



March 6, 2023

Director Melanie Fontes Rainer  
Office of Civil Rights (OCR)  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**RE: [RIN 0945–AA18] Notice of Proposed Rulemaking (NPRM): Safeguarding the Rights of Conscience as Protected by Federal Statutes**

Dear Acting Director Rainer,

The American Academy of Nursing (Academy) appreciates the opportunity to offer comments regarding the Department of Health and Human Services (HHS) proposed rule on Safeguarding the Rights of Conscience as Protected by Federal Statutes. The Academy applauds the agency for committing to making health programs and activities accessible to all people. For 50 years, the Academy has been advancing health policy and practice through the generation, synthesis, and dissemination of nursing knowledge. With more than 2,900 Fellows, the Academy represents nursing's most accomplished leaders in policy, research, administration, practice, and academia.

The vision of the Academy is *Healthy Lives for All People*. To actualize this vision, the Academy's mission is to improve health and achieve health equity by influencing policy through nursing leadership, innovation, and science. This proposed rule has the potential to serve as a robust blueprint to strengthen protections against discrimination based on race, color, national origin, sex, age, and disability in certain health programs and activities, and more importantly, for communities disproportionately experiencing health inequities. Nurses play a key role in educating patients on their health care treatment options. Nurses also promote and advocate for the rights, health, and safety of the patient.

The Academy acknowledges and supports nurses' diverse personal beliefs and values. At the same time, the patient must always come first so that care is not delayed or withheld. The American Nurses Association's (ANA) *Code of Ethics for Nurses with Interpretive Statements* defines ethics as the moral principles that guide a nurse in carrying out nursing responsibilities in a manner consistent with quality in nursing care and the ethical obligations of the profession.<sup>1</sup> Under any circumstances, the moral and ethical considerations of the nurse should never result in the inability of the patient to receive timely, accessible, and equitable quality care. In the comments the Academy submitted during the rulemaking process for the 2019 Final Rule, we expressed concerns that strengthening the authority of the Office of Civil Rights (OCR) to enforce statutory conscience rights under various federal statutes could lead to discrimination against patients as well as exacerbate health disparities.<sup>2</sup> Therefore, the Academy recommends HHS rescind the 2019 Final Rule and further recommends the Department continue adding provisions, strategies, and definitions to advance protections under this proposed rulemaking for all individuals, including patients, nurses, and all health programs and activities versus conscientious entities.

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<sup>1</sup> *Code of Ethics for Nurses with Interpretative Statements*. (2015). American Nurses Association. <https://www.nursingworld.org/coe-view-only>

<sup>2</sup> Letter from ANA–AAN to HHS (Mar. 23, 2018) available at <https://www.regulations.gov/document/HHS-OCR-2018-0002-55870>

### Addressing Underlying Statutes and Other Laws

The Academy applauds HHS for rescinding parts of the 2019 Final Rule due to constitutional issues. However, HHS should rescind the rule and “create a standard for health systems and individual practices to ensure prompt, easy access to critical health care services if an individual provider has a moral or ethical objection to certain health care services; such as a standard should build on an evidence-based and effective mechanism to accommodate conscientious objections to services.”<sup>2</sup> To that end, The Code of Ethics for Nurses serves as a guide for nurses’ professional behavior, provides support, and helps prevent moral distress.<sup>1</sup> Patients’ decisions, regardless of convictions, should guide nurses’ care of patients, as stated in the Code of Ethics for Nurses.<sup>2</sup> Patients should receive the health care services they need and HHS should create standards to prevent discrimination or barriers to high-quality care for patients. Discrimination and stigma to seeking care and treatment remain a barrier for many disadvantaged and vulnerable populations, which contributes to the exacerbation of health disparities. Conscientious exemptions will only continue to hinder a patient’s universal access to high-quality care. The mission of HHS is to enhance the health and well-being of all Americans, by providing effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services.<sup>3</sup> For HHS to adhere to its mission, the agency through the OCR should develop a standard for health systems and individual practices to ensure prompt, easy access to critical health care services. If a nurse has a moral or ethical objection to certain health care services; evidence-based and effective mechanisms to accommodate conscientious objections should be developed to ensure patient access to services such as abortion, sterilization, gender-affirming care, or assisted suicide.

