

U.S. Department of Health and Human Services, Office for Civil Rights  
Attention: Conscience NPRM, RIN 0945-ZA03  
Hubert H. Humphrey Building  
Room 509F  
200 Independence Avenue, SW.  
Washington, DC 20201

Re: Department of Health and Human Services, Office for Civil Rights, Conscience NPRM, RIN 0945-ZA03

The below **XX** public and professional health organizations and **XX** individual medical professionals respectfully submit the following comment regarding the proposed rule referenced above, as published in the Federal Register. We are concerned that the rule may be interpreted by citizens and/or frontline officials in ways that could put people and communities at serious risk. Specifically, we are concerned that some may try and use the rule – in spite of the Department’s clear intent to respect state law - to challenge existing state school immunization requirements, undermining a state’s autonomy to protect public health according to its assessment of local conditions. We are also concerned that some will interpret the rule, incorrectly, as prohibiting private practices – business owners – from choosing their own clientele. And we are concerned that explicitly naming vaccine administration and reception as a category of discrimination may encourage healthcare workers to act in ways that put others at risk.

We are requesting that the Department:

1. Clarify that the rule is not aimed at, and will not be used for, interfering in existing state legislation that does not currently violate federal law, such as school immunization requirements or state vaccination mandates for healthcare workers.
2. Clarify that the rule is not intended to limit the freedom of independent health care providers to choose which patients to accept or reject, as long as the criteria for such choices are aimed solely at protecting the population they serve and are not religiously motivated.
3. Remove the language that indicates health care providers “being required to administer or receive certain vaccinations derived from aborted fetal tissues as a condition of work or receipt of educational services” is religious discrimination, since refusal to vaccinate in these circumstances can put others – patients and the communities – at risk.

### **Overview of the Intersection of Vaccines and Religion**

Freedom to practice religion is a fundamental right in the U.S., guaranteed by the very first Amendment to our Constitution. However, no right is absolute. If compelling reasons exist to limit this right, we must seriously consider their potential impact.

From smallpox to chicken pox, our nation has successfully protected those in the U.S. from deadly infectious diseases. Vaccines given to children born between 1994-2016 will prevent an estimated 381 million illnesses, 24.5 million hospitalizations, 855,000 deaths, and \$1.65 trillion in total societal costs.<sup>i</sup> To give two examples, the Hib vaccine prevents over 20,000 of cases of serious disease and a thousand deaths each year,<sup>ii</sup> and the rubella vaccine protects the unborn from being harmed, and also prevents

tens of thousands of miscarriages, still births, and cases of birth defects that used to result from infections in pregnancy.<sup>iii</sup>

While freedom to practice religion – including which medical services to receive – is a fundamental right in this country, it is less certain whether religion and vaccination are truly in conflict. Few, if any, organized religions are opposed to vaccination. Below is an overview of eleven major religions' position on immunization:

