



March 6, 2023

The Honorable Xavier Becerra  
Secretary  
Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC 20201

Dear Secretary Becerra:

On behalf of the American Academy of Family Physicians (AAFP), representing 127,600 family physicians and medical students across the country, I write in response to the notice of proposed rulemaking (NPRM) on safeguarding the rights of conscience as posted in the January 5, 2023 version of the [Federal Register](#).

The Office of Civil Rights (OCR) is proposing to partially rescind the 2019 Final Rule, "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority." The AAFP previously [raised concerns](#) that this 2019 Final Rule would restrict access to care for vulnerable patients seeking the aid of their family physician or other health care professionals by broadening the scope of conscience protections and increasing enforcement. As such, the AAFP applauds HHS and OCR for taking steps to repeal many of the provisions in the 2019 Final Rule.

Because of legal challenges to the 2019 Final Rule, HHS has continued to rely on the previous final rule from 2011. The AAFP agrees with OCR's action to revise the 2011 rule to incorporate specific provisions from the 2019 rule and clarify the current status of conscience protections.

Specifically, OCR proposes to expand the 2011 Final Rule category of covered statutes to include that of the 2019 rule. The 2011 Final Rule gave OCR the authority to investigate violations of and enforce the Church Amendments, the Weldon Amendment, and the Coats-Snowe Amendment, which provide discrimination protection for moral or religious objection to performing abortions or sterilizations in non-emergency situations. They also protect against discrimination for physicians who do choose to provide these services. Under this newly proposed rule, OCR would continue to have the authority to investigate and enforce those amendments, in addition to conscience protections embedded in Medicare, Medicaid, the Affordable Care Act, global health programs, health screenings, and more. OCR further proposes to retain and modify provisions from the 2019 Final Rule related to complaint handling, investigations, and the voluntary notice provisions. All other provisions from the 2019 Final Rule would be rescinded.

The AAFP firmly [supports](#) the rights of health care professionals to decline to prescribe treatment or perform a procedure that violates their personal code of ethics. Our policy further stipulates that in these circumstances, the physician may withdraw from the case so long as adequate notice is given to enable the patient to engage the services of another physician. The AAFP is also committed to ensuring all patients have access to health care, regardless of actual or perceived race, color, religion, gender, sexual orientation, gender identity, ethnic affiliation, health, age, disability, economic status, body habitus or national origin. The AAFP makes a [clear distinction](#) between declining to participate in a procedure based on moral grounds versus denying access to care to an individual

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patient. Declining to participate in a procedure based on moral grounds is a protected right; declining to care for specific groups of people or individuals without adequate notice or an appropriate referral is an unacceptable shirking of health care professionals' responsibility to care for patients and is contrary to the key underpinnings of the [Code of Medical Ethics](#).

The AAFP agrees that this proposed rule appropriately strikes a balance between upholding the rights of clinicians to not participate in procedures or forms of care that violate their personal morals in non-emergency situations and ensuring appropriate access to care for all patients, especially historically marginalized populations. We also agree that maintaining OCR as the primary office to investigate and enforce conscience protections across statutes will promote consistent enforcement and streamline the complaint process when a patient's or clinician's rights are violated.

The AAFP appreciates the opportunity to provide these comments and looks forward to working with HHS to ensure uphold the rights of physicians and their patients. For additional questions or comments, please contact Morgan Bailie, Senior Regulatory Specialist, at [mbailie@aafp.org](mailto:mbailie@aafp.org).

Sincerely,

A handwritten signature in black ink that reads "STERLING N. RANSONE, JR. MD FFAFP". The signature is written in a cursive, flowing style.

Sterling Ransone, Jr., MD, FFAFP  
American Academy of Family Physicians, Board Chair