



8 Tishrei 5783
October 3, 2022

Department of Health & Human Services Office for Civil Rights
Attention: 1557 NPRM (RIN 0945-AA17)
Hubert H. Humphrey Building Room 509F
200 Independence Avenue, SW
Washington, DC 20201

Subj: Nondiscrimination in Health Program and Activities
RIN 0945-AA17

Dear Sir or Madam,

This comment is submitted by the Coalition for Jewish Values (CJV) and the CJV Healthcare Council. The Coalition for Jewish Values represents over 2,000 traditional, Orthodox rabbis in matters of American public policy; its Healthcare Council represents observant Jewish medical practitioners and others in the healthcare industry. CJV and the CJV Healthcare Council strongly oppose the new rules found in the Notice of Proposed Rulemaking (NPRM) titled *Nondiscrimination in Health Programs and Activities*, and we urge the Department of Health and Human Services (HHS) to abandon this effort.

The proposed changes raise a host of grave ethical and practical concerns with serious immediate and long-term ramifications for every American. These new regulations threaten the sex-based rights of women, the rights of parents to safeguard their children's best interests, the safety and long term well-being of America's children, and the religious liberty of medical practitioners to provide the care they believe to be in the best interests of their patients.

I. Nonsectarian Concerns

A comprehensive review of those harms is beyond the scope of this (or, we imagine, any one) comment. Nevertheless, CJV shares the concerns of those who have voiced them.

Faith-based and medical organizations have highlighted the problematic and even coercive impacts upon healthcare providers and others. We concur with the American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), which states that the NPRM "attempts to insert federal agencies into sensitive physician-patient relationships... [and] override the professional medical judgement of a physician in the physician-patient relationship."

See also the joint comment of the United States Conference of Catholic Bishops, Catholic Medical Association, The National Catholic Bioethics Center, National Association of Catholic Nurses U.S.A., Council for Christian Colleges & Universities, and The Catholic University of America. As they state, “the proposed regulations go beyond access to care by suggesting that health care providers must provide, and that health plans must cover, procedures that are not medically indicated, may harm rather than heal, and may violate the religious and moral convictions of an insurer, plan sponsor, provider, or other stakeholder.”

Women’s organizations as politically diverse as Concerned Women for America and the Women’s Liberation Front (WoLF) have detailed the dangers to women and girls found in the NPRM. Other legal defense and public policy organizations have also cited the hostility to traditional values and those who uphold them ensconced in the 97 pages of proposed changes.

We must emphasize that all of the foregoing objections are not sectarian. The Founding Fathers recognized common values among diverse groups, and acted to protect both speech and religious faith for all in the Bill of Rights. As rabbis and as healers, we share the same concerns regarding this NPRM as the aforementioned organizations, despite the philosophical and religious differences we may have with the diverse and disparate ideologies that many of these groups represent.

For ourselves, we can best address the threats the proposed changes pose to the First Amendment freedoms of conscience, speech, and religious practice, and how they affect the Jewish community and Jewish healthcare professionals. Here, we outline several specific issues.

II. Expectations for Non-Profit Organizations

Under the NPRM, any organization receiving federal financial assistance (FFA) could be bound by these regulations, even those not in the healthcare industry. In other legal decisions related to Title IX of the Education Amendments of 1972, courts have ruled that tax-exempt organizations are effectively receiving a form of FFA.

We thus must ask directly: under these regulations, is it the intent of the Federal Government to bind every tax-exempt organization to comply, such that a tax-exempt organization could be found to have engaged in discrimination if it opposes elective abortions, same-sex marriage, or harming of healthy individuals in the name of “gender affirmation?” Would these rules extend to houses of worship? Under the NPRM, will the twice-annual reading of Leviticus 18:22 (once as part of weekly readings, the other on the afternoon of Yom Kippur) be prohibited as “discriminatory” at every synagogue in the United States?

III. Destruction of Healthy Organs, with No Limit to Covered Procedures

The proposed rules expand sex-based discrimination to include “gender identity.” Yet nowhere do they define that term. No limits are placed upon the procedures that might be considered

“gender-affirming care.” As the comment from WoLF states, “‘Gender-affirming’ services include the provision of drugs and hormones for cosmetic purposes, as well as procedures like the surgical removal or mutilation of healthy tissues, organs, and other body parts.” This is true although none of these procedures are medically necessary or even indicated, except as an unproven method of resolving gender dysphoria. All of these are to be done for no reason other than to make a person more closely resemble a member of the opposite sex.

This includes an ever-increasing array of body modifications, all of which would be included under healthcare and which Americans would be required to financially and ideologically support. These currently include (at least) modifications to facial bone structure, eyelids, nose, chin, neck and more, surgical modification of the chest area, and fat transfer to modify the waist-to-hip ratio.

IV. Apparent Discrimination against Non-Transgender and Detransitioning Patients

The foregoing would be covered for “transgender” men and women who desire plastic surgery in order to pursue what they consider a more perfect, “gender-affirming” body—even if that means a potentially endless series of procedures. None of these procedures, or anything like them, are covered for a “cisgender” individual trying to do the same thing. In what way are the proposed regulations not transparently discriminatory against “cisgender” men and women who seek precisely the same end result as their transgender peers, yet who are not and will not be entitled to medical coverage for identical or similar procedures?

This gives rise to other issues. It is obvious that medical coverage will be provided for both inevitable consequences and unintended side effects of the foregoing procedures. Would coverage be provided for those who regret the “gender-affirming” interventions they have undergone, and now wish to “detransition?” No medicine can replace healthy tissue that has been surgically removed or undo the effects of cross-sex hormones on the developing mind and body, damage that may mean lifelong care even for those who no longer identify as the opposite sex. And if further surgery will be covered to detransition, will that person now be eligible for precisely the same covered procedures that were not covered before they transitioned in the first place?

