

PUBLIC COMMENTS FROM CITIZENS' COUNCIL ON HEALTH CARE

Not on CCHC stationary due to Department request for Microsoft Word document rather than PDF

April 9, 2009

Office of Public Health and Science
Department of Health and Human Services
Attention: Rescission Proposal Comments
Hubert H. Humphrey Building
200 Independence Ave SW
Room 716G
Washington, D.C. 20201

RE: Rescission Proposal

Dear Mr. Nayyar,

I am writing to make comments on the proposed rescission of the Conscience Clause: "Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law." (73 FR 50274).

Citizens' Council on Health Care is very concerned by the Obama Administration's move to rescind the conscience clause.

Three Questions: The Department takes great pains to discuss five provisions in federal law that already prohibit violation of conscience in the provision of medical care and in conducting research. However, in its rationale for rescinding the rule, the Department writes that those who wrote comments in opposition to the rule assert that the Rule, "would limit access to patient care and raised concerns that individuals could be denied access to services."

Why would the rule limit access to care if there already is a federal law that prevents the same violation of conscience from taking place?

We are further concerned that the Department rationalizes its proposed rescission by stating that the Department wants to "review this regulation to ensure its consistency with current Administration policy."

Is it thus current or pending Administration policy that the conscience of health care workers be violated?

CCHC is also concerned by the Department's request for specific stories of limited access or harm due to the Rule. As the Department notes, the Rule only went into effect on January 20, 2009. The only effect of the Rule, once implemented, is to require a statement of compliance with the Rule. That certification requirement is not yet implemented. As noted on page 10209, "the certification requirement is not effective pending completion of the information collection process under the Paperwork Reduction Act. The 60-day comment period on the information collection expired on February 27, 2009, and OMB approval for the information collection has not yet been sought." In other words, nothing has yet changed to even provide the Department with "specific examples where feasible, supporting or refuting allegations that the December 19, 2008 final rule reduces access to information and health care services."

Why is the Department seeking specific stories to describe negative impact of the rule when it has yet to be implemented?

Cost of Protecting the Right of Conscience: The proposed rescission also says there is money to be saved by rescission of the rule, but that argument isn't even listed in as rationale for the proposed rescission. Furthermore, there is a discrepancy of figures. The Department says it will save \$43.6 million each year to the health care industry. The figure listed in the current Conscience Clause Rule is \$42.6 million per year to

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health care entities (1/2 hour of time x 584,294 health care entities x \$145.54 (the *loaded* hourly rate of a person at the Chief Executive level)]. The current Conscience Clause Rule also lists the cost of collecting and maintaining records to be estimated at \$2 million (77,333 entities x 1 hour x \$30) for the “73,088 grant awards and 4,245 contractors doing business with HHS...” The total cost according to the current Conscience Clause Rule is “estimated to be \$44.5 million each year.” It should be noted as well that the cost could be much lower if a CEO or other high-level employee was not doing the certification.

While we do not understand the various fiscal discrepancies stated in the Department’s proposed rescission, we do understand the following:

- Of all the Department’s regulations, this may be the most important one for protecting the rights of individuals not to be subjected to mandates that violate their own conscience.
- One-half hour of work per health care entity at a maximum cost of \$72.77 (CEO level) is inexpensive insurance against wholesale violation of religious beliefs and moral convictions.
- At Abbott Northwestern Hospital in Minneapolis, there are 1,600 physicians alone. At \$72.77 for the hospital, that’s less than 5¢ to protect each doctor. The cost per individual protected will be much less than 5¢ when nurses, supervisors, OTs, RTs, pharmacists, and other staff are included.
- If the Obama Administration wants to cut health care costs, there are many other options to pick from, including the more than 130,000 pages of expensive and oppressive Medicare regulations.

Protecting Patients. The current rule not only protects health care practitioners from being forced to undertake, prescribe, assist with, or conduct activities, procedures and research experiments that violate their own conscience, it protects those patients who are most vulnerable to having unethical or immoral procedures and experiments forced onto them. By allowing practitioners to say no to procedures and research they find immoral, unethical or wrong, a protective buffer zone is created for the patient. A patient who resolutely wants to have a procedure done or to become part of a research study found objectionable by one practitioner can always go in search of another.

Protecting Practitioners. No patient, no government official, no policy maker should be able to require a practitioner to do what is viewed as unethical, morally objectionable or a violation of the religious beliefs of that practitioner.

In conclusion, the proposed rescission portends an Administration position that is antithetical to individual freedom. The Department’s proposed rescission is an attempt to start chipping away at the right of health care professionals, hospitals, and other health care entities to be free from coercive government medical and research mandates that violate the conscience, belief systems and moral convictions of millions of health care providers, patients and citizens. The protection of the right to abide by one’s conscience is vital to the protection of each person’s individual freedom. Citizens cannot remain free if they are not free to protect their own conscience.

The rule should not be rescinded.

If you have questions, I can be reached directly at 651-646-8935. You may also send an email to info@cchconline.org.

Sincerely,

Twila Brase
President

P.S. The proposed rescission’s description of where and how to make comments at www.Regulations.gov is insufficient. In addition the stated links “Comment or Submission” was not visible. Nor was it possible to find the link for the website to view public comments. Finally, a phone call the Mr. Nayyar at 240-276-9866 was met with a message: “mailbox is full.” Rather than being directed to another person, the call was then disconnected. These communications and procedures fail to provide complete information to the public during the public comment time.