

February 04, 2020

Secretary Alex Azar
Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically to www.regulations.gov

Re: Ensuring Equal Treatment of Faith-Based Organizations [HHS-OS-2019-0012; RIN 0991-AC 13]

Dear Secretary Azar:

The American Nurses Association (ANA) respectfully comments on the proposed rule implementing Executive Order 13831, concerning the Administration's Faith and Opportunity Initiative. The Department of Health and Human Services (HHS) seeks to amend 45 CFR Part 87, Equal Treatment for Faith-Based Organizations, to offer additional protections to religious organizations that provide social services funded by HHS grant programs.

We recognize HHS' intent to harmonize 45 CFR Part 87 with the Executive Order, and we further recognize the Administration's efforts to uphold the rights of religious organizations receiving federal funding. However, we are concerned that the proposed changes could reduce beneficiary access to HHS programs and could place some nurses and other health care professionals in an untenable ethical situation.

Specifically, HHS seeks to delete the current provision at 45 CFR 87.3(h)(4) which requires a grantee to "undertake reasonable efforts to identify and refer the beneficiary to an alternative provider" in cases where the beneficiary objects to the religious character of an organization. This section seeks to ensure that beneficiaries have full access to HHS-funded programs, especially in situations where they encounter a provider organization whose service offerings may be limited by professed religious beliefs.

To the extent a nurse is employed by such an organization and adopts its conscience-based standards, the Code of Ethics for Nurses is very clear. Conscience-based refusals are recognized, but must be mitigated:

Nurses who decide not to participate on the grounds of conscientious objection must communicate this decision in a timely and appropriate manner. Such refusal should be made known as soon as possible, *in advance and in time for alternate arrangements to be made for patient care* (emphasis supplied). Nurse executives should ensure the availability of policies that address conscientious objection. Nurses are obliged to

provide for patient safety, to avoid patient abandonment, and to withdraw only when assured that nursing care is available to the patient.¹

We believe that 45 CFR 87.3(h)(4) is well aligned with nursing ethics and strikes the proper balance between religious rights of providers and the rights and needs of beneficiaries of HHS programs. We strongly believe that eliminating this provision will compromise access for some beneficiaries, while potentially placing nurses in burdensome ethical dilemmas. **We urge you to reconsider this proposal.**

ANA is the premier organization representing the interests of the nation's 4.0 million RNs, through its state and constituent member associations, organizational affiliates, and individual members. ANA advances the nursing profession by fostering high standards of nursing practice, promoting a safe and ethical work environment, bolstering the health and wellness of nurses, and advocating on health care issues that affect nurses and the public. ANA members practice in diverse settings, and also include the four advanced practice registered nurse roles (APRNs): Nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse-midwives (CNMs) and certified registered nurse anesthetists (CRNAs).² ANA is dedicated to partnering with health care consumers to improve practices, policies, delivery models, outcomes, and access across the health care continuum.

If you have any questions, please contact Brooke Trainum, Assistant Director, Policy and Regulatory Advocacy, at 301.628.5027 or brooke.trainum@ana.org.

Sincerely,



Debbie Hatmaker, PhD, RN, FAAN
Acting Chief Executive Officer

cc: Ernest Grant, PhD, RN, FAAN, ANA President

¹ American Nurses Association. Code of Ethics for Nurses with Interpretive Statements. 2015: Second Edition. Page 21.

² The Consensus Model for APRN Regulation defines four APRN roles: Certified nurse practitioner, clinical nurse specialist, certified nurse-midwife and certified registered nurse anesthetist. In addition to defining the four roles, the Consensus Model describes the APRN regulatory model, identifies the titles to be used, defines specialty, describes the emergence of new roles and population foci, and presents strategies for implementation. Web: <https://www.nursingworld.org/certification/aprn-consensus-model/>