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Center for Faith-Based and Neighborhood Partnerships  
Office of Intergovernmental and External Affairs  
Department of Health and Human Services  
200 Independence Ave. S.W.  
Washington, D.C. 20201

**Re: Request for information on Removing Barriers for Religious and Faith-Based Organizations to Participate in HHS Programs and Receive Public Funding**

To Whom It May Concern:

The National Health Law Program (NHeLP) appreciates the opportunity to comment on the Department of Health and Human Services' (HHS') Request for information (RFI) on Removing Barriers for Religious and Faith-Based Organizations to Participate in HHS Programs and Receive Public Funding. NHeLP advocates, litigates, and educates at the federal and state levels to protect and advance the health rights of low-income and underserved individuals. Our comments present general concerns, and then respond to the four specific objectives outlined in the RFI.

**General Concerns**

Faith-based organizations and other community-based and institutional partners collectively play a vital role in helping to advance the Department's mission of protecting and advancing the health and well-being of Americans. They provide critical health and social services for vulnerable populations including women, people of color, immigrants and refugees, and low-income individuals. HHS program and initiatives were established to serve and protect all individuals across the lifespan. As such, HHS programs and policies must be responsive to individual patient and consumer needs and preferences.

In order for HHS to deliver effective programs and services, it must support individual decision making and informed consent.

These fundamental principles cannot exist unless recipients of federally conducted programs and services receive medically accurate, evidence-based, unbiased comprehensive health care and social services. Many faith-based organizations adhere to these principles, however, some faith-based organizations impose one perspective of religious beliefs on patients and consumers. For example, some faith-based organizations adhere to concepts such as “the unborn” and life “from conception” in its programs and services, and therefore refuse family planning services and abortion care. These concepts run contrary to medical and health-related evidence and standards of care, and instead reflect one particular religious point of view that has no role in advancing and protecting the public health of a diverse population.

Existing federal laws and policies already provide sufficient protections and exemptions for entities and individuals who object to providing certain services based on their religious beliefs. Thus, we are concerned the RFI will lead HHS to create additional exemptions that are unnecessary and may potentially discriminate against certain program participants. Denying individuals the services they need undermines the very purpose of the taxpayer-funded service or program, and will exacerbate the very health disparities HHS should be focused on alleviating.

We address the specific issues raised in the RFI below.

### **1. Removing obstacles to participation**

We do not believe faith-based organizations face obstacles in the delivery of publicly funded or contracted services and activities. All HHS funded or contracted organizations, including those that are faith-based, must comply with the same requirements to provide unbiased, non-discriminatory, evidence-based information in the delivery of programs and services. These fundamental consumer and patient protections are not “obstacles” to be removed. Deviation from these standards should not be allowed.

Federal law already provides sufficient protections and religious exemptions, such as the Church Amendments, for health and social service entities and individuals who object to providing certain services based on their religious beliefs.<sup>1</sup> The RFI provides no evidence that further protections are needed. To the contrary, the Department cites numerous examples in the RFI where faith-based organizations received federal funding to provide a range of HHS-supported services, including homeless beds, hospital care and assistance in natural disasters and emergencies.

We oppose the addition of new HHS regulations, guidance and other documents that would further shield objecting faith-based organizations from delivering evidence-based quality medical and health-related services for all individuals. Such changes would be unnecessary, restrictive, and harmful to women and LGBTQ individuals.

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<sup>1</sup> 42 U.S.C. § 300a-7.

## **2. Ensuring faith-based organizations are not excluded from eligibility for HHS funding**

We do not believe that faith-based organizations are excluded from eligibility for HHS funding. Rather, faith-based organizations already benefit from unique partnership opportunities with the federal government. As mentioned in the RFI, Presidents George W. Bush and Barack Obama issued executive orders that direct federal agencies to ensure “equal protection under the laws for faith-based and community organizations” and to “strengthen the capacity of faith-based organizations to deliver services effectively to those in need.”<sup>2</sup> These and other executive orders and regulations already promote federal partnerships with faith-based organizations, and “ensure[] faith-based community groups and organizations are as equally eligible as secular groups to compete for federal funding to provide social services to the public.”<sup>3</sup>

The executive orders provide a level playing field for faith-based organizations to compete with secular organizations for federal grants and contracts. Thus, we urge HHS to remain religiously and morally neutral in awarding grants and contracts. Moreover, HHS must ensure that any HHS-funded or contracted organization provide programs or services that comport with unbiased, evidence-based standards of care. Individuals should not feel proselytized by providers or receive access to a limited scope of services due to the moral or religious nature of an organization.

## **3. Ensuring accommodation, equal treatment, and respect for religious and moral beliefs**

Existing federal laws and policies already provide ample protections and exemptions for entities and individuals who object to providing certain services based on their religious beliefs. We do not believe faith-based organizations need additional accommodation for administering HHS-funded programs and activities, and the RFI provides no evidence that further protections are needed. Rather, in light of the October 6, 2017 interim final rules on Moral and Religious Exemptions and Accommodations for Coverage of Certain Preventive Services under the Affordable Care Act (collectively, “IFRs”), we believe the exemptions and option for accommodation provided to faith-based entities to refuse to cover contraceptives allows them to jeopardize the health of women.

