

April 8, 2009

Acting Secretary Charles E. Johnson and Staff
Office of Public Health and Science
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW., Room 716G
Washington, DC 20201
Sent Via Electronic Mail: proposedrescission@hhs.gov
Attn: Rescission Proposal Comments

Re: Proposed Rule, 45 CFR Part 88, RIN 0991–AB49, “Rescission of the Regulation Entitled ‘Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law’”

Dear Secretary Johnson and Health and Human Services Department Staff,

I am writing on behalf of HIV Law Project, Center for Women & HIV Advocacy to submit comments on the above proposed rule, RIN 0991-AB49 (the “proposed rule” or “proposed regulation”). The proposed regulation would rescind the December 19, 2008 final rule entitled “Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law” (hereinafter “The Provider Conscience Rule”). The Provider Conscience Rule will expanded the ability of health care providers, insurers and health care institutions to refuse to provide health care services, as well as information and referrals, to patients.

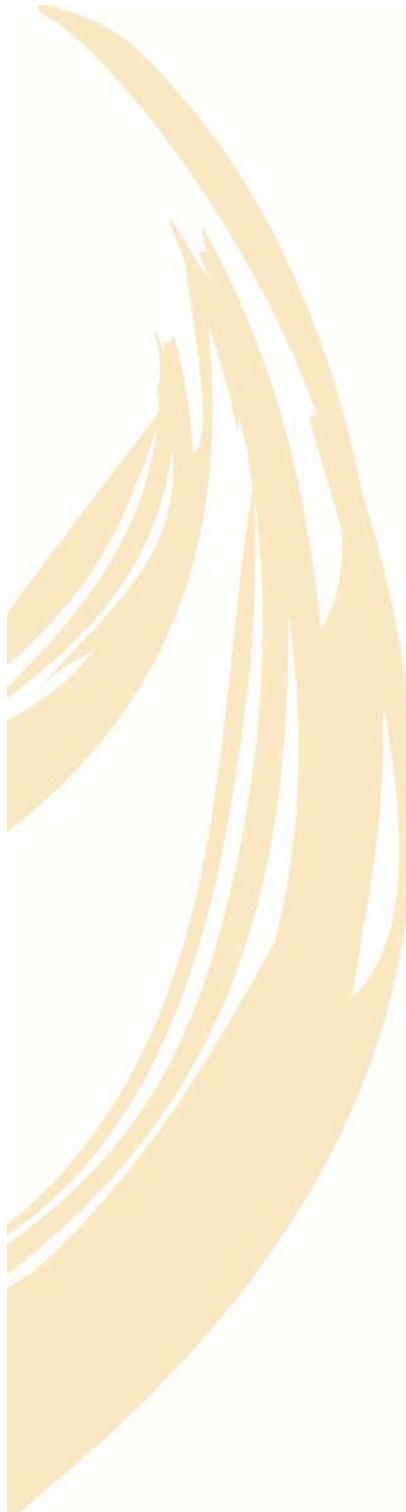
New York has long been at the forefront in extending access to health care to those in need, especially those living with HIV and AIDS. Although the full impact of the Provider Conscience Rule, if left standing, is uncertain, the risk that it will limit access to a wide range of health care services and disturb existing protections for patients is too high. Accordingly, it should be rescinded, as proposed. Some possible and highly objectionable outcomes of the Provider Conscience Rule for people living with HIV/AIDS and the public health include:

- Allowing medical professionals to refuse to discuss safer sex and HIV/STI prevention with at-risk patients because of objections to contraception or the patients’ sexual activities or partners;
- Allowing medical professionals to refuse services to people living with HIV/AIDS because of religious or moral views about how they contracted the virus (e.g., homosexuality);



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- Allowing an emergency room to refuse a patient with emergency prophylaxis and emergency contraception following possible exposure to HIV;
 - Allowing a doctor to refuse to provide an HIV-positive women with a *referral* for an abortion, even if continuing a pregnancy posed a risk to the health or the life of the woman;
 - Allowing a clinician to refuse to discuss prevention strategies with a patient at risk for HIV-transmission;
 - Allowing a hospital to refuse to provide HIV information and prevention counseling to intravenous drug users;
 - Allowing a doctor to refuse to provide reproductive technology assistance and fertility care for unmarried sero-discordant couples, HIV-positive single women, or same-sex couples seeking to have children;
 - Reducing patients' ability to make end-of-life decisions with dignity when facing a terminal illness such as AIDS.

The above negative outcomes are real possibilities, especially when viewed in the light of the guidance that the existing Provider Conscience Rule is “to be interpreted and implemented broadly.”

In essence, while there are many uncertainties, it is clear that the Provider Conscience Rule could lead to potentially disastrous public health consequences. Because the regulation impacts publicly funded clinics, it targets the most vulnerable Americans—low income women, young women, and immigrant women. Many of these individuals are also living with or at-risk for HIV infection and in need of access to medical care and accurate and complete information regarding their health care options, including HIV prevention counseling and treatment, abortion, contraception, and alternate reproductive methods to avoid HIV transmission.

Moreover, the proposed costs of the provider Conscience Rule are too high. The Department of Health and Human Services estimated that the rule, which would affect nearly 600,000 hospitals, clinics and other health care providers, would cost \$44.5 million a year to administer. And this figure does not include the myriad indirect costs that would flow from withheld services or information, including the lack of HIV treatment and care, as well the prevention of HIV transmission. As we face a national health care crisis and more and more Americans are either uninsured or struggling with the soaring costs of health care, the federal government should be expanding access to critical prevention and health services, not undermining it.



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For the reasons enumerated above, we urge the Department to rescind the Provider Conscience Rule in its entirety.

Sincerely yours,

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Executive Director



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