



**Association of
American Medical Colleges**
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Submitted electronically via [regulations.gov](https://www.regulations.gov)

March 6, 2023

Melanie Fontes Rainer, JD, MSME
Director
Office for Civil Rights
U.S. Department of Health and Human Services
RIN 0945-AA18
Hubert Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

RE: Safeguarding the Rights of Conscience as Protected by Federal Statute

Dear Director Fontes Rainer:

The Association of American Medical Colleges (AAMC) appreciates the opportunity to respond to the Department of Health and Human Services (HHS or the Department) Office for Civil Rights (OCR) notice of proposed rulemaking entitled “Safeguarding the Rights of Conscience as Protected by Federal Statute,” 88 *Fed. Reg.* 820 (January 5, 2023).

The AAMC (Association of American Medical Colleges) is a nonprofit association dedicated to improving the health of people everywhere through medical education, health care, medical research, and community collaborations. Its members are all 157 U.S. medical schools accredited by the [Liaison Committee on Medical Education](#); 13 accredited Canadian medical schools; approximately 400 teaching hospitals and health systems, including Department of Veterans Affairs medical centers; and more than 70 academic societies. Through these institutions and organizations, the AAMC leads and serves America’s medical schools and teaching hospitals and the millions of individuals across academic medicine, including more than 193,000 full-time faculty members, 96,000 medical students, 153,000 resident physicians, and 60,000 graduate students and postdoctoral researchers in the biomedical sciences. Following a 2022 merger, the Alliance of Academic Health Centers and the Alliance of Academic Health Centers International broadened the AAMC’s U.S. membership and expanded its reach to international academic health centers. Learn more at aamc.org.

The AAMC has previously commented on federal rulemaking to establish health care conscience regulations,¹ most recently in response to the 2018 notice of proposed rulemaking that led to the

¹ See, [AAMC Comments to HHS OCR Re: Protecting Statutory Conscience Rights in Health Care](#), HHS (Mar. 26, 2018), which strongly urged the Department to withdraw the proposed regulation that ultimately resulted in the 2019 Final Rule.

2019 Final Rule.² Regarding conscience regulations, the AAMC strongly believes that that the needs of patients should be put first.

Ethical and moral issues within the context of health care are among the most challenging that we face. They require a careful balance between the rights of the health care professional to avoid behavior that violates his/her/their moral or ethical code, and the rights of a patient to receive lawful health care services that are safe and medically appropriate. In some circumstances, it is difficult to maintain this balance. When that happens, the health and the rights of the patient, who is in the more vulnerable position, must be given precedence. Those who choose the profession of medicine are taught repeatedly during their training that, in the end, their duty to care for the patient must come first - before self. For example, the American Medical Association *Principles of Medical Ethics* state, “A physician shall, while caring for a patient, regard responsibility to the patient as paramount.”³ Similarly, the American Nursing Association’s Nursing Code of Ethics state, “Nurses are obliged to provide for patient safety, to avoid patient abandonment, and to withdraw only when assured that nursing care is available to the patient.”⁴ This does not mean that a physician or other health care provider must act in violation of his or her own moral code, but it does mean that a physician has the duty to provide information and to refer the patient to other caregivers without judgment.

Comments to specific proposals follow.

OCR Should Finalize Proposals to Expand 45 CFR §88.1 to Fully Enumerate Conscience Protections Embedded in Department Programs and Modify §88.2 to Formalize Department Processes for Handling Complaints and Investigations

OCR proposes to retain the category of “federal health care provider conscience protection statutes” in the 2019 Final Rule as a proposed new, condensed §88.1 of the Code of Federal Regulations.⁵ OCR proposes to retain and codify its authority for and handling of complaints and investigations to enforce the Federal health care provider conscience protection statutes in a new, modified §88.2. The Department believes that retaining these provisions and maintaining OCR as the centralized HHS office tasked with receiving and investigating complaints under these provisions will provide clarity about the rights protected by the various statutes and where to file complaints alleging violations of those rights. **The AAMC supports these proposals to provide clarity and awareness of the various conscience protections that are embedded in HHS Programs and the Department’s enforcement procedures.** Every health care provider and entity has the obligation to comply with all applicable federal laws. Clarity and awareness of the rights protected by statute and of OCR’s authority to receive and investigate complaints helps ensure protection of conscience rights.

