

March 6, 2023

U.S. Department of Health and Human Services
Office for Civil Rights
ATT: Conscience NPRM, RIN 0945-AA18

RE: Safeguarding the Rights of Conscience as Protected by Federal Statutes

Howard Brown Health is the largest LGBTQ+ health center in the Midwest, serving more than 30,000 patients across eleven clinic locations in Chicago, IL. Howard Brown serves adults and youth in its diverse health and social service delivery system focused around seven major programmatic divisions: primary medical care, behavioral health, research, HIV/STI prevention, youth services, elder services, and community initiatives. As a federally qualified health center, Howard Brown provides services regardless of a patient's ability to pay or insurance status. We are committed to providing inclusive, affirming, and non-discriminatory care to all of our patients, and for that reason, we strongly support the proposed rescinding of the 2019 Rule regarding conscience rights for healthcare providers.

The 2019 Rule was exceptionally broad, and as such, its scope extended far beyond other federal statutes that protect the religious rights of providers. For example, the 2019 Rule interpreted "assisting in the performance" of a medical procedure—such as an abortion—to include "any program or activity with an articulable connection to a procedure, health service, health program, or research activity." This language is exceptionally broad, and at a healthcare organization, every employee's job—from the clinical providers to medical assistants to front desk staff to IT to fundraising—has some articulable connection to programs and services offered. As such, the 2019 Rule could be interpreted to allow any individual with a healthcare-related job to refuse to perform their job duties for any patient or service that they object to. In the example of an abortion, this could cover not only the healthcare providers, but also the front desk person checking the patient in or the finance employees responsible for billing for the procedure. This overly broad language in conjunction with the development of the HHS Conscience and Religious Freedom Division tasked with "vigorously enforcing" conscience protections sent the message that the 2019 Rule provided a legal license to discriminate in healthcare.

Allowing healthcare workers to refuse to serve patients based on personal beliefs is contrary to the ethical standards of every healthcare profession. As providers, we take an oath to first "do no harm" in the treatment and care of our patients. As a federally qualified health center, we at Howard Brown serve every patient that comes through our clinic doors, regardless of race, religion, sexual orientation, gender identity, or ability to pay. In fact, about 20% of our patients are uninsured, 50% are LGBTQ, and 20% are transgender or nonbinary. Allowing healthcare workers to opt out of treating certain patients for personal

reasons is antithetical to our mission as a community health center, and because of the sweeping nature of the 2019 Rule, it could also undermine the work of care teams and disrupt workflows resulting in delayed access to care and worse health outcomes for all patients.

Of course, we know that were the 2019 Rule ever enacted, a disproportionate amount of the burden and harm from the rule would fall on patients from marginalized communities, including LGBTQ+ patients. Research shows that LGBTQ+ people already experience widespread discrimination in healthcare. A 2022 study from the Center for American Progress found that more than 1 in 5 LGBTQ+ adults, including more than 1 in 3 transgender and nonbinary individuals, reported postponing or avoiding medical care in the past year due to provider discrimination. The 2019 Rule would only increase discrimination against LGBTQ+ people in healthcare. We are grateful that the 2019 Rule was never fully enacted, and we urge now for the rule to be rescinded to clarify that federal government's stance that providers cannot refuse to serve patients due to personal beliefs.

As anti-LGBTQ+ legislation, including bans on LGBTQ+ healthcare, ramp up across the nation, it is a critical time for the Biden Administration and federal government agencies to protect LGBTQ+ communities. We need action now from the federal government to ensure that LGBTQ+ individuals can safely access necessary healthcare, and one crucial step would be the rescinding of the 2019 Rule. If you have any questions, please feel free to reach out to Tim Wang, Director of Policy and Advocacy, at timothyw@howardbrown.org.

Sincerely,

David Ernesto Munar
President and CEO