American College of Pediatricians®
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October 3, 2022

RE: RIN: 0945-AA17 [Docket ID: HHS-OS-2022-0012]
Nondiscrimination in Health Programs and Activities, HHS Proposed Rule on Section 1557 of the Affordable Care Act

To Whom It May Concern:

The American College of Pediatricians (ACPeds) is a national organization of pediatricians and other health care professionals dedicated to the health and well-being of children. In addition to our commitment as health care professionals to "first, do no harm," the American College of Pediatricians has also committed ourselves specifically to "what's best for children." The proposed rule on Section 1557 of the Affordable Care Act (ACA) would threaten both of these deeply-held commitments.

The in-depth commentary we would prefer to offer is constrained by the short Rule comment period. Below are brief comments on three key elements of the Rule, along with reference to our relevant position papers.

1) **The proposed rule would force doctors and other health care professionals to commit abortions.**

- **Human Life Begins at Fertilization**

The American College of Pediatricians' commitment to "what's best for children," extends to the earliest time of the child's development, which biologically means at fertilization, specifically at sperm-egg fusion. It is a medical fact—not an opinion—that a unique human being is formed at this moment as explained in the included ACPeds position paper on "When Human Life Begins."[1] We are all on a developmental journey from conception to death and are deserving of human dignity and human rights at each stage in this journey.

1 https://acpeds.org/position-statements/when-human-life-begins

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- **Abortion is Not Health Care**

When a woman is pregnant, there are two patients—the mother and her baby. Abortion is clearly not health care for the baby, as the child's death is its express intent. In addition, aspects of proposed Rule 1557 make the incorrect assumption that preborn children do not feel pain, however as ACPeds shows, preborn babies do in fact feel pain.[2]

Abortion also falls short of being health care for the pregnant mother. In addition to demonstrable maternal mortality due to abortion, the procedure also carries with it significant risks, pain, and often life-long suffering for the mother. Compassion and support are what pregnant women need, not abortion. Proposed Rule 1557 would force doctors to perform abortions, which are not in the best interests of either the mother or the preborn child.

Furthermore, while there can be rare medical complications of pregnancy necessitating emergency care, pregnancy per se is not an emergency. There is never a need for an abortion even in an emergency situation. Pregnant women presenting in an emergency room will be treated and such care does not require an abortion. As such, extension of regulations requiring emergency medical treatment by emergency departments and physicians should not have blanket extension to women requesting an elective abortion. Abortion is not health care.

- **Adolescents are Not Capable of True Informed Consent**

As pediatricians, the patients we see who would be seeking abortions would be adolescents. It is widely acknowledged in both the medical and legal fields that the teenage brain is still under construction and, as yet, biologically lacking in mature judgment.[3]

This fact is acknowledged in dozens of laws throughout our society, including those restricting the ages for voting, smoking, and alcohol consumption. More to the point, parental consent is required for all medical procedures when the patient is under the age of 18. This biological reality must drive the discussion about body-altering and life-altering procedures such as gender transition interventions and abortions on minors. Despite the claim that abortion is health care, it has been exempted from this otherwise-universal restriction, even though it carries significant physical, psychological, and emotional risks for the pregnant mother. When the mother in question is an adolescent, it is unreasonable to expect her to make the grave decision to undergo an abortion in the absence of parental guidance.[4]

Adolescents are not sufficiently mature to make significant irreversible medical decisions. The adolescent brain does not achieve the capacity for full risk assessment until the early to mid-twenties. There is a serious ethical problem with allowing minors to receive life-altering medical

[2] https://acpeds.org/position-statements/fetal-pain
[3] https://acpeds.org/position-statements/the-teenage-brain-under-construction
[4] https://acpeds.org/position-statements/parental-involvement-and-consent-for-a-minor-s-abortion

interventions including cross-sex hormones and body-altering surgeries when they are incapable of providing informed consent for themselves.

The treatment of gender dysphoria in childhood with hormones and surgeries effectively amounts to mass experimentation on, and sterilization of, youth who are cognitively incapable of providing full informed consent.

