



HHS's 2024 Final Rule on Health Care Refusals: What Health Advocates Need to Know

[Madeline T. Morcelle](#) & [Charly Gilfoil](#)

On January 11, 2024, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued a final rule, "Safeguarding the Rights of Conscience as Protected by Federal Statutes" ("2024 Final Rule"), which partially rescinds the Trump Administration's unlawful, unethical, and discriminatory 2019 health care refusal regulations ("2019 Final Rule").¹ Federal health care refusal laws, such as the Weldon Amendment and the Church Amendments, govern when and how covered health care entities, providers, and professionals can refuse to deliver or provide information to patients on medically necessary health care that they find objectionable on the basis of their religious or personal beliefs.² These refusals often harm access to essential services including abortion (including emergency abortions); treatment for people living with HIV, substance use disorder, and other disabilities; gender-affirming care; and contraception.³ The 2019 Final Rule sought to dramatically expand how OCR interpreted and enforced federal health care refusal laws and was ripe for abuse, allowing health care providers to disregard evidence-based standards of care in violation of federal law and principles of medical ethics and informed consent.⁴

A key effort in the Trump Administration's pernicious campaign to roll back civil rights protections for underserved communities, the 2019 Final Rule had the potential to embolden discriminatory refusals of care for people who need access to sexual, reproductive, or gender-affirming care, people with disabilities, and people who live in rural communities. If implemented, the rule would have drastically undermined the quality of the U.S. health care system, jeopardized the health and lives of underserved populations, and worsened health inequities. Fortunately, three federal courts held that the rule was unlawful, so the rule never took effect.⁵ As a result, OCR has operated under the framework established in the prior 2011 Final Rule—until now.⁶

The Biden-Harris Administration's 2024 Final Rule advances access to care for all by ending the most harmful policies from the 2019 Final Rule. It clarifies how OCR will interpret and enforce federal health care refusal laws going forward. It also emphasizes that covered health care

entities and professionals must continue to comply with the Emergency Medical Treatment and Active Labor Act (EMTALA) and other key federal legal protections. In this issue brief, the National Health Law Program (NHLP) highlights what health advocates need to know.

The 2024 Final Rule Clarifies Important Guardrails on and Eliminates Overbroad Protections for Discriminatory Refusals of Care

The 2024 Final Rule restores and significantly expands upon the 2011 Final Rule's section on "Complaint Handling and Investigating."⁷ In doing so, the rule rescinds the "Definitions" section that the 2019 Final Rule previously replaced the "Complaint Handling and Investigating" section with.⁸ The 2019 Final Rule's definitions section reflected a dangerous expansion in how the agency interpreted health care refusal statutes. If implemented, many of the definitions would have enabled covered health care entities and professionals to deny patients health care services and critical information (*e.g.*, accurate information about patients' health conditions and all of the treatments available to them) that they find objectionable based on their religious or personal beliefs beyond the parameters allowed under federal health care refusal statutes. These definitions would likely have fueled discriminatory health care refusals for underserved communities.⁹

Take the 2019 Final Rule's definition of "assist in the performance," which would have allowed health care providers and professionals to refuse to counsel, refer, train, or otherwise make arrangements for a service or part of a health service program or research activity that they find objectionable beyond what all federal health care refusal laws require.¹⁰ This overbroad exemption would have protected health care providers who object to providing information about critical services and treatment options, even when core principles of medical ethics and informed consent require them to do so. These principles often require that providers counsel patients on evidence-based sexual and reproductive health, gender-affirming care, and/or disability services, regardless of whether they find these services objectionable based on their personal beliefs. For example, providing and offering information and counseling on or referral to contraceptives and abortions are part of the evidence-based standards of care for a range of medical conditions, such as cancer, endometriosis, and postural orthostatic tachycardia syndrome (POTS).¹¹ Every major medical association has long recognized gender-affirming care as a safe and effective, evidence-based standard of care.¹² And medications such as buprenorphine and methadone are the evidence-based and often lifesaving treatment standard for opioid use disorder.¹³ Resulting denials of services and information about contraceptives, abortion, gender-affirming care services and SUD treatments could have risked patients' health and lives. The definition may also have enabled non-provider health care

professionals to refuse to assist in the performance of access to care that they find objectionable, such as receptionists who do not want to schedule appointments for services that they object to.

