

January 13, 2022

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Becerra:

We write to respectfully request the swift removal of the 2019 “Conscience Rule” which allows health care providers and other entities covered under the 2019 rule to impede and deny patients access to care. To accomplish this goal, we urge the U.S. Department of Health and Human Services (HHS) to immediately engage in notice and comment rulemaking to rescind the 2019 “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority” rule (the 2019 Conscience Rule), leaving HHS rule, “Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws” finalized in 2011 (the 2011 Conscience Rule) in effect.¹ The federal district courts for the Southern District of New York, Eastern District of Washington, and the Northern District of California vacated the Conscience Rule in November 2019. The undersigned organizations represent communities across the country whose access to care would have been unduly restricted by the Conscience Rule and who have an interest in ensuring patients have access to medical care regardless of their providers’ religious affiliation.

During the 2018 public comment period for the 2019 Conscience Rule, the undersigned were among many organizations that raised concerns that the proposed rule would create significant barriers for patients seeking to access a host of medical options.² After the rule was promulgated, plaintiffs ranging from state and local governments to health care providers challenged it in multiple federal courts, alleging procedural and constitutional violations. The federal district courts for the Southern District of New York and Eastern District of Washington vacated the rule on the grounds that HHS had violated the Administrative Procedure Act and contravened Title VII of the Civil Rights Act, the Emergency Medical Treatment and Labor Act, and the Spending Clause of the U.S. Constitution. Subsequently, the federal district court for the Northern District of California also vacated the 2019 Conscience Rule, agreeing that HHS exceeded its rulemaking and enforcement authority.³

We believe that swift rescission of the 2019 Conscience Rule, leaving the 2011 Conscience Rule in effect, is necessary to ensure that patients will not be denied access to medical care, including the ability

¹ Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 76 Fed. Reg. 9,968 (February 23, 2011). Available at: <https://www.federalregister.gov/documents/2011/02/23/2011-3993/regulation-for-the-enforcement-of-federal-health-care-provider-conscience-protection-laws>

² Protecting Statutory Conscience Rights In Health Care, 84 Fed. Reg. 23,170 (May 21, 2019) (codified at 45 C.F.R. pt. 88). Available at: <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>

³ San Francisco v. Azar, No. 19-02405 WHA (N.D. Cal. Nov. 19, 2019). Available at: <https://casetext.com/case/city-county-of-sf-v-azar>

to terminate a pregnancy, access information about their medical options, or make decisions about their care at the end of life.

Thank you for your attention to this request. If you have any questions or are interested in meeting with representatives of the undersigned organizations, please contact Charmaine Manansala, Chief Advocacy Officer with Compassion & Choices at 818-669-8344 or via email at cmanansala@compassionandchoices.org.

Sincerely,

Compassion & Choices

American Atheists

Asian & Pacific Islander American Health Forum

Atheists United

Auburn

Autistic Self Advocacy Network

Catholics for Choice

Center for Law and Social Policy (CLASP)

Center for LGBTQ Economic Advancement & Research (CLEAR)

Center for Reproductive Rights

Commission on the Public's Health System

Community Catalyst

Equality California

Equality Federation

Families USA

Family Equality

FORGE, Inc.

Freedom From Religion Foundation

GLMA: Health Professionals Advancing LGBTQ Equality

Grand Rapids Pride Center

Human Rights Campaign
Impetus - Let's Get Started LLC
Interfaith Voices for Reproductive Justice
Japanese American Citizens League
Justice in Aging
Latinos for Healthcare Equity
Legal Voice
MANA, A National Latina Organization
MANA Action Fund
Medical Students for Choice
Mi Familia Vota
National Academy of Elder Law Attorneys
National Asian American Pacific Islander Mental Health Association
National Association of Social Workers
National Center for Transgender Equality
National Consumers League
National Health Law Program
National Hispanic Medical Association
National Organization for Women
National Women's Law Center
PFLAG National
Physicians for Reproductive Health
Planned Parenthood Federation of America
Secular Coalition for America
SisterReach
Silver State Equality-Nevada

Tara Health Foundation

The Praxis Project

United States Hispanic Leadership Institute

Wisconsin Alliance for Women's Health