- **Babies Born Alive Have Legally-Recognized Civil Rights**

ACPeds is in complete support of the civil rights of babies born alive to receive medical care as afforded to any other individual under the Emergency Medical Treatment and Labor Act (EMTALA). More specifically, the U.S. Department of Health and Human Services (HHS) should review Executive Order 13952—Protecting Vulnerable Newborn and Infant Children, September 25, 2020. This EO states in part that:

> *"(E)very infant born alive, no matter the circumstances of his or her birth, has the same dignity and the same rights as every other individual and is entitled to the same protections under Federal law. Such laws include the Emergency Medical Treatment and Labor Act (EMTALA), 42 U.S.C. 1395dd, which guarantees, in hospitals that have an emergency department, each individual's right to an appropriate medical screening examination and to either stabilizing treatment or an appropriate transfer. They also include section 504 of the Rehabilitation Act (Rehab Act), 29 U.S.C. 794, which prohibits discrimination against individuals with disabilities by programs and activities receiving Federal funding. In addition, the Born-Alive Infants Protection Act, 1 U.S.C. 8, makes clear that all infants born alive are individuals for purposes of these and other Federal laws and are therefore afforded the same legal protections as any other person. Together, these laws help protect infants born alive from discrimination in the provision of medical treatment, including infants who require emergency medical treatment, who are premature, or who are born with disabilities. Such infants are entitled to meaningful and nondiscriminatory access to medical examination and services, with the consent of a parent or guardian, when they present at hospitals receiving Federal funds."* [5]

2) The proposed rule would force pediatricians and other health care professionals to perform gender transition interventions.

- **Gender Transition Interventions are Harmful to Children**

The proposed rule would adopt new and, as of yet, experimental treatments for gender dysphoria in people (including minors), which are rooted in the assumption that gender dysphoria is innate. This is despite the fact that, when gender dysphoria occurs in the pre-

[5] https://www.federalregister.gov/documents/2020/10/02/2020-21960/protecting-vulnerable-newborn-and-infant-children

pubertal child, it resolves organically in the vast majority of patients—an average of 85%--by late adolescence.[6]

As one of our member pediatricians and board members, Dr. Andre Van Mol, stated in his public comment on this proposed Rule, "[Gender/transition affirming health care] is neither proven effective nor safe long term, does not reduce suicides, and is not the standard of care for gender dysphoria." The treatments that would be adopted by the proposed Rule involve pubertal suppression (puberty blockers) followed by the use of cross-sex hormones and, eventually, gender transition surgeries including double mastectomies, vaginoplasties, and phalloplasties.

As doctors, we want to highlight the physical and health dangers associated with gender transition interventions. Dr. Andre Van Mol also outlined in his public comment (attached) studies that show evidence of the list of physical dangers of gender transition interventions.

A short list of the dangers associated with the most commonly prescribed puberty blockers include:

- Arrested bone growth
- Decreased bone accretion
- Prevention of the sex-steroid dependent organization and maturation of the adolescent brain
- Inhibited fertility and, often, permanent infertility
- Possible increased risk of coronary artery disease

Increased risk in males transitioning to females include:

- Thrombosis/thromboembolism
- Cardiovascular disease
- Weight gain
- Hypertrigyceridemia
- Elevated blood pressure
- Decreased glucose tolerance
- Gallbladder disease
- Prolactinoma
- Breast cancer

Increased risk in females transitioning to males include:

- Low HDL and elevated triglycerides
- Increased homocysteine levels
- Hepatotoxicity
- Polycythemia
- Increased risk of sleep apnea
- Insulin resistance

When cross-sex hormones are then introduced following the use of puberty blockers, the combination results in sterility. Just a few of the other dangers associated with cross-sex hormones are included below.

[6] https://acpeds.org/position-statements/gender-dysphoria-in-children

Increased risk in males transitioning to females include:

- Blood clots
- Heart attacks
- Strokes
- Breast cancer
- Insulin resistance

Increased risk in females transitioning to males include

- Heart attacks
- Strokes
- Breast cancer
- Uterine cancer
- Hypertension
- Severe acne

Furthermore, a 2019 international panel of endocrinology organizations stated of testosterone use in women, "The safety of long-term testosterone therapy has not been established." [7]

These are a sample of the unintended physical consequences of cross-sex hormones for the patient but it is also important to remember that the intended consequences—chemical changes to the body to appear more like the opposite sex—are not reversible.

