https://www.becketlaw.org/index/2019-findings/>.