



October 3, 2022

Electronically Submitted

U.S. Department of Health and Human Services
Office for Civil Rights
Attention: 1557 NPRM (RIN 0945-AA17)
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Re: Request for Public Comment Concerning Proposed Rule on Section 1557 of the Affordable Care Act (ACA) (Section 1557), Entitled “Nondiscrimination in Health Programs & Activities”; RIN 0945-AA17

Dear Sir or Madam:

The Ethics & Religious Liberty Commission (ERLC) of the Southern Baptist Convention (SBC) respectfully submits the following comments in opposition to the proposed revision to Section 1557 of the Affordable Care Act.

The ERLC is the public policy and ethics entity of the SBC, which has nearly 14 million members in over 50,000 churches and congregations in the United States. We are charged by the SBC with addressing public policy affecting such issues as religious liberty, marriage and family, the sanctity of human life, and ethics. Religious freedom and the protection of consciences is an indispensable, bedrock value for Southern Baptists. The Constitution’s guarantee of freedom from governmental interference in matters of faith is a crucial protection upon which Southern Baptists, as well as adherents of other faiths, depend as they follow the dictates of their conscience in the practice of their faith.

One of the stated intentions of this proposed rule is to modify Section 1557 of the ACA, expanding the definition of discrimination on the basis of sex to include sexual orientation and gender identity. The proposed rule raises significant questions and concerns, especially for the consciences of many Americans. This new language would force medical professionals to perform and insurance providers to cover “gender transition services,” even if such procedures violate their moral, religious, and professional judgment.

The proposed revision of Section 1557 of the ACA mandates gender affirming care, and would impede the work of healthcare professionals, faith-based hospitals and insurance providers.



This proposed change not only expands “sex” to include “sexual orientation and gender identity,” but would require coverage of gender affirming care, transitioning surgery and hormones. While religiously affiliated hospitals routinely serve patients of any background, including those who identify as members of the LGBT community, providers who hold moral or religious beliefs cannot perform every procedure a patient requests. For example, doctors and nurses who object to gender reassignment surgeries for moral, religious, or scientific reasons would be forced to provide the procedure or risk losing their jobs.

The Department itself states that “a provider's view that no gender transition or other gender-affirming care can ever be beneficial for such individuals (or its compliance with a state or local law that reflects a similar judgment) is not a sufficient basis for a judgment that a health service is not clinically appropriate.” This analysis by the Department shows a complete disregard for the very real religious and evidence-based beliefs of many highly skilled medical providers around the country.

Additionally, the ERLC has grave concerns that the rule has no distinction between care for children and adults in regards to gender-transitioning procedures. Evidence shows that gender-transitioning treatments are not successful in alleviating the mental health challenges facing gender dysphoric adults, and even more so, evidence points to the life-long detrimental effects such treatment has on children. It is unthinkable that a medical professional would be forced to perform or an insurance company would be forced to pay for puberty blockers, hormonal therapies, and the abhorrent practice of gender reassignment surgical interventions for a child under 18 who does not have the capacity to consent to such life-altering “treatments.”

Christian doctrine and Southern Baptist teaching require that faith govern every aspect of a Christian’s life.

The Bible instructs that faith in Christ Jesus should suffuse all that we do (Romans 6:6–22; 12:1–2; 1 Cor. 4:1–2). Because God is the origin and Creator of humanity and everything in the world belongs to Him (Psalm 24:1), Christians believe that God is concerned with all areas of life. Thus, Christians seek to follow Jesus in all areas of life and see their entire lives in relationship to God as resulting from and pointing to the saving work of God (Col. 3:17; 23–24; 1 Cor. 10:31). These fundamental principles are reflected in the Southern Baptist Convention’s summary of beliefs, the Baptist Faith & Message. As described in the Baptist Faith & Message, “Christians have a spiritual debtorship to the whole world, a holy trusteeship in the gospel, and a binding stewardship in their possessions. They are therefore under obligation to serve Him with their time, talents, and ma-



terial possessions. . . . Christians should contribute their means cheerfully, regularly, systematically, proportionately, and liberally for the advancement of the Redeemer's cause on earth.”

Knowledge of God's saving grace compels Christians to obey God's commands in their deeds as well (James 2:17). The Baptist Faith & Message states that Christians should actively “seek to bring industry, government, and society as a whole under the sway of the principles of righteousness, truth, and brotherly love.” Moreover, the Bible teaches that Christians should discern when to refrain from activities that would be unhelpful, or harmful, to their neighbor (1 Cor. 6:12; 10:23–11:1).

The proposed modification to Section 1557 of the ACA hinders Christians' ability to honor their religious convictions regarding biological sex.

When the Bible reveals that God created two distinct and complementary sexes, male and female, Christians believe that these were an intentional act of God's creative will and not an arbitrary assignment that man can change (Gen. 1:26–27). Turning again to the Baptist Faith & Message: “He created them male and female as the crowning work of His creation. The gift of gender is thus part of the goodness of God's creation.” Sadly, however, the fall of man into sin has introduced brokenness into God's good and perfect creation. While we lament the nature of the conflict that some experience between their biological sex and gender identity, we yearn for their ultimate good. As such, we trust that God's intentional design is what will ultimately bring about their flourishing.

The proposed rule fundamentally hinders the good and flourishing of our neighbors in expanding beyond the biblical truth of binary sexes and biological realities, such as primary and secondary sex characteristics, and conflates “sex” with “gender.” As such, it actually undermines the human dignity of our fellow citizens.

It is ultimately in pursuit of the good of our neighbor and because of our trust in God's design that Christians hold fast to these beliefs about human sexuality. Furthermore, requiring Christians to embrace and participate in actions that affirm the contrary is forcing them to live in violation of their deeply held religious beliefs.

The proposed modification to Section 1557 of the ACA rule would not adequately protect American consciences or religious freedom.

While the Department states that “its Section 1557 enforcement will comply with Religious Freedom Restoration Act (RFRA) and all other legal requirements,” there is no explanation as to how the Department will adequately protect Americans with con-



science objections from the inclusion of sexual orientation and gender identity language in this proposed rule. In fact, the Department's own language that "religious exemption would not be required if that burden was the result of the government's advancement of a compelling interest," leads us to believe that conscience and religious exemptions may not be granted. We are gravely concerned that the Department will not comply with RFRA to protect millions of Americans' consciences.

In summary, we strongly believe that the proposed rule change will lead to violations of the consciences of religious individuals and entities. Requiring medical care providers and insurance companies to perform or cover gender affirming procedures or undermining their ability to approach the issues of sexual orientation and gender identity as required by their religious beliefs should not be seen as an acceptable outcome for any policy. We urge the Department to withdraw this harmful rule.

Thank you for the opportunity to comment.

Respectfully submitted,

Brent Leatherwood
President
Ethics & Religious Liberty Commission
of the Southern Baptist Convention