The 2019 Final Rule's definition of "referral or refer" explicitly would have enabled providers to refrain from referring patients to health care entities or providers who do not object to providing the care they need, even in an emergency.¹⁴ The 2024 Final Rule also eliminates the 2019 definition of "discriminate or discrimination."¹⁵ If implemented, the definition would have prevented prospective health care employers from asking job applicants about which services they might refuse to provide, even when provision of those services is a primary job function or necessary during a medical emergency. For example, the regulations would have prohibited an abortion clinic from withholding or terminating employment from a health care provider who objects to providing abortions, even if that was an essential job function. This approach abandoned Title VII of the Civil Rights Act of 1964's longstanding reasonable accommodation/undue hardship balancing framework.¹⁶ By eliminating this definition, the 2024 Final Rule restores guardrails that require balancing the interests of the refusing party and the party that needs access to health care. At a moment when access to critical health services such as abortion and gender-affirming care is waning, we are encouraged to see OCR rescind this definition.

Along with these rescissions, the 2024 Final Rule clarifies that covered entities and professionals must comply with EMTALA, which protects people with emergency medical conditions who need stabilizing treatment, such as emergency abortions during ectopic pregnancy, severe preeclampsia, or miscarriage complications. To this point, the Centers for Medicare & Medicaid Services (CMS) previously issued guidance to state agencies regarding hospital staff and physicians' obligations under EMTALA in light of new state laws prohibiting or restricting access to abortion.¹⁷ That guidance affirmed that when abortion is the stabilizing treatment necessary to resolve an emergency medical condition as defined by EMTALA, they "must provide that treatment."¹⁸

The 2024 Final Rule Maintains the 2019 Final Rule's Concerning Expansion of OCR's Enforcement Authority

The 2019 Final Rule vastly expanded the number of federal health care refusal laws that OCR enforces from three to twenty-five.¹⁹ Previously, covered health care entities and professionals had to enforce their rights under twenty-two of these statutes via the courts. Despite many health advocacy organizations' calls for OCR to roll back this concerning expansion, the Biden-Harris Administration maintained it in the 2024 Rule.²⁰ As we raised in our comments, this

decision may embolden covered entities and professionals to file an unprecedented number of complaints regarding their rights to refuse care.²¹ Under the final regulations, OCR will need to review those complaints, which could take a big bite out of its already limited resources to enforce nondiscrimination protections for people facing barriers to care. OCR's decision to maintain the 2019 Final Rule's expansion of its federal health care refusal law enforcement authority only highlights the urgent need for Congress to substantially increase appropriations to the agency to ensure adequate and timely resolution of its enforcement, resolution, and outreach responsibilities, particularly for Section 1557 of the Patient Protection and Affordable Care Act (ACA), Section 504 of the Rehabilitation Act, and other protections against discriminatory barriers to care.²² NHeLP will continue to advocate for sufficient appropriations for nondiscrimination enforcement.

The 2024 Final Rule Requires OCR to Conduct a Fact-Based Inquiry of Each Complaint Alleging a Violation of Health Care Refusal Laws

The 2024 Final Rule maintains the general framework that OCR has used since 2011 to examine potential violations of federal refusal of care laws.²³ Under this framework, OCR will apply the relevant refusal statute(s) to the facts of each case and determine an appropriate remedy under the same refusal statute(s).²⁴ This case-by-case approach recognizes that the twenty-five health care refusal laws that OCR will enforce under the 2024 Final Rule vary significantly in terms of the programs, entities, and types of providers they regulate. For example, the Medicare provisions cited in the 2024 Final Rule govern private Medicare insurers, and the ACA provisions govern ACA Marketplace insurers.²⁵ Moreover, factors such as the nature of the religious or personal belief underpinning the refusal and the burden and harm to a patient vary vastly case-to-case.