V. Requirements upon Providers for Destructive Procedures

The confusion deepens when we look at providers. By requiring healthcare professionals to participate in “gender-affirming” procedures to which they object, the NPRM would compel healers to compromise their deeply held principles. Instead of providing patients with the best possible care, they will be ordered to lend their hard-won expertise to interventions they consider medically unnecessary, dangerous, and destructive.

Furthermore, the requirements appear to demand that medical practitioners provide “gender-affirming” care even to minors. While p. 45 of the NPRM states that “the provisions here do not compel a particular treatment for any given condition,” it immediately goes on to say that

“this section prohibits health care providers from discriminating against individuals on the basis of sex, including gender identity,” and later that “when providing gender-affirming medical care for minors, informed consent involves discussions among providers, minors, and parents or guardians.”

The NPRM claims to exempt a physician who makes a “nondiscriminatory bona fide treatment decision,” but the belief that such treatment is never appropriate would be deemed discriminatory *prima facie*. It emerges from the foregoing that an endocrinologist or pharmacist who rejects the unanimous opinion of parents, pediatrician and patient, and refuses to prescribe puberty blocking hormones, could credibly be accused of discrimination against the gender identity of the child patient.

VI. Same Procedures Deemed Actionable Violent Crimes in Other Contexts

But it is also not difficult to imagine a scenario in which the provider agrees to prescribe the hormones to that child, and the patient returns ten years later as an adult, claiming that he or she was unable to give informed consent as a prepubescent minor for drugs certain to cause the irreversible denial of the ability to have an orgasm, much less to be a child’s biological parent. So the NPRM places medical professionals in an impossible catch-22. If they refuse to prescribe hormones or permanently remove healthy organs from a minor, they can be accused of discrimination. But if they do, the child can return later as an adult and accuse them of abuse of a minor.

Furthermore, the castration, neutering, or genital mutilation of a healthy child is otherwise understood to be a serious, violent crime with criminal and civil penalties. It is also commonly understood that a child of that age has indeed not reached the age of consent in order, for example, to engage in consensual relations with an adult. Such a child is also deemed incapable of mature decision-making in many other areas: they are not allowed to drive, obtain cigarettes or alcohol, carry a firearm, or vote until they reach ages several years beyond the onset of puberty. Many of these are arguably far less consequential than permanent, irreversible alteration of hormone balance, much less destruction of healthy body organs and tissue.

VII. Limitation of Provider Liability for Treatment of Minors

Yet the NPRM makes no mention of liability or malpractice in this context. If a former patient later wishes to hold a healthcare provider liable for the permanent, destructive physical and mental consequences of providing those hormones to a prepubescent child incapable of informed consent, what protections will be provided under the NPRM in this situation?

And in reality, if your answer is that a provider should indeed be protected in such cases, what is the basis for this decision? Why should a practitioner be able to use “gender affirmation” to escape a criminal conviction for malpractice and indeed child abuse, when permanent procedures are performed upon minors lacking the maturity or experience to grant informed consent, as recognized in a host of other areas?

VIII. Forcing Religious Persons from Healthcare Field

Finally, we call your attention to the entirely predictable and already obvious chilling effect of current and proposed regulations upon observant Jewish and other individuals who wish to spend their careers healing the sick, a practice explicitly blessed by the Bible. We have heard from numerous pre-medical and medical students inquiring which specialties are both currently and likely to remain “safe” for them to enter, especially considering the threats even to expert specialists with decades of experience. Others have openly shared that they have given up on medicine as a career choice, certain that government decrees will force them to one day abandon their practice by demanding they violate Torah law or the dictates of their conscience by damaging minds and bodies.

It is already true that a psychiatrist can lose his or her license to practice in many states, if he or she determines that the healthiest course for a particular adult patient is to help the patient to redirect his or her sexual energies, rather than engage in conduct contrary to that person’s deeply held religious values. This is true despite the obvious denigration of religious precepts inherent in such rules.

Under the NPRM, pediatrics, obstetrics, gynecology, andrology, urology, endocrinology, plastic surgery, and a host of other fields will require practitioners to violate their most deeply held beliefs.

Have you conducted a study to determine how many will be forced to abandon their careers in healthcare due to these regulations? Or do you assume that Jewish medical professionals will abandon 3,300 years of conviction? For millennia, Jews have sacrificed their lives, much less their livelihoods, rather than succumb to governments attempting to tell them what is right and what is wrong.

Do you believe others—of all faiths and none—will fold so easily? Have you surveyed medical, osteopathy, physician assistant, and nursing schools to determine how many prospective practitioners are at least considering withdrawing from each medical specialty if the regulations are passed? Have you analyzed the resulting impact upon the medical care of hundreds of millions of Americans?

IX. A Tragic and Unconstitutional Divergence from American Tolerance

The NPRM threatens to accuse medical practitioners of “discrimination” simply for exercising their Jewish faith. We are rabbis and doctors, not lawyers, yet we believe this to be grossly at odds with the First Amendment.

It is with great sadness that we must now contemplate an America where the only people able to work in healthcare are those who surrender all personal moral judgment to the will of the state, those who believe government determines what is moral and good, and those willing to

obey orders no matter how irrational or immoral. As Jews, we find this frankly terrifying, given our experience with just this sort of regime and its “healthcare” system less than a century ago.

We strongly oppose the proposed rulemaking, because we do not see a way that the foregoing concerns, including those detailed by others, can be fully addressed without abandoning the NPRM in favor of a new and more equitable rule that protects the rights of medical practitioners, women, children, and all guided by religious faith.

Yours sincerely,

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Coalition for Jewish Values

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