No patient should ever be deprived of necessary health care services or compassionate health care<sup>4</sup> based on the patient’s attributes, per the professional *Code of Ethics for Nurses*.<sup>2</sup> HHS must work to create and establish clarifying language that does not infringe on a patient’s access to essential and high-quality care. Further, HHS should ensure that nurses and other health care providers who refuse to provide health care services to patients because of their personal beliefs, direct them to providers who will. Such actions will relieve the nurse from infringing on their conscientious exemption and ensures alternate arrangements for patient care.<sup>5</sup>

### Equitable Access to Coverage and Services

As you know, when Congress enacted Section 1557 of the ACA,<sup>6</sup> it established the first civil rights law to prohibit and address widespread discrimination against individuals in health care coverage and delivery. For example, LGBTQ+ patients may be subjected to unnecessary barriers to obtaining indispensable healthcare coverage and access to services without these critical protections. The Academy has illuminated the negative health outcomes that impact LGBTQ+ patients among youth and adults.<sup>7</sup> We encourage HHS to strengthen protections for a patient’s access to gender-affirming care within this proposed rule as well. The Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation states that children and adults should have access to health care

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<sup>3</sup> U.S. Department of Health and Human Services. (2023, January 18). Introduction: About HHS. HHS.gov. Retrieved from <https://www.hhs.gov/about/strategic-plan/2022-2026/introduction/index.html#:~:text=Cross%2DAgency%20Collaborations-Mission%20Statement,public%20health%2C%20and%20social%20services>.

<sup>4</sup> American Association of Colleges of Nursing. (n.d.). Compassionate Care. Retrieved from [https://www.aacnursing.org/5B-Tool-Kit/Themes/CompassionateCare#:~:text=Within%20the%20healthcare%20community%2C%20compassion,%E2%80%9D%20\(Lown%2C%202016\)](https://www.aacnursing.org/5B-Tool-Kit/Themes/CompassionateCare#:~:text=Within%20the%20healthcare%20community%2C%20compassion,%E2%80%9D%20(Lown%2C%202016)).

<sup>5</sup> ANA Center for Ethics and Human Rights. (2018, June 15). *Risk and responsibility in providing nursing care - ANA position statement*. American Nurses Association. Retrieved from <https://www.nursingworld.org/practice-policy/nursing-excellence/official-position-statements/id/risk-and-responsibility-in-providing-nursing-care/>

<sup>6</sup> (OCR), O. for C. R. (2015, November 12). *Section 1557 - summary*. HHS.gov. Retrieved from <https://www.hhs.gov/civil-rights/for-individuals/section-1557/summary/index.html>

<sup>7</sup> Hein, L. C., Stokes, F., Greenberg, C. S., & Saewyc, E. M. (2018, September 1). *Policy brief: Protecting vulnerable LGBTQ youth and advocating for ethical health care*. Nursing Outlook. Retrieved from [https://www.nursingoutlook.org/article/S0029-6554\(18\)30494-9/fulltext](https://www.nursingoutlook.org/article/S0029-6554(18)30494-9/fulltext)

and receive equal treatment no matter their gender identity or sexual orientation.<sup>8</sup> Furthermore, under section 1554 of the ACA, it is up to the Secretary of HHS to uphold a patient's access to therapies and not create unreasonable barriers or limit the availability of health care treatment.<sup>9</sup> The Academy urges HHS under this proposed rule to rescind rule-making allowing for broad conscientious and religious exemptions from providing health care services to LGBTQ+ patients. Studies have shown that LGBTQ+ patients who seek care are often turned away from medical providers, and alternatives are not always easily accessible. For example, the Trevor Project found that sixty percent of LGBTQ+ youth who wanted mental health care in 2021 were not able to get it.<sup>10</sup> The Academy stands firm in belief and reiterates that the civil rights of LGBTQ+ patients and their accessibility to quality health care services should be protected in a manner consistent with the statutory conscience rights of health care providers under this proposed rule.<sup>2</sup> The protection of such conscience rights should never impede the ability of LGBTQ+ patients access to health care services.<sup>2</sup>

The Academy is also on the record supporting evidence-based policies that: ensure all patients have full access to safe sexual and reproductive health services; facilitate the expansion of clinical knowledge and evidence-based preventive health services; and, assure that all health care, including safe sexual and reproductive health services and policies that support those services, are grounded in scientific knowledge and evidence-based policies and standards of care.<sup>11,12</sup> While the proposed rule provides language around safe sexual and reproductive health services, the Academy urges HHS to rescind and remove models and statutory language that only accommodates providers' moral and religious beliefs and recommends the development of models that deliver evidence-based, patient-centered care. Given a previous analysis of the 2019 Final Rule<sup>13</sup>, the Academy finds that the definitions within this 2019 Final Rule allow for blanket discrimination by permitting a broad interpretation of not only what type of services can be refused but also the providers and other individuals who can also refuse to provide care.<sup>2</sup> Furthermore, the Academy urges HHS to rescind definitions within the 2019 Final Rule that would continue to violate the intent of new and existing laws on this issue.

