March 23, 2018

U.S. Department of Health and Human Services
Office for Civil Rights
Attention: Conscience NPRM
RIN 0945-ZA03
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

RE: Proposed Rule: Protecting Statutory Conscience Rights in Health Care; Delegations of Authority

Dear Secretary Azar:

Thank you for the opportunity to comment on the proposed rule published by HHS on January 26, 2018. The National Health Care for the Homeless Council (NHCHC) is a membership organization representing federally qualified health centers (FQHCs) and other organizations providing health services to people experiencing homelessness. In 2016, there were 295 Health Care for the Homeless (HCH) programs serving nearly 1 million patients in 2,000+ locations across the United States. Our members offer a wide range of services to support people without homes gain better health, to include comprehensive primary care, mental health and addiction treatment, medical respite care, supportive services in housing, case management, outreach, and health education.

We are concerned about the recent proposed rules that expand the ability of employees to refuse to perform standard job functions based on moral and conscience objections. Specifically, we'd like to raise five possible outcomes should these rules become final:

1. **Compromises quality of care:** We are expected to practice evidence-based care and meet HHS quality measures in keeping with prevailing health standards of care. Upholding discrimination, denying care, and facilitating a judgmental environment only serve to erect barriers to care and inhibit achieving the very health outcomes we strive to improve each day. Many of our members are not large providers and do not have additional staff on hand to fill in should a colleague refuse to provide care under these regulations. Denying care and/or treating patients with judgment and disrespect can have catastrophic consequences. This is particularly true for our clients who are suicidal, seeking substance use treatment (particularly for opioids, where overdose is a significant risk), and where continuity of care and medications is critical (e.g., medications to treat HIV, Hepatitis C virus, and tuberculosis treatments).
2. **Stifles our ability to be an employer:** These regulations are extremely broad and apply to just about any service or referral available in the community. This allows for arbitrary and capricious

behavior, possibly allowing any staff person to claim a moral objection should they not wish to perform basic job functions. These proposed rules deny employers the ability to supervise and hold staff accountable for actions that can have pervasive impacts on patients, as well as other staff in the agency.

3. **Increases our legal liability:** We cannot deny patient care based on individual characteristics. This is particularly true if the patient is in a protected class (race, ethnicity, disability status, sexual orientation, religion, etc.). Should we implement this rule, we increase our legal liability and lawsuits filed against us for denying care based on discriminatory factors.
4. **Increases health costs:** Denying care doesn't negate health needs. Should patients be refused services or treated disrespectfully by a health care provider, they instead will seek care in emergency rooms, hospitals, and other higher-cost venues. Untreated chronic conditions, mental health, addiction, and other health issues can then worsen and contribute to an overall downward spiral that benefits no one.
5. **Alienates vulnerable people and compromises trust:** People experiencing homelessness and other marginalized populations already struggle to develop trusting relationships with medical providers and engage in the care needed to improve health and wellbeing. This is also a population that is already vastly underserved, with very few providers willing and able to address a broad range of clinical and social issues. When denied care because of their personal characteristics, there may be no other provider available as an alternative. As a result, trust is broken and patients are less likely to engage in care in the future.

While we understand the intent of these proposed rules is to protect some workers, the overall impact could be devastating to community-based organizations who function the same as any other business or employer. For the patients we serve, they often do not have another outpatient health care option that is designed to meet their needs. We request the Administration reconsider these rules in light of the unintended consequences outlined above.

Thank you for the opportunity to comment on these proposed rules for moral and conscience rights in health care. Please contact us if you should wish to discuss any aspect of these comments further. I can be reached at bwatts@nhchc.org or at 615-226-2262.

Sincerely,

G. Robert Watts
Chief Executive Officer