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March 6, 2023

VIA ELECTRONIC SUBMISSION

U.S. Department of Health and Human Services
Office for Civil Rights
Attention: Conscience NPRM, RIN 0945-AA18
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

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

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the **Safeguarding the Rights of Conscience as Protected by Federal Statutes** proposed rule. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable and equitable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to over three million people with Medicare, family caregivers, and professionals.

We applaud this proposal by the Department of Health and Human Services (HHS) to rescind the most damaging aspects of the 2019 final rule Protecting Statutory Conscience Rights in Health Care; Delegations of Authority.”¹

In our 2018 comments in opposition to the proposed rule,² we noted our grave concern that the rule would put people with Medicare at risk of lacking access to medically necessary treatment and information they need to make educated, person-centered choices. Medicare beneficiaries, their families, and caregivers need to know their medical needs and choices will be honored within the Medicare program and the health care system as a whole. In addition, we noted the lack of information

¹ 84 Fed. Reg. 23170.

² Medicare Rights Center, “Re: Protecting Statutory Conscience Rights in Health Care; Delegations of Authority [RIN 0945-ZA03]” (March 27, 2018), <https://www.medicarerights.org/pdf/032718-conscience-rights-comments.pdf>.

regarding the interaction of the proposed rule with existing statutes, case law, and non-discrimination efforts.

While the rule's provisions never went into effect because of timely court action,³ even an unimplemented rule sends a message.

In this proposed rule, HHS is exploring keeping and modifying the voluntary notice provision of the 2019 rule which would advise providers about their rights. While we do not object to such notice, this does not address information gaps on the patient side. In some cases, patients might not even be aware that they could be refused care. We urge HHS to explore ways to ensure that patients, caregivers, consumers, enrollees, and potential enrollees receive information about what refusals might mean for their care. There are models for this. For example, Medicare rules require that Medicare Advantage organizations that object to paying for particular referrals or counseling must notify both the Centers for Medicare & Medicaid Services and any current or prospective enrollees of their refusal, with advance notice for current enrollees.⁴ Such notice allows patients and their families to determine for themselves if the provider or institution offer sufficient services to meet the patient's wants and needs. Any finalized rule should use such notice requirements as a model to ensure patients and their families have the information they need to make informed, person-centered choices.

Conclusion

Thank you again for the opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Counsel for Federal Policy at JCarter@medicarerights.org or 202-637-0962.

Sincerely,



Fred Riccardi
President
Medicare Rights Center

³ 88 Fed. Reg. 820, 825.

⁴ Centers for Medicare & Medicaid Services, "Managed Care Manual, Chapter 6" (last accessed March 3, 2023), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/mc86c06.pdf>.