- While there is a minority of **Amish** parents who do not vaccinate their children, vaccination is not prohibited by their religion.<sup>iv</sup>
- The **Church of Jesus Christ of Latter-day Saints** has supported childhood vaccination for over 30 years. In July 1978 they stated, “We urge members of The Church of Jesus Christ of Latter-day Saints to protect their own children through immunization. Then they may wish to join other public-spirited citizens in efforts to eradicate ignorance and apathy that have caused the disturbingly low levels of childhood immunization.”<sup>v</sup>
- Many imams and other **Islamic** leaders have issued clear statements commenting that vaccination is consistent with Islamic principles.<sup>vi, viii</sup> In particular, a 1995 conference of Islamic scholars concluded, “The transformation of pork products into gelatin alters them sufficiently to make it permissible for observant Muslims to receive vaccines containing pork gelatin.”<sup>ix</sup> However, some specific select Muslim communities throughout the world have opposed vaccinations, including the Nation of Islam, whose leader Minister Louis Farrakhan once said that the 2009 H1N1 flu vaccine was designed to kill people.<sup>x</sup>
- According to The Watch Tower Bible and Tract Society of Pennsylvania, the main legal entity that organizes worldwide activities by **Jehovah’s Witnesses**, “We have no objection to vaccines in general.”<sup>xi</sup>
- While there is no single voice for **Jewish** communities, many rabbis have spoken out in favor of vaccinations noting the importance of preserving life (*pikuakh nefesh*) and that, according to Jewish law, there is no objection to porcine or other animal-derived ingredients in vaccines.<sup>xii</sup>
- The **Roman Catholic Church** recognizes the importance of vaccinations and their use in the fight against infectious disease to protect both individuals and the larger community. It advocates use of alternatives, if available, of certain viral vaccines manufactured in cell lines with remote fetal origins. However, “as regards the vaccines without an alternative, the need to contest so that others may be prepared must be reaffirmed, as should be the lawfulness of using the former in the meantime inasmuch as is necessary in order to avoid a serious risk not only for one’s own children but also, and perhaps more specifically, for the health conditions of the population as a whole - especially for pregnant women; the lawfulness of the use of these vaccines should not be misinterpreted as a declaration of the lawfulness of their production, marketing and use, but is to be understood as being a passive material cooperation and, in its mildest and remotest sense, also active, morally justified as an *extrema ratio* due to the necessity to provide for the good of one’s children and of the people who come in contact with the children (pregnant women).”<sup>xiii</sup>

Additional opinions on vaccines from organized religious groups can be found in the Appendix of this comment.

### **Respecting State Jurisdiction**

These are just a few examples of the views of organized religions. Most states recognize individuals may hold religious beliefs that do not perfectly align with an organized religion. Therefore, all but three states in the U.S. – California, Mississippi and West Virginia – allow individuals to refuse immunizations for religious and/or philosophical reasons.

National and even state-wide immunization rates only tell part of the picture. In reality, disease outbreaks occur at the community-level where vaccination rates have fallen below the thresholds needed to prevent disease. For example, this past spring, Minnesota experienced a major outbreak of measles. In one community in Minnesota, measles vaccination rates had dropped to 42 percent among a group of preschool-aged children, despite a state-wide immunization rate of 93 percent.<sup>xiv</sup> As a result, 8,000 people were exposed to measles, 79 contracted the disease, and 22 were hospitalized. It is therefore critical that states be able to pursue policies and laws that best protect their populations as they know the situations their residents are facing best.

The proposed rule makes it clear in multiple places that its intent is not to interfere in state law. For example, the rule says that, “The proposed rule makes clear that it is not intended to interfere with the operation of State law, except as required by existing Federal health conscience protections.” There is no federal law addressing school immunization requirements. We request that the Department clarify that the rule is not intended to be used against schools following state laws in this matter by adding the following language to section 88.8: “Nothing in this part shall be construed as preempting or interfering with existing and valid state law, for example, state school immunization requirements.”

### **Allowing Health Care Providers the Freedom to Accept or Reject Patients**

Just as states are in the best position to create vaccination laws and policies that protect their residents, health care providers are in the best position to determine what is best for their patients. Standards are set by national and state law as well as by recommendations from professional medical societies, but within those guidelines there exists some leeway for health care providers to create policies for their practices, including which patients to accept or reject.

Unfortunately, we know that when children are exempt from immunizations, they are at higher risk of deadly infectious diseases. For example:

- Children exempt from vaccination requirements are **more than 35 times more likely to contract measles<sup>xv</sup>** and **nearly 6 times more likely to contract pertussis,<sup>xvi</sup>** compared to vaccinated children.
- **States with loose exemption policies had approximately 50% more cases of whooping cough compared to stricter states** in a 2006 study.<sup>xvii</sup>

Vaccines protect both the individuals vaccinated and those around them from dangerous diseases (a concept known as “community protection”). Most vaccine-preventable diseases are transmitted from

person to person, so if a high proportion of the population is vaccinated and immune, then the chains of transmission are broken. For example, a child can be protected against measles or whooping cough, even if they have not yet reached the recommended age for vaccination, if enough people around them have been vaccinated and are less likely to carry or transmit the disease. Conversely, if not enough individuals are vaccinated, diseases can once again spread through a community, affecting even those who were vaccinated. Thus, the medical community strongly supports vaccination according to the U.S. Centers for Disease Control and Prevention's recommended immunization schedule.

