March 26, 2018

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

Attention: Conscience NPRM, RIN 0945-ZA03

Dear Sir/Madam:

The American Psychological Association (APA) appreciates this opportunity to respond to a request for information published in the Federal Register on January 26, 2018 (Docket No. HHS-OCR-2018-0002): Protecting Statutory Conscience Rights in Health Care; Delegations of Authority. This proposed rule is intended to implement and enforce federal health care conscience and associated anti-discrimination laws that, for example, protect the rights of persons, entities, and health care entities to refuse to perform, assist in the performance of, or undergo health care services or research activities to which they may object for religious, moral, ethical, or other reasons.

APA is the largest scientific and professional organization representing psychology in the United States. APA's membership includes nearly 115,700 researchers, educators, clinicians, consultants and students. APA works to advance the creation, communication and application of psychological knowledge to benefit society and improve people's lives. We place a strong emphasis on, and are committed to, promoting and advocating for patient well-being.

APA is responding to the specific request for “information, data, studies, reports, or other documentation that support what costs, if any, result from ancillary effects of this proposed rule.” Based on available data, we do not agree with the assertion that “the proposed rule would generate benefits by securing a public good -- a society free from discrimination.” APA is concerned that the proposed rule would in fact increase discrimination against several groups, limiting or even eliminating access to necessary health care. This is particularly problematic for health care organizations whose codes of ethics mandate helping all those in need. In this comment, we will explain how enhancing conscience-based exemptions will harm psychology training programs, sexual and gender minorities, women, and efforts to combat HIV/AIDS.

APA strongly believes that people should not be discriminated against because of their religious beliefs or moral convictions. For example, a psychologist should never be denied employment
because of religious beliefs; a psychologist’s conscience-based practices must be accommodated within reason; and a psychologist should never be harassed due to ethical principles. We acknowledge that religious organizations play a central role in HHS’ mission to deliver services and provide access to programs that will improve the health and well-being of Americans. We also affirm health providers’ legally protected rights to express and maintain religious- or conscience-based views that are central to their values and mission. However, we recognize that prejudice based on religion can in some instances result in discrimination against religious individuals or organizations. Accordingly, we support efforts to ensure that faith-based groups whose religion supports a particular system of conscience-based convictions are able to provide services and supports.

However, the framework protecting religious- and conscience-based exemptions is already enshrined in law and need not be further expanded or enforced. Rather, we argue that the rights of patients must be paramount. Our guidelines for serving a diverse public assert that “psychologists need to interact beneficially and non-injurious with all clients/patients who seek care. When such conflicts occur, the overriding consideration must always be the welfare the client/patient.” Our Ethics Code reiterates that psychologists may not practice “unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.” We firmly believe that these principles – placing patient welfare front and center – should hold true across health care settings.

Psychology licensure requires that students are trained to serve broad populations within their competence; training programs and trainees cannot be selective about the core competencies needed for the practice of psychology because these competencies are determined by the profession for the benefit of the public. The proposed rule would limit the freedom of professional education and training programs in psychology to determine the training our students should acquire to meet the responsibilities of a practicing psychologist. Our Standards of Accreditation require psychology training programs to ensure that all students attain an understanding of cultural and individual diversity as related to both the science and practice of psychology, along with the relevant skills and competencies to provide services to all segments of the public. Programs may not restrict or otherwise “constrain” academic freedom in accord with these procedures, and programs must prepare their graduates “to navigate cultural and individual differences in research and practice,” including those that “may produce value conflicts or other tensions arising from the intersection of different areas of diversity.” We oppose efforts to limit our disciplinary and institutional freedom to train our students to best serve diverse populations, as demanded by our profession’s requirements for licensure.

Were this proposed rule to be finalized in its current form, it would harm sexual and gender minorities, especially those in more rural areas with fewer available health care providers. Sexual minorities already have poorer access to health services than heterosexual people. They are more likely to be uninsured, and to have delayed medical care or unmet medical needs. While a variety of economic and social factors contribute to these disparities, provider insensitivity or discrimination is also influential. A recent survey found that 18% of sexual and gender minorities have avoided medical care due to fear of discrimination, and the same proportion reported being personally discriminated against when going to a doctor or health clinic. The
survey revealed even starker statistics for transgender people: 31% said they have no regular doctor or form of health care, and 22% said they have avoided doctors or health care out of concern they would be discriminated against. Particularly troublesome is the situation where the disclosure by the patient that may trigger the provider’s conflict of conscience does not occur until the patient has already established the therapeutic alliance and is thus especially vulnerable to harm from interruption of that relationship. People can be prejudiced against sexual and gender minorities for many reasons, but many claim conscience-based convictions as the source of their actions. Thus, permitting conscience-based discrimination can be expected to increase experiences of patient discrimination and lead to reduced access to health care.

This proposed rule would limit women’s access to reproductive health care, which would have harmful consequences to their physical and mental health. Autonomy and confidentiality in one’s reproductive health decisions is both a human right and public health concern. Research has shown that women with an unplanned pregnancy are at higher risk for depression, anxiety, and lower reported levels of happiness. In turn, these mental health effects will have other negative impacts on parental and family health. APA supports the right to reproductive choice and freedom from discrimination in that choice.

The proposed rule would also limit the availability of effective public health strategies to prevent and treat HIV/AIDS in populations severely impacted by the epidemic. Thirty-six million persons are living with HIV infection around the world, and 1.8 million are newly infected each year. Yet tremendous progress in the prevention and treatment of HIV/AIDS has inspired governments and multilateral organizations to set a goal of ending the epidemic by 2030. The President’s Emergency Plan for AIDS Relief (PEPFAR) relies on life-saving antiretroviral treatment for all of the people in high-burden countries, coupled with comprehensive services for preventing and treating HIV, to reach global AIDS eradication goals. We are concerned that the rule may permit entities receiving PEPFAR funds to deny sex workers, men who have sex with men, people who inject drugs, and transgender persons access to tailored evidence-based combinations of HIV prevention interventions. Federal resources are best spent advancing the implementation of scientifically sound comprehensive strategies in the most impacted areas in the U.S. and abroad, coupled with partnerships with health care providers and communities on the ground. Allowing groups to claim a conscience-based exemption to the provision of what we know are the most effective programs could jeopardize the continued success of U.S. global efforts to eradicate HIV.

Finally, one of the most troubling provisions in this rule focuses on referrals; this was not included in the 2008 rule, Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law. As explained above, it is problematic that providers may refuse to provide services to some individuals. It is more so that they may even refuse to provide referrals, including the provision of any form of information, by any method, pertaining to any aspect of a service that may be objected to on conscience-based grounds. This additional provision increases the likelihood that some people (e.g., sexual and gender minorities or women seeking reproductive health care) will not be able to receive the care that they need.
APA urges HHS to seriously consider the likely adverse health effects of condoning discrimination through expanding conscience-based exemptions. While we recognize the important role and rights of faith-based health care providers, we are concerned that further codifying their ability to limit service provision to women, sexual and gender minorities, and other vulnerable people will harm the mental and physical health of those in need of support. Please contact Gabriel Twose, Ph.D. (202-336-5931; gtwose@apa.org) in our Public Interest Government Relations Office if we can provide any further information.

Sincerely,

Arthur C. Evans, Jr., Ph.D.
Chief Executive Officer

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