

December 2, 2024

Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services (HHS)  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

RE: “HHS Acquisition Regulation: Regulatory Review” (RIN: 0991-AC36) (89 Fed. Reg. 80,634)

Dear Secretary Becerra:

Below are the comments of Advancing American Freedom (“AAF”) on the Department of Health and Human Service’s Proposed Rule “HHS Acquisition Regulation: Regulatory Review” on December 2, 2024.

### **Introduction**

Advancing American Freedom (AAF) is a 501(c)(4) non-profit organization that advocates for conservative values and policies by developing innovative policy solutions, strategies, coalitions, and messaging that build upon the accomplishments of the last administration and expand freedom for all Americans.

AAF is concerned that the Proposed Rule, as it relates to sexual orientation, gender identity, and pregnancy provisions of nondiscrimination regulations, leaves the door open for discrimination against religious entities and for the government to violate the right of women to single-sex private spaces. We also urge the Department of Health and Human Services (HHS) not to enshrine the Biden-Harris Administration’s poor record.

### **This Proposed Rule Leaves an Uncertain Future for First Amendment Freedoms**

The Biden-Harris Administration’s handling of nondiscrimination law leaves the rights of women, the unborn, and religious Americans in question. Subpart 311.7100 of the Review requires any entity that contracts with HHS to fulfill its accessibility nondiscrimination requirements under 28 CFR Part 36. Meanwhile, Section 1557 of the Affordable Care Act (ACA) includes “gender identity” as a nondiscrimination category in the field of healthcare. Would this review require HHS contractors to allow men in women’s sex-specific spaces?

We have similar questions for Subpart 322.808’s requirement for contractors’ cooperation with HHS in investigations of Equal Employment Opportunity (EEO) complaints pursuant to 29 CFR part 1614 and Subpart 322.810’s requirement for contractors to include the Federal Acquisition Regulation’s (FAR) antidiscrimination prohibitions regarding gender identity. Given the Equal

Employment Opportunity Commission’s recent attempts to classify abortion as a “pregnancy-related condition” in antidiscrimination statutes, would this Review require employers, including religious employers, to provide abortion accommodations?<sup>1</sup> Additionally, regarding the provisions of Subpart 322.810, what protections do religious organizations have?

Subpart 337.7004 says “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 non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental).”<sup>2</sup> Would using biologically accurate pronouns be considered a violation of this provision? Given the recent HHS Proposed Rule adopting the following series of pronouns to include in medical records databases: he/him/his/his/himself; she/her/her/hers/herself; they/them/their/theirs/themselves; ze/zir/zir/zirs/zirself; xie/hir ("here")/hir/hirs/hirself; co/co/cos/cos/coself, en/en/ens/ens/enself; ey/em/eir/eirs/emself; ve/vis/ver/ver/verself; [and] yo/yo/yos/yos/yoself,<sup>3</sup> we are not optimistic. We reiterate our aforementioned concerns regarding sex-specific spaces for women as well.

### **This Rule Cements A Legacy of Radicalism and Failure**

Beyond the specific concerns we have about this proposed rule, we take issue with a central function of this Proposed Rule, which is to promote and continue the policies of the Biden-Harris Administration. It cites several Biden-Harris Executive Orders, such as [E.O. 13985](#), “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” ([86 FR 7009](#); Jan. 25, 2021), and [E.O. 14008](#), “Tackling the Climate Crisis at Home and Abroad” ([86 FR 7619](#); Feb. 1, 2021). These executive orders weaponized the entire federal government in service of a racialized ideology and crippling climate and energy policies, respectively.

The conduct of HHS has been particularly egregious over the past four years. The Department abused the Chevron Doctrine to mandate doctors and hospitals carry out abortions by overriding Texas’ law protecting innocent life,<sup>4</sup> removed crucial safety restrictions on the abortion drug mifepristone in a politicized and deadly quest to expand abortion at all costs,<sup>5</sup> and unlawfully discriminated against states like Oklahoma that did not seek to refer pregnant women to a hotline that will tell them how to get an abortion.<sup>6</sup> Just over the past few months, the administration has sought to ask unaccompanied children at the border if they are nonbinary.<sup>7</sup> We request that HHS protect the privacy of women’s sex-specific spaces like restrooms and locker rooms, recognize the rights of religious employers to act on their beliefs, affirm the reality of biological sex, and

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<sup>1</sup> <https://www.becketlaw.org/case/united-states-conference-of-catholic-bishops-v-eeoc/>

<sup>2</sup> <https://www.federalregister.gov/documents/2024/10/03/2024-17095/hhs-acquisition-regulation-regulatory-review>

<sup>3</sup> <https://www.federalregister.gov/documents/2024/08/05/2024-14975/health-data-technology-and-interoperability-patient-engagement-information-sharing-and-public-health#sectno-reference-172.400>

<sup>4</sup> <https://advancingamericanfreedom.com/aaf-on-biden-administration-use-of-chevron-deference-to-expand-abortion/>

<sup>5</sup> <https://advancingamericanfreedom.com/aafs-testimony-in-the-senate-finance-committee-hearing-on-abortion/>

<sup>6</sup> <https://advancingamericanfreedom.com/aaf-fights-the-weaponization-of-title-x-to-push-abortion-on-prolife-states/>

<sup>7</sup> <https://dailycitizen.focusonthefamily.com/nonbinary-nonsense-hhs-proposes-rule-migrant-children/>

respect the powers of States to protect the most vulnerable among us: unborn children in the womb.

**Paul Teller**

*Executive Vice President*

Advancing American Freedom

*Vice President Mike Pence, Founder*