The 2024 Final Rule does not attempt to couch all health care refusals in the same terms as the prior rule or reinterpret existing law. Rather, it strictly governs OCR's internal processes in evaluating enforcement actions under the applicable statutes. The language of the 2024 Final Rule addresses OCR's authority to:

- (1) Receive and handle complaints;
- (2) Initiate compliance reviews;
- (3) Conduct investigations;
- (4) Consult on compliance within [HHS];
- (5) Seek voluntary resolutions of complaints;
- (6) Consult and coordinate with the relevant [HHS] component, and utilize existing enforcement regulations, such as those that apply to grants, contracts, or other programs and services;

- (7) In coordination with the relevant component or components of [HHS], coordinate other appropriate remedial action as the HHS deems necessary and as allowed by law and applicable regulation; and
- (8) In coordination with the relevant component or components of [HHS], make enforcement referrals to the Department of Justice.²⁶

The 2024 Final Rule does not prescribe a uniform process for receiving and handling complaints, monitoring compliance, and conducting investigations, but requires OCR to use the relevant refusal statute to evaluate its actions in each case. This approach could help more fairly balance enforcement of these statutes with the rights of patients to receive timely, quality, and evidence-based care and information.

The 2024 Final Rule Continues to Encourage—But Does Not Require—that Health Care Entities Notify Patients and Providers of Refusal Rights

As in 2019, the 2024 Final Rule includes a model notice that a covered provider or entity can post to advise providers, patients, or other potentially affected parties of their rights under refusal statutes.²⁷ Displaying a notice remains voluntary for covered entities and offers a means for them to demonstrate compliance with federal health care refusal laws.

Importantly, OCR updated the model notice text from the 2019 Final Rule. Whereas the 2019 Final Rule's model notice emphasized all possible ways that a covered health care professional or entity could permissively refuse to provide services, the 2024 Final Rule's model notice instead informs the reader, whether provider or patient, of the applicable statutes and of the method of making a complaint to OCR.²⁸ As with the model notice in the 2019 Final Rule, the 2024 Final Rule indicates that an entity can modify the suggested language in the notice text as appropriate and still retain the beneficial inference of compliance in an enforcement action.

In NHeLP's comments on the Biden-Harris Administration's 2023 Proposed Rule, we asked OCR to go beyond offering language for a model notice and take affirmative steps to protect access to care. We believe OCR should **require** covered entities to inform consumers of what services they refuse to cover, deliver, provide information on, or otherwise facilitate access to as permitted by federal health care refusal statutes.²⁹ Individuals should know which services a health care professional or entity will refuse access to before signing up for a health insurance plan, engaging with a health care system or network, or scheduling a visit with a provider. NHeLP will continue to advocate for OCR to take further steps to increase awareness of refusals or complaints made pursuant to health care refusal statutes.

As provided in the model notice text, individuals who believe a health care entity or professional has violated any of the federal health care refusal statutes can file a complaint with HHS OCR:

- Electronically through the Office for Civil Rights Complaint Portal: <https://ocrportal.hhs.gov/>;
- By mail: U.S. Department of Health and Human Services, 200 Independence Avenue SW, Room 509F, HHH Building Washington, DC 20201; or
- By phone: 1–800–368–1019, 800–537–7697 (TDD).

For more information about federal health care refusal laws and regulations, visit: www.hhs.gov/conscience.

ENDNOTES

¹ Safeguarding the Rights of Conscience as Protected by Federal Statutes, 89 Fed. Reg. 2078 (Jan. 11, 2024) (to be codified at 45 C.F.R. pt. 88) (hereinafter *2024 Final Rule*), <https://www.federalregister.gov/documents/2023/01/05/2022-28505/safeguarding-the-rights-of-conscience-as-protected-by-federal-statutes>; Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170, 23264 (May 21, 2019) (codified at 45 C.F.R. pt. 88) (hereinafter *2019 Final Rule*), <https://www.federalregister.gov/documents/2019/05/21/2019-09667/protecting-statutory-conscience-rights-in-health-care-delegations-of-authority>.

² Note that covered entities vary widely across the twenty-five federal health care refusal statutes that OCR will enforce under the 2024 Final Rule. 42 U.S.C. § 300a-7 et seq.; see 2024 Final Rule, *supra* note 1, at 2078–2079 (discussing the Church Amendments, which consist of five provisions that provide, for example, that “[t]he receipt of any grant, contract, or loan guarantee under [certain statutes implemented by HHS] by any individual or entity does not authorize any court or any public official or other public authority to require” (1) the individual to perform or assist in a sterilization procedure or an abortion, if it would be contrary to their religious beliefs or moral convictions; (2) the entity to make its facilities available for sterilization procedures or abortions, if doing so is prohibited by the entity on the basis of religious beliefs or moral convictions; or (3) the entity to provide personnel for the performance or assistance in the performance of sterilization procedures or abortions, if doing so would be contrary to the religious beliefs or moral convictions of such personnel, among other provisions. Also discussing the Weldon Amendment, an annual appropriations rider that requires that “[n]one of the funds made available in this Act [making appropriations for the Departments of Labor, HHS, and Education] may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government, subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions”).

