



Submitted Electronically

Nov. 20, 2024

U.S. Department of Health and Human Services
Office of the Assistant Secretary for Financial Resources
Office of Acquisition Policy
200 Independence Avenue SW
Washington, DC 20201

**Subj: HHS Acquisition Regulation; Regulatory Review (HHSAR Case 2023-002)
RIN 0991-AC36**

Dear Sir or Madam:

On behalf of the United States Conference of Catholic Bishops (USCCB), we respectfully submit the following comments on a proposed rule, published by the Department of Health & Human Services at 89 Fed. Reg. 80634 (Oct. 3, 2024), in the above-captioned matter.

The proposed regulation states:

It is the policy of the HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on ... gender identity ... [or] sexual orientation....

89 Fed. Reg. at 80691 (proposed 48 C.F.R. § 337.7004); 89 Fed. Reg. at 80707 (proposed 48 C.F.R. § 352.237-74 (nearly identical wording)).

The preamble provides no explanation of how this nondiscrimination requirement will be construed, or will work in practice, as applied to the various programs and services that HHS administers and for which it enters into contracts.

In the absence of an explanation, we are concerned that, for health programs and services, the requirement of nondiscrimination on the basis of gender identity could be construed to require the provision of so-called “gender-affirming care” and the exclusion of all other forms of treatment for gender dysphoria, especially in minors. Indeed, HHS has taken that approach in its proposed foster care regulations. Similarly, the requirement of nondiscrimination on the basis of sexual orientation could be construed to require the provision of counseling and other care that affirms same-sex attraction, again to the exclusion of all other forms of counseling and other treatment, especially in minors.

We addressed these concerns at length in our comments on the proposed foster care regulations, noting the harm that would be caused by such a requirement. Those previous comments are hereby incorporated by reference, and are accessible here: www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/2023.nov.13.foster.care.cmts.pdf.



Given the ambiguities in the current proposed regulation, and for the reasons stated here and in our previous comments, we urge the Department to reject the proposed requirement of nondiscrimination on the basis of “sexual orientation and gender identity.” Even if the Department rejects this recommendation, at a minimum it should acknowledge in the final acquisition regulation that it lacks a general police power to regulate the health professions, and that its nondiscrimination requirements do not mandate or bar the provision of any specific type of treatment or care.

Thank you for the opportunity to comment.

Sincerely,

William J. Quinn
General Counsel

Michael F. Moses
Director, Legal Affairs