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Columbia Law Scholars Respond to New HHS Rule, "Protecting Statutory Conscience Rights in Health Care"

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Press Statement

Date: May 2, 2019

Subject: Columbia Law Scholars respond to new HHS Rule, “Protecting Statutory Conscience Rights in Health Care”

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Today, during his National Day of Prayer remarks, President Trump announced a [finalized rule](#)¹ that creates expansive legal protections for healthcare providers with specific religious beliefs, including opposition to abortion, sterilization, end-of-life care, and healthcare for LGBTQ persons. The final rule does not offer similarly broad protections to healthcare providers who feel religiously obligated to provide comprehensive sexual and reproductive healthcare to their patients.

Ironically, [the announcement](#)² for the rule issued by the U.S. Department of Health and Human Services (HHS) states that it “fulfills President Trump’s promise to promote and protect the fundamental and unalienable rights of conscience and religious liberty.” In fact, the rule violates the religious liberty of all Americans by establishing a formal legal preference for particular religious beliefs, including opposition to abortion and sterilization.

As the Law, Rights, and Religion Project (LRRP) explained in [our comment](#)³ to HHS’s initial proposed rule, communities and people of faith hold a wide spectrum of views regarding abortion, sterilization, and other health services implicated by the rule. In fact, several religious denominations hold that the right to reproductive healthcare is an essential aspect of religious freedom. The Central Conference of American Rabbis stated in a resolution that, “freedom of choice in the issue of abortion is directly related to the First Amendment’s guarantee of religious freedom.” The Evangelical Lutheran Church in America has found that, “[f]or some, the question of pregnancy and abortion is not a matter for governmental interference, but a matter of religious liberty and freedom of conscience protected by the First Amendment.” The

¹ The United States Department of Health and Human Services (2019). *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*. (RIN 0945-AA10). Washington, DC: <https://www.hhs.gov/sites/default/files/final-conscience-rule.pdf>.

² The United States Department of Health and Human Services (2019). *HHS Announces Final Conscience Rule Protecting Health Care Entities and Individuals*. <https://www.hhs.gov/about/news/2019/05/02/hhs-announces-final-conscience-rule-protecting-health-care-entities-and-individuals.html>.

³ The Law, Rights, and Religion Project (2019). *Comment on U.S. Department of Health and Human Services Rule*. New York, NY: https://lawrightsreligion.law.columbia.edu/sites/default/files/content/Policy%20Analyses/Policy_HHSRule_3.27.18.pdf.

Presbyterian Church has publicly supported “national policy [regarding abortion] that embodies that conviction, carefully guarding the separation of church and state with respect for the freedom of the individual’s conscience.”

Moreover, many medical providers have explained that their religious faith and moral convictions require them to provide patients with comprehensive reproductive healthcare, including abortion. The final rule offers little protection to such providers, who may be forced by their employers to violate their beliefs and withhold critical health information and services to patients. By enacting robust legal protections only for those who are religiously *opposed* to providing comprehensive sexual and reproductive healthcare, the HHS rule places the support of the U.S. government behind particular religious views. This conflicts with the neutrality principle of the First Amendment, which prohibits government agencies from favoring certain religious views over others.

“[Research shows](#)⁴ that many doctors working at faith-based hospitals object to religious restrictions that limit the care they can provide to their patients,” said Elizabeth Reiner Platt, Director of the Law, Rights, and Religion Project. “If the administration truly cared about conscience rights, it would protect all healthcare providers, not just those who share the President’s views on abortion, contraception, and LGBTQ rights.”

⁴ Stulberg, Debra B. et al. (2012). *Obstetrician-gynecologists, religious institutions, and conflicts regarding patient care policies*. Am J Obstet Gynecol. 2012 Jul. 207(1). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3383370/>.