- ³ Amy Chen & Hayley Penan, Nat'l Health Law Prog., *Health Care Refusals & How They Undermine Standards of Care Part I: An Overview* (Jun. 13, 2022), <https://healthlaw.org/health-care-refusals-how-they-undermine-standards-of-care-part-i-an-overview/>; Amy Chen & Hayley Penan, Nat'l Health Law Prog., *Health Care Refusals & How They Undermine Standards of Care Part II: The Impact of Health Care Refusals, Discrimination, and Mistreatment on LGBTQ Patients and Families* (Jun. 13, 2022), <https://healthlaw.org/health-care-refusals-how-they-undermine-standards-of-care-part-ii-the-impact-of-health-care-refusals-discrimination-and-mistreatment-on-lgbtq-patients-and-families/>; Nat'l Women's Law Ctr., *Refusals to Provide Health Care Threaten the Health and Lives of Patients Nationwide* (May 15, 2023), <https://nwlc.org/resource/refusals-to-provide-health-care-threaten-the-health-and-lives-of-patients-nationwide-2/>.
- ⁴ See generally Madeline Morcelle, Charly Gilfoil, Cat Duffy, and Héctor Hernández-Delgado, Nat'l Health Law Prog., *Comments on HHS's Proposed Changes to Health Care Refusal Regulations* (Mar. 7, 2023), <https://healthlaw.org/resource/national-health-law-program-comments-on-hhss-proposed-changes-to-health-care-refusal-regulations/> (hereinafter *NHeLP Comments*).
- ⁵ See *Washington v. Azar*, 426 F. Supp. 3d 704 (E.D. Wash. 2019), *appeal pending*, No. 20–35044 (9th Cir.); *San Francisco v. Azar*, 411 F. Supp. 3 1001 (N.D. Cal. 2019), *appeal pending*, Nos. 20–15398 et al. (9th Cir.); *N.Y. v. H.H.S.*, 414 F. Supp. 3d. 475 (S.D.N.Y. 2019), *appeal dismissed without prejudice*, Nos. 19–4254 et al. (2d Cir.).
- ⁶ Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws, 76 Fed. Reg. 9968 (Mar. 25, 2011) (codified at 45 C.F.R. pt. 88) (hereinafter *2011 Final Rule*), <https://www.federalregister.gov/documents/2011/02/23/2011-3993/regulation-for-the-enforcement-of-federal-health-care-provider-conscience-protection-laws>.
- ⁷ 2011 Final Rule § 88.2.
- ⁸ 2019 Final Rule § 88.2.
- ⁹ NHeLP Comments, *supra* note 4, at 6–11.
- ¹⁰ 2019 Final Rule § 88.2.
- ¹¹ See, e.g., Charlotte Huff, *New Abortion Laws Jeopardize Cancer Treatment for Pregnant Patients*, KAISER HEALTH NEWS (Sep. 16, 2022, 5:00 AM EDT) (discussing situations in which a pregnant patient must have an abortion in able to access the best practice treatment for their breast or cervical cancer, such as radiation or chemotherapy), <https://www.cbsnews.com/news/abortion-laws-cancer-treatment-pregnant-patients/#:~:text=New%20abortion%20laws%20jeopardize%20cancer%20treatment%20for%20pregnant%20patients,-By%20Charlotte%20Huff&text=As%20abortion%20bans%20go%20into,treatment%20options%20they%20can%20offer>; Robert F. Casper, *Progestin-Only Pills May Be a Better First-line Treatment for Endometriosis than Combined Estrogen-Progestin Contraceptive Pills*, 107(3) FERTILITY & STERILITY 533 (Mar. 2017), <https://www.sciencedirect.com/science/article/pii/S0015028217300377> (discussing oral contraceptives as the first-line treatment for symptoms associated with endometriosis); Am. Coll. of Obstetricians & Gynecologists, *Gynecologic Considerations for Adolescents and Young Women with Cardiac Conditions* (No. 813), (Nov. 2020), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2020/11/gynecologic-considerations-for-adolescents-and>

[young-women-with-cardiac-conditions#:~:text=Contraceptive%20Considerations%20for%20Patients%20With,with%20postural%20orthostatic%20tachycardia%20syndrome](#) (discussing how hormonal contraceptives can relieve symptoms for some people with POTS).

