



## CAEAR Coalition Statement

### **Opposing HHS' Proposed Rule Changes as Outlined in *Protecting Statutory Conscience Rights in Health Care***

The Communities Advocating Emergency AIDS Relief (CAEAR) Coalition opposes the U.S. Department of Health and Human Services (HHS)' proposed rule changes as outlined in the *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority* which appeared in the Federal Register (Vol. 83, No. 18) on January 26, 2018. The new rules are a blatant attempt to legitimize discrimination and are an affront to individual and public health.

The proposed rules expand the jurisdiction of the HHS' Office of Civil Rights (OCR) to include enforcement activities to protect providers who exercise religious and moral objections to providing a wide array of health services. The language in the proposed rule indicates that the Administration holds a very broad interpretation of the laws protecting the exercise of objections and that it intends to apply this interpretation to many types of providers and service types. Further, the proposed rule indicates that it intends to pursue aggressive enforcement in these cases.

- **Protected Provider Types:** The proposed rule would allow for OCR enforcement in matters involving anyone who provides, funds, refers, counsels, or otherwise enables healthcare provision for any entity that receives HHS funding. Entities that receive HHS funding include clinical settings, state and local governments, community-based organizations, as well as Medicaid and Medicare managed care insurance products.
- **Services Covered:** The proposed rule would allow for OCR enforcement for refusal to provide services that include abortion, sterilization, euthanasia, and a category called "certain other health services." This category is not defined clearly and could include many health services that are essential to people living with or at risk for HIV, ranging from vaccinations to family planning and sexual health services.
- **Enforcement Options:** The proposed rule would allow OCR to exercise any of its existing enforcement options to protect providers, which include audits, case investigation, claw backs, termination of funding, referral to the U.S. Department of Justice, or other measures.

The proposed rule also would rescind the 2016 HHS guidance that restricted states' ability to engage in activities that could place limitations on family planning providers that offer abortion services.

Details of the CAEAR Coalition's objections are as follows:

- **Misplaced Priority:** The proposed rule prioritizes an individual provider's moral and religious objections over a patient's health and civil rights.

- **Undermines the First Amendment:** The proposed rule violates the First Amendment of the U.S. Constitution by granting preference to the religious beliefs held by a minority of Americans over the government's role in providing for the care of all Americans.
- **Violation of Intent:** The OCR's purpose is to protect civil rights by protecting vulnerable populations from discrimination. Protecting denial-of-services is in direct conflict with the OCR's stated purpose.
- **Confusing Language:** The proposed rule uses ambiguous language, which will lead to broad misinterpretation. This confusion will impede service delivery and the quality of treatment and care.
- **Danger to Populations Subject to Discrimination:** The broad, undefined nature of the conscience and moral objection language will provide cover for denial-of-services based on bias towards people because of their race, ethnicity, gender, and sexual identity.
- **Setback to Decades of Stigma-Reduction Work:** The proposed rule will require facilities to post prominent signage asserting that providers have the right to deny services based on religious and moral values. This will send the message to patients from marginalized populations that their provider may not be acting in their best interest.
- **Specific Concerns around PrEP and Gender-Affirming Care:** Medical services used almost exclusively by LGBT populations are subject to religious and moral objection. The protection to refuse to provide, counsel, or refer patients for these services will enable discrimination against LGBT individuals and impede access to PrEP and gender-affirming care.
- **Impact on Rural Communities:** The proposed rule will impact rural communities more than urban districts because there are few healthcare providers in these areas and, therefore, limited options for care.

### **CAEAR Coalition**

The Communities Advocating Emergency AIDS Relief (CAEAR) Coalition is a national membership organization which advocates for federal policy, legislation, regulations, and appropriations to meet the care, treatment, support and prevention needs of people living with HIV/AIDS and the organizations that serve them, focusing on health care reform and the evolving role of the Ryan White Program. CAEAR Coalition's proactive national leadership is focused on the Ryan White Program as a central part of the nation's response to HIV/AIDS. CAEAR Coalition's members include Ryan White Program Part A, Part B, and Part C consumers, grantees, and providers as well as the Part F AIDS Education and Training Centers. Learn more about the CAEAR Coalition at [www.caeear.org](http://www.caeear.org).