Outbreaks have been started in doctors' offices by unvaccinated children in the past. A 2008 measles outbreak sparked in a San Diego pediatric clinic waiting room is a case in point.<sup>xviii</sup> An unvaccinated child returned from a vacation in Switzerland with measles, leading to the exposure of 839 people, 11 additional cases (all in unvaccinated children), and the hospitalization of an infant below the age measles vaccine is recommended. It is important to provide all children with medical care, but providers are best placed to assess the risks in their community and decide which risks they are willing to take.

It is therefore quite reasonable that some health care providers would have policies that do not allow voluntarily unimmunized children to join their practices out of concern for their other patients – regardless of the reason *why* the parents chose not to immunize the child. The Department should make it clear that such general and legal policy adopted for reasons that have nothing to do with religion is not discriminatory when applied to all patients equally.

### **Placing Patient Health First**

While 20 percent of the population lives in rural areas, less than 10 percent of physicians practice in rural areas.<sup>xix</sup> According to Georgetown University's Public Health Institute:

The Department of Health and Human Services recommends a provider-to-patient ratio of one primary care physician to every 2,000 individuals. Over 20 million rural Americans live in areas that have a provider-to-patient ratio of 1 to 3,500 or less and are federally designated as health professional shortage areas (HPSAs). More than 2,200 physicians are needed to remove the HPSA designation from all rural areas, but more than twice that number is needed to achieve the recommended ratio of 1 to 2,000 in these areas.<sup>xx</sup>

As a result, many individuals across the U.S. have limited options to receive medical care, including vaccinations. If the only provider in an area does not administer vaccines because it against his or her personal religious beliefs, then entire communities could be left vulnerable to devastating infectious diseases.

Similarly, an unvaccinated provider in a health professional shortage area would be in a prime position to spread vaccine-preventable diseases throughout an entire town or even county. It is critical that providers immunize themselves against vaccine-preventable diseases in order to protect their patients better.

The proposed rule specifically refers to providers who do not support the use of fetal cells in vaccines. According to The National Catholic Bioethics Center: "One is morally free to use the vaccine regardless of its historical association with abortion. The reason is that the risk to public health, if one chooses not to vaccinate, outweighs the legitimate concern about the origins of the vaccine. This is especially

important for parents, who have a moral obligation to protect the life and health of their children and those around them.”<sup>xxi</sup>

Allowing a disease such as rubella, which can cause miscarriages, stillbirths, and birth defects when contracted by pregnant women, to rampage a community due to the personal religious beliefs of a single provider would violate both the Hippocratic Oath as well as religious doctrine.

We therefore ask that the department delete this language in the proposed rule from its final version: “being required to administer or receive certain vaccinations derived from aborted fetal tissues as a condition of work or receipt of educational services. “

Preserving religious freedom in the U.S. is important, but so is keeping our people free from deadly, vaccine-preventable diseases. We hope the Department will consider our requested changes.

Sincerely,

[signatories]

#### **Appendix: Additional Vaccination Beliefs of Organized Religions**

- In 2010, Tibetan **Buddhist** spiritual leader and Nobel laureate the Dalai Lama helped vaccinate and launch a polio eradication drive in India.<sup>xxii</sup>
- There are some faith-healing groups—of which the **Church of Christ, Scientist (Christian Science)** is the most prominent—that believe they can heal all things through prayer rather than through medicine. Therefore, many of these worshippers strongly oppose vaccinations.<sup>xxiii, xxivxxv</sup>
- There is no formal statement from **Hindu** authorities on vaccination, as Hinduism has several hundreds of sects, each with its own traditions and rules. Many areas of the world with large Hindu populations, such as India, which is 80.5% Hindu, have taken proactive efforts to eradicate vaccine-preventable diseases like polio.<sup>xxvi, xxvii</sup>
- There is no official statement on immunization from **Sikh** authorities. But generally, Sikhs do not have religious or societal issues against vaccination.

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