¹² Transgender Legal Defense & Ed. Fund, *Medical Organization Statements*, <https://transhealthproject.org/resources/medical-organization-statements/> (last visited Jan. 16, 2023) (linking to statements in support of gender-affirming care from 30 major medical associations).

¹³ HHS, *Pub No. (Sma) 12-4214, Medication-Assisted Treatment for Opioid Addiction In Opioid Treatment Programs* (2012), available at <https://store.samhsa.gov/shin/content/SMA12-4214/SMA12-4214.pdf>; National Institute on Drug Abuse, *Effective Treatments For Opioid Addiction* (Nov. 2016), <https://nida.nih.gov/publications/effective-treatments-opioid-addiction>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 42 U.S.C. § 2000e 2 et seq.; U.S. Equal Employment Opp. Comm., *Section 12: Religious Discrimination* (Jan. 15, 2021), <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>.

¹⁷ 42 U.S.C. § 1395dd; HHS, *Reinforcement of EMTALA Obligations Specific to Patients who are Pregnant or are Experiencing Pregnancy Loss (QSO-21-22-Hospitals)*, (revised Aug. 2022), <https://www.cms.gov/files/document/qso-22-22-hospitals.pdf>.

¹⁸ *Id.* (but see Aug. 2022 update stating that pursuant to the preliminary injunction in *Texas v. Becerra*, No. 5:22-CV-185-H (N.D. Tex.), (“HHS may not enforce the following interpretations contained in the July 11, 2022, CMS guidance (and the corresponding letter sent the same day by HHS Secretary Becerra): (1) HHS may not enforce the Guidance and Letter’s interpretation that Texas abortion laws are preempted by EMTALA; and (2) HHS may not enforce the Guidance and Letter’s interpretation of EMTALA—both as to when an abortion is required and EMTALA’s effect on state laws governing abortion—within the State of Texas or against the members of the American Association of Pro Life Obstetricians and Gynecologists (AAPLOG) and the Christian Medical and Dental Association (CMDA).”).

¹⁹ 2019 Final Rule, *supra* note 1, at 23170.

²⁰ See NHeLP Comments, *supra* note 4, at 6–11.

²¹ *Id.*

²² See, e.g., The Leadership Conf. on Civ. & Human Rights, *Civil Rights FY 2024 Appropriations Priorities* (Sep. 21, 2023), <https://civilrights.org/resource/civil-rights-fy-2024-appropriations-priorities-2/> (discussing the need for substantially higher OCR funding levels to ensure adequate and timely completion of its enforcement responsibilities).

²³ See 2024 Final Rule, *supra* note 1, at 2084 (noting consistency with 2011 Final Rule’s approach); 2011 Final Rule, *supra* note 6, at 9968, 9973 (Feb. 31, 2011) (discussing case-by-case approach).

²⁴ 2024 Final Rule, *supra* note 1, at 2088, 2093.

²⁵ See 2024 Final Rule, *supra* note 1, at 2079. Medicaid and Medicare refusal statute requirements “provide[] that Medicaid managed care-managed organizations and Medicare Advantage plans are not required to provide, reimburse for, or cover a counseling or referral

service if the organization or plan objects to the service on moral or religious grounds,” but “[t]he organization or plan must, however, provide sufficient notice of its moral or religious objections to prospective enrollees.” Other statutes governing ACA-subsidized plans do not include this required notice provision. See 89 Fed. Reg. 2080 (describing ACA refusal and religious discrimination provisions).

²⁶ 2024 Final Rule, *supra* note 1, at 2107–08.

²⁷ 2024 Final Rule, *supra* note 1, at 2109 (Appendix A).

²⁸ Compare 2019 Final Rule, *supra* note 1, at 23272 with 2024 Final Rule, *supra* note 1, at 2109.

²⁹ See NHeLP Comments, *supra* note 4, at 12–13.