Pertaining to minors, while not all adolescents suffering from gender dysphoria go on to trans-identification, as noted above, cross-sex hormones do inevitably result in irreversible changes for them. This is all the more true when it comes to gender interventions, which remove a child's healthy organs, permanently disfiguring his or her young body.

- **The Proposed Rule Corrupts the Practice of Medicine**

A review of the current literature suggests that the new treatments for gender dysphoria are founded on an unscientific gender ideology, lack an evidence base, and violate the long-standing ethical principle of "First do no harm." [8] As physicians, our responsibility is to assist the body in functioning properly. The purpose of gender interventions, whether via chemicals or surgeries, is to prevent a healthy body from functioning properly and even to remove healthy organs. Such practices have no place in medicine.

3) The proposed rule threatens medical conscience rights.

- **Federal Conscience Laws Must Be Enforced**

According to HHS' own website, under the heading, *Conscience Protections for Health care Providers*[9]*,* conscience protections are explained as applying, "to health care providers who refuse to perform, accommodate, or assist with certain health care services on religious or moral

[7] Susan R Davis, et al, Global Consensus Position Statement on the Use of Testosterone Therapy for Women, *The Journal of Clinical Endocrinology & Metabolism*, Volume 104, Issue 10, October 2019, Pages 4660–4666, https://doi.org/10.1210/jc.2019-01603.

[8] https://acpeds.org/position-statements/gender-dysphoria-in-children

[9] https://www.hhs.gov/conscience/conscience-protections/index.html?language=en

grounds." HHS then goes on to outline when a health care professional may file a complaint, stating, "You may file a complaint under the Federal Health Care Provider Conscience Protection Statutes if you believe you have experienced discrimination because you: Objected to, participated in, or refused to participate in specific medical procedures, including abortion and sterilization, and related training and research activities; Were coerced into performing procedures that are against your religious or moral beliefs."

These protections are based on federal conscience laws that were passed, some with bipartisan support decades ago. These federal conscience laws include the Church Amendments, Coats-Snowe Amendments, Weldon Amendment, Section 1303(b) of the ACA, and Section 1553 of the ACA.

It is the role of HHS' Office for Civil Rights to enforce these federal conscience laws. The proposed rule flies in the face of these very protections, which it is the express responsibility of HHS to uphold. The proposed rule leaves the public wondering how the Department will both enforce federal conscience laws while, at the same time, force health care professionals (in opposition to these laws) to act against their consciences.

- **Conscience Rights Must Be Protected**

Compelling health professionals to subordinate their moral or religious objections to the dictates of any authority such that they comply with fluctuating social norms and patient demands threatens the integrity of medical professionals and also endangers the lives of patients.[10]

There is a significant shortage of physicians in America. Experts predict that the current shortage of physicians will worsen and fail to meet the needs of patients. Threats of legal action, and additional pressures to compel physicians and other health professionals to participate in procedures they deem morally unacceptable, will make an already dangerous shortage even worse. Competent young men and women, who are desperately needed to meet the projected shortfall, will be effectively barred from entering these vital professions as a matter of conscience.

Physician burnout is another potential consequence of disrespect for conscience in medical practice. In their article regarding the importance of ethical diversity, Dr. Stephen Genius and Dr. Chris Lipp suggest that the associated moral distress of affected health care professionals may accelerate physician burnout and cause many to feel they must pursue non-clinical roles. If the government forces health care professionals to choose between conscience and career, America will lose current physicians and other health professionals who are already in demand and in short supply.

ACPeds views these actions as coercive attempts to enforce a secular code of ethics on all physicians and patients. This code is grossly at odds with the long-standing Judeo-Christian belief

[10] https://acpeds.org/position-statements/freedom-of-conscience-in-health care

held by many Americans about the protection of human life and the dignity of the human person, and its imposition violates the free exercise of religion guarantee found in the First Amendment of the U.S. Constitution.

Sincerely,

Quentin Van Meter, MD, FCP
President
American College of Pediatricians