

March 3, 2023

The Honorable Xavier Becerra
U.S. Department of Health and Human Services
Office of Civil Rights
Hubert H. Humphrey Building, Room 509 F
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically via regulations.gov

Re: Safeguarding the Rights of Conscience as Protected by Federal Statutes (RIN 0945-AA18)

Dear Secretary Becerra:

The Endocrine Society appreciates the opportunity to comment on the Department of Health and Human Services' (HHS) proposed rule entitled "Safeguarding the Rights of Conscience as Protected by Federal Statutes." The Endocrine Society is the world's oldest and largest organization of scientists devoted to hormone research and physicians who care for people with hormone-related conditions. Many of our 18,000 members treat patients who belong to vulnerable patient populations, including transgender people and pregnant people. The Endocrine Society believes that all individuals should be able to access the full spectrum of appropriate medical care, and we advocate for policies that will help achieve this. **We are pleased that this proposed rule will better protect and expand all individuals' access to care while reducing the administrative burden on patients and providers than the existing policy and urge the administration to finalize these expanded protections.**

Access to Care

This proposal includes provisions to rescind several provisions from the final rule entitled, "Protecting Statutory Consciences Rights in Health Care; Delegations of Authority" from May 21, 2019 ("2019 Final Rule") that limited patients' ability to access critical health care. The 2019 Final Rule expanded the rights of health care providers to refuse to offer or deliver services to which they have a moral or religious objection and interpreted the Department of Health and Human Services Office of Civil Rights' (OCR) authority broadly to allow health care providers to refuse to deliver any service to which they object. The Endocrine Society understands and respects that some providers have moral or religious objections to providing certain types of health care, which must be respected. However, the exercise of these rights should not come at the expense of patients' access to medically appropriate care.

In many circumstances, patients can easily find an alternate provider should one object to delivering care to them, but this may place an undue burden on and be onerous for certain patients, particularly transgender people, who already struggle to access care because of a shortage of appropriately trained health care professionals. Consequently, transgender people often depend on primary care physicians to provide emergency or preventive care. Under the 2019 Final Rule, a provider could have objected to caring for a patient simply because they are transgender, jeopardizing the patient's health and violating the Physician Code of Ethics that states that a physician must provide emergency services to a patient in need.



The provisions of the 2019 Final Rule proved particularly onerous for patients in rural and underserved communities who may only have access to one health care provider. Should the provider refuse to offer care, then the resident is forced to travel elsewhere to access care. For patients seeking urgent or emergent care, a provider refusing to provide care can result in the deterioration of the patient's condition or be potentially life threatening. For example, a pregnant person may be forced to travel significant distances to receive care. Some may also forgo care they need if travelling is too financially or physically disruptive, ultimately at a higher cost to the individual and health care system.

As noted in the proposed rule, the provisions of the 2019 Final Rule discussed above “undermine[d] the balance struck between safeguarding conscience rights and protecting access to care.” This imbalance can result in discrimination against vulnerable patient populations, like transgender people and pregnant women, who already struggle to access care. The Endocrine Society urges the OCR to finalize the changes outlined in this proposed rule and believes they will remove barriers to care for vulnerable patient populations.

Patient Protections

Under this proposed rule, OCR clarifies protections for patients and outlines potential improvements to the complaint adjudication process. The proposed rule seeks to retain three aspects of the 2019 Final Rule with modifications:

- The federal healthcare provider conscious protection statute from the 2019 Final Rule that is embedded in a wide range of programs and OCR's ability to receive and investigate claims under these provisions;
- Several provisions related to complaint handling and investigations, while expanding upon the previous rule's description of complaint handling and investigation; and
- The voluntary notice provisions, while expanding this provision to include a notice of nondiscrimination laws, instructions for how to file a complaint if a person believes their rights have been violated, and information for how a patient can access additional care.

The Endocrine Society is pleased that OCR is modifying these provisions. In particular, we believe that requiring covered entities to include a notice of nondiscrimination laws will empower patients to better understand their rights and ensure that there is a competent, clear, and transparent system to handle violations of those rights. These protections are essential for the health and wellbeing of all individuals.

These proposed changes will improve health outcomes for vulnerable patient populations, such as transgender people, who have historically faced barriers to improving their health. Discrimination is one of the largest barriers that transgender individuals face when accessing health care. Studies indicate that 70% of transgender individuals have experienced maltreatment by medical providers, including harassment and violence and 28% of transgender individuals have postponed necessary medical care when sick or injured due to previous discrimination by health care providers. The lack of competence among providers makes it harder for transgender individuals to access quality care, which contributes to poorer health outcomes among this population. These protections will ensure that transgender people are aware of their rights when seeking care and able to report when they have been a victim of discrimination.



The proposed rule has robust provisions that will improve and protect patient access to care while allowing providers to exercise their conscience rights. The Endocrine Society supports OCR's decision to rescind several provisions from the 2019 Final Rule that limited patient access to care and modify others to clarify patient protections and complaint handling under the rule. Ultimately, we believe these changes, if finalized, will improve access to care and strengthen protections for vulnerable patient populations, while respecting provider objections to providing certain services.

Thank you for considering our comments. If we can be of further assistance, please contact Judith Gertzog, Manager, Health Policy and Advocacy at jgertzog@endocrine.org

Sincerely,

A handwritten signature in black ink that reads "Ursula Kaiser".

Ursula Kaiser, MD
President
Endocrine Society