### Improving the Nation's Health Through Civil Rights Protections

To this end, we applaud HHS for acknowledging the dual roles that the OCR plays concerning upholding various provisions and statutory conscience rights within the proposed rule. The Academy strongly believes in every individual's right to health care and cannot condone the potential risks the 2019 Final Rule would put patients in. HHS and OCR should implement guidelines and evidence-based models for individual providers, practices, agencies, health systems, and institutions that accommodate nurses, other providers, and patients<sup>7</sup> while preventing excessive hardships for providers and a patient's access

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<sup>8</sup> The United States Government. (2021, January 21). Executive order on preventing and combating discrimination on the basis of gender identity or sexual orientation. The White House. Retrieved from <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>

<sup>9</sup> Legal Information Institute. (2010, March 23). 42 U.S. Code § 18114 - access to therapies. Legal Information Institute. Retrieved from <https://www.law.cornell.edu/uscode/text/42/18114>

<sup>10</sup> 2022 national survey on LGBTQ Youth Mental Health. The Trevor Project. (2022). Retrieved from <https://www.thetrevorproject.org/survey-2022/>

<sup>11</sup> Olshansky, E., Taylor, D., Johnson-Mallard, V., Holloway, S., & Stokes, L. (2018). Sexual and Reproductive Health Rights, Access & Justice: Where Nursing Stands. *Nursing Outlook*, 66(4), 416–422. <https://doi.org/10.1016/j.outlook.2018.07.001>

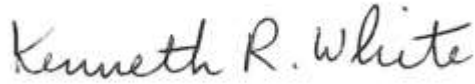
<sup>12</sup> American Academy of Nursing. (2022, June 24). *Joint Statement from Maternal Health Specialists on Dobbs v. Jackson Women's Health Organization*. Policy News - American Academy of Nursing Main Site. Retrieved from [https://higherlogicdownload.s3.amazonaws.com/AANNET/c8a8da9e-918c-4dae-b0c6-bd630c46007f/UploadedImages/Joint\\_Maternal\\_Health\\_Statement\\_in\\_Dobbs.pdf](https://higherlogicdownload.s3.amazonaws.com/AANNET/c8a8da9e-918c-4dae-b0c6-bd630c46007f/UploadedImages/Joint_Maternal_Health_Statement_in_Dobbs.pdf)

<sup>13</sup> National Women's Law Center. Trump Administration Proposes Sweeping Rule to Permit Personal Beliefs to Dictate Health Care. February 16, 2018. Web: <https://nwl.org/resources/trump-administration-proposes-sweeping-rule-to-permit-personal-beliefs-to-dictate-health-care/>

to timely medical services or information.<sup>14</sup> The Academy urges HHS and the OCR to make every attempt to strike an equitable balance between conscientious objections and patients' inalienable rights.

The Academy thanks HHS for the opportunity to provide comments on the Safeguarding the Rights of Conscience as Protected by Federal Statutes proposed rule. If we can be of any assistance to you or your staff, please do not hesitate to contact the Academy's Senior Director of Policy, Christine Murphy, at [cmurphy@aannet.org](mailto:cmurphy@aannet.org) or 202-777-1174.

Sincerely,



Kenneth R. White, PhD, AGACNP, ACHPN, FACHE, FAAN  
President

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<sup>14</sup> Lewis-Newby, M., Wicclair, M., Pope, T., Rushton, C., Curlin, F., Diekema, D., Durrer, D., Ehlenbach, W., Gibson-Scipio, W., Glavan, B, Langer, L., et al., on behalf of the ATS Ethics and Conflict of Interest Committee. (2015). An official American Thoracic Society policy statement: Managing conscientious objections in intensive care medicine. *American Journal of Respiratory & Critical Care Medicine*, 191(2), 219 - 227, <https://doi.org/10.1164/rccm.201410-1916ST>