

September 24, 2008

Office of Public Health and Science  
Department of Health and Human Services  
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Comments of Attorneys General of the States of Arizona, Connecticut, Illinois, Iowa, Maine, Maryland, Massachusetts, Montana, New Jersey, Oregon, Rhode Island, Utah, Vermont

Proposed Rule: Provider Conscience Regulation, 45 CFR Part 88

We submit these comments to urge the Department of Health and Human Services (HHS) to withdraw the proposed provider conscience regulations issued on August 21, 2008 (the proposed regulation) to avoid significant adverse consequences on the delivery of health care services to patients and victims of rape, the ability of organizations to fulfill their core mission of assisting patients and the ability of state governments to ensure equal access to medically necessary services.

The proposed regulation is vague, lacking in clear definition as to the health care procedures that may be withheld on moral or religious grounds. Use of the term 'abortion' leaves unclear what medical procedures are included, as the regulation does not define it. Compounding this lack of definition is the general principle in the proposed regulation that it should be 'interpreted and implemented broadly to effectuate their [certain cited federal statutes] purposes'. Vagueness and broad application, together with the penalty of withdrawal of critical federal health care funding to a health care entity that violates -- even inadvertently -- the proposed regulation, may have substantial and significant consequences for the provision of health care to many Americans.

The proposed regulation completely obliterates the rights of patients to legal and medically necessary health care services in favor of a single-minded focus on protecting a health care provider's right to claim a personal moral or religious belief. Medically necessary health care to patients would be withheld, even if such care has been prescribed by the patient's primary health care provider. In any health care setting, there must be a balance between a patient's right

to necessary and appropriate medical care, a health care provider's legal, moral and ethical responsibilities to provide necessary and appropriate patient care and the personal moral and religious views of the provider. By focusing exclusively on the personal moral and religious beliefs of the health care provider, the proposed regulation unconscionably favors one set of interests, upsetting the carefully crafted balance that many states have sought to achieve.

As an example of this careful balancing of important personal and health policy interests, female sexual assault victims in Connecticut have the legal right to receive information about emergency contraception in order to avoid becoming pregnant. Upon victim or patient request, the health care provider must dispense contraception to her. If the provider has a moral objection to providing such contraception, the health care institution is required by law to provide a reasonable alternative method of providing the needed contraception medication to the victim.

The proposed regulation undermines this balancing of the interests of patient and health care provider by failing to ensure that the patient's rights are adequately protected.

The proposed regulation also prevents many organizations involved in the provision of health care services from fulfilling their core missions. The proposed regulations may bar these organizations from either prohibiting or requiring their providers to perform health care services or prescribe medications even if such prohibition or requirement forms the basis of the organization's practices or is anathema to the principles of the organization. For example, Planned Parenthood may be unable to decline to hire physicians who refuse, on moral grounds, to provide medically necessary and legal terminations of pregnancy or contraception. Similarly, a religious-based hospital may be unable to take employment action against any health care provider who, for moral or ethical reasons, prescribes certain legal medications or medical procedures that are prohibited under that hospital's basic principles.

Finally, the proposed regulation will significantly undermine the states' sovereign interests in ensuring that their health care policies are implemented fairly and uniformly throughout the state. State governments have long established health care policies such as requiring health insurance coverage of medically necessary procedures, legalizing certain procedures to address end of life concerns such as a living will, and mandating medical professionals to protect and assist the health care needs of patients. If certain health care providers can legally frustrate those goals and objectives by raising moral or religious grounds, states cannot be assured that patients will benefit from these carefully constructed health care policies.

We urge the HHS to adhere to a basic medical tenet -- first, do no harm to the patient -- and withdraw the proposed regulation.



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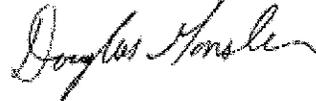
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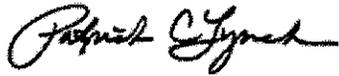
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