² 84 *Fed. Reg.* 23170 (May 21, 2019)

³ American Medical Association Council on Ethical & Judicial Affairs, Code of Medical Ethics Opinion 1.1.7, “[Physician Exercise of Conscience](#)”

⁴ American Nursing Association Nursing Code Ethics with Interpretive Statements, [Provision 5.4 Preservation of Integrity](#), at 21.

⁵ Safeguarding the Rights of Conscience as Protected by Federal Statutes, 88 *Fed. Reg.* 820, at 825 (Jan. 5, 2023).

CMS Should Finalize its Proposal to Adopt Standards Under a New §88.3 for Voluntary Notice of Federal Conscience and Nondiscrimination Laws

OCR proposes to retain in part the 2019 Final Rule’s notice provisions, with modification – most notably to make such notice voluntary. The notice would advise persons and covered entities about their rights and may also provide information about how to file a complaint with OCR and additional information to patients on how to seek care. OCR proposes to adopt a model notice in regulatory text, while allowing for tailoring the voluntary notice to “particular circumstances and communities” and combining the notice with other notices.⁶ The AAMC opposed the mandatory notification proposal in 2018, in part out of concern for burden with the proposed timeline for adopting and posting such notice.⁷ **We believe that OCR’s approach as proposed, namely a voluntary notice that may be tailored and combined with other notices to the public and the workforce, appropriately promotes compliance without undue burden.**

OCR Should Finalize Partial Rescission of the 2019 Final Rule

OCR, informed by the three district court decisions that vacated the 2019 Final Rule prior to taking effect, proposes to otherwise rescind the 2019 Final Rule because the remaining portions are “redundant, unlawful, confusing or undermine the balance Congress struck between safeguarding conscience rights and protecting access to health care, or because significant questions have been raised as to their legal authorization.”⁸ In the AAMC’s 2018 comments to notice of proposed rulemaking, we urged the Department to withdraw the proposed rule, in part, due to the failure to offer evidence of demonstrable need for the proposed rule and that the proposed rule was “overly expansive in its reach.”⁹ As an alternative to full withdrawal of the notice, we recommended that the rule be re-proposed and narrowed in scope to, at a minimum, appropriately balancing the needs of patients with the needs of health care providers who have freely chosen their profession.”¹⁰ Additionally, as OCR states, the 2019 Final Rule never went into effect, and thus “no person or entity could have reasonably relied on its provisions.”¹¹ **The AAMC supports OCR’s proposal to largely rescind the 2019 Final Rule in line with our prior comments to the Department and the absence of a reliance interest in the 2019 Final Rule.**

Conclusion

The AAMC thanks HHS and OCR for the opportunity to provide input on this important effort to balance patient care with individual conscience protections. We would be happy to work with you on any of the issues discussed above or other topics that involve the academic medicine

⁶ *Id.*

⁷ AAMC 2018 Comments, *supra* note 1.

⁸ Safeguarding the Rights of Conscience NPRM, *supra* note 3.

⁹ AAMC 2018 Comments, *supra* note 1.

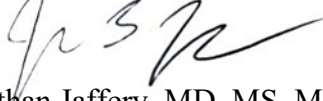
¹⁰ *Id.*

¹¹ 88 *Fed. Reg.* at 824.

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community. Please contact my colleague Phoebe Ramsey (pramsey@aamc.org) with any questions about these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Jaffery', with a stylized flourish at the end.

Jonathan Jaffery, MD, MS, MMM
Chief Health Care Officer

cc: David Skorton, MD, AAMC President and CEO