As such, we are very concerned that the outcome of this RFI will lead HHS to create new rules that allow faith-based organizations to use tax-payer dollars to further deny care and discriminate against women, LGBTQ individuals, and other people in need of reproductive and sexual health services. Denials of care undermine the Affordable Care Act’s intention to ensure all women receive comprehensive contraceptive coverage of the full range of FDA-approved drugs and devices, with the individual deciding the appropriate choice of method. They also interfere with the patient-provider relationship by limiting the information, counseling, referral, and provision of contraceptive and abortion services that woman can receive, despite the fact that these are part of the

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<sup>2</sup> Executive Order 13279, 67 Fed. Reg. 77,141. Executive Order 13559, 75 Fed. Reg. 71,317.

<sup>3</sup> Executive Order 13199, 66 Fed. Reg. 8,499.

standard of care for a range of common medical conditions including heart disease, diabetes, epilepsy, lupus, obesity, and cancer. Denials of care also exacerbate health disparities and put individuals in life-threatening circumstances.

We are opposed to any expansion of the existing accommodation. If HHS considers a new accommodation, eligibility should be limited and narrowly defined. Further, HHS must ensure the accommodation does not result in third party harm. The First Amendment forbids the government from creating religious accommodations to generally applicable laws when the accommodation would have a detrimental effect on third parties.<sup>4</sup> In *Hobby Lobby* the Supreme Court made clear this same principle applies when developing an accommodation pursuant to the Religious Freedom Restoration Act (RFRA), finding that the impact on third parties must be “precisely zero.”<sup>5</sup>

We are also concerned that the RFI does not solicit comments on how HHS can ensure efforts to accommodate faith-based organizations will not violate federal civil rights laws. These include Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act, which are relevant to providing healthcare options that meet the needs of all consumers. These laws must be fully implemented and enforced by HHS to ensure that all Department programs and activities, and those it supports with federal funds, are responsive to consumer demands.

#### **4. Role of faith-based organizations in implementing HHS’ goals and objectives**

Faith-based organizations have a long and important history of partnering with HHS to deliver vital health and social service programs. Yet some faith-based organizations also have a history of using HHS funds to discriminate and withhold needed services.<sup>6</sup> LGBTQ individuals have been denied care or been subject to disparaging provider behavior because of their sexual orientation or gender identity, and women have been refused services at religiously affiliated hospitals when seeking contraceptive services, sterilization, or abortion care.<sup>7</sup>

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<sup>4</sup> *Cutter v. Wilkinson*, 544 U.S. 709, 720, 722 (2005); *See also Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2781 (2014); *Estate of Thornton v. Caldor*, 472 U.S. 703, 710 (1985) (“unyielding weighting” of religious exercise “over all other interests...contravenes a fundamental principle” by having “a primary effect that impermissibly advances a particular religious practice.”); *Texas Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n.8 (1989) (religious accommodations may not impose “substantial burdens on nonbeneficiaries”).

<sup>5</sup> *Hobby Lobby*, 134 S. Ct. at 2760; *see also id.* at 2781–82.

<sup>6</sup> *See* Samantha Lachman, HuffPost, “Lawsuits Target Catholic Hospitals for Refusing to Provide Emergency Miscarriage Management (June 10, 2016), [https://www.huffingtonpost.com/entry/catholic-hospitals-miscarriage-management\\_us\\_5759bf67e4b0e39a28aceea6](https://www.huffingtonpost.com/entry/catholic-hospitals-miscarriage-management_us_5759bf67e4b0e39a28aceea6). *See also* Sacramento Bee, Transgender patient sues Dignity Health for discrimination over hysterectomy denial, <http://www.sacbee.com/news/local/health-and-medicine/article145477264.html>.

<sup>7</sup> Lambda Legal, *When Health Care Isn’t Caring, Lambda Legal’s Survey on Discrimination Against LGBT People and People Living with HIV*, 5 (2010),

Religious exemptions often fall hardest on those most in need of care—including women, LGBTQ individuals, and people of color—due to health and health care disparities. Exemptions undermine the ability for individuals from these groups to access comprehensive and unbiased health care, including sexual and reproductive health information and services. Any efforts by faith-based organizations or providers to limit the information and access that patients are entitled to receive, even when the organization may not provide those services itself, is incompatible with true consumer choice and individual decision making.

Thus, we strongly urge HHS to reinforce existing policies and practices that prioritize the needs of the individuals and communities receiving HHS programs and services, including reproductive health care. The proper role of faith-based organizations that administer health care services, social services, research, or other HHS activities is to engage in medically accurate, evidence-based, non-discriminatory, and unbiased activities. Any new or continued government collaboration with faith-based organizations should not include the sanctioning of discriminatory practices that deny services to certain populations. This means that reproductive health care services, including hormonal contraception, sterilization, and pregnancy termination must be available to all who desire those services in accordance with their own individual beliefs.

In conclusion, we thank HHS for the opportunity to comment on the RFI. If you have any questions or would like additional information, please contact Susan Berke Fogel at [fogel@healthlaw.org](mailto:fogel@healthlaw.org).

Sincerely,



Elizabeth G. Taylor  
Executive Director

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[http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report\\_when-health-care-isnt-caring\\_1.pdf](http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring_1.pdf). See also Nat'l Women's Law Ctr., *Fact Sheet: Health Care Refusals Harm Patients: The Threat to Reproductive Health Care* (May 2014), <https://nwc.org/resources/health-care-refusals-harm-patients-threat-reproductive-health-care/>.