DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

Director
Office for Civil Rights
200 Independence Ave, SW
Washington, DC 20201

July 12, 2018

TO: All OCR Personnel

FROM: Roger Severino
Director, Office for Civil Rights (OCR)

SUBJECT: Delegations of Authority

Background/Purpose:

The origin of the OCR Director's authority is documented in delegations granted by the Secretary of the Department of Health and Human Services and rest on the staff division head's management responsibility. Refer to the HHS General Administration Manual for additional guidance.

This document identifies responsible officials and delegates specified authorities from the OCR Director to subordinate Authorized Officials.

Table of Delegations:

By the OCR Director's signature below, the following authorities are hereby granted to the listed individuals on an ex officio basis. This memo refers to OCR positions, and so grants authority to incumbents during their time of service in OCR. Designations refer to the final approval level and do not abrogate the need for intermediate reviews and approvals.

Pursuant to the HHS General Administration Manual (GAM) Chapter 8-100-50, "Delegation of Authority Process", the table delegates authority to perform the indicated human resources, travel, financial management, regional operations, and other actions to the OCR positions identified.

Pursuant to the HHS GAM Chapter 8-77-30, "Interagency Agreements", the table delegates authority to approve such agreements. These agreements include, but are not limited to, Interagency/Intra-agency agreements (IAAs), Customer Service Agreements (CSA), Memoranda of Understanding (MOU), Task Orders (TO), and Reimbursable Work Authorizations (RWA).

Additionally, also included is a table on regional operations outlining responsibilities and delegations for a variety of functions.

Limitations:

If a duty position listed on the delegation tables is either vacant or eliminated, the authority reverts to the next higher level during the time of the temporary or permanent organizational change.

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To avoid conflict of interest issues, transactions that personally benefit or affect the cited Officials must be approved by the individual's supervisor or designee to whom such authority has been delegated in writing.

Unless otherwise stated, the limits cited in the below table include all related modifications, amendments, and/or orders.

This Delegation of Authority does not affect the need to first obtain funds certification/approval by the applicable budget official.

Delegated authorities must be exercised in accordance with applicable law, regulation, and HHS and/or OS policy, guidance, or other directive.

Communication with the Director and Chief of Staff, Principal Deputy Director, or other applicable leaders, about planned actions is encouraged for significant or material issues.

Effective Date:

This Delegation of Authority supersedes all previously existing delegations of authority for the above-cited business transactions and is effective as of the date of the signature below.

Expiration Date:

The delegated authority expires when the individual no longer holds the position cited in the table or when the authority is revoked in writing by an official authorized to take such action, whichever occurs first.

If you have any questions, please contact the below as appropriate.

Mary Gerald (202-774-2797 or mary.gerald@hhs.gov)
Alec Blakeley (202-774-2122 or alec.blakeley@hhs.gov)
Steve Novy (202-619-0403 or steve.novy@hhs.gov)

Roger Severino

7/12/18
Date

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OCR Delegations of Authority – Human Resources

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2018

The Honorable Catherine E. Lhamon
Chair
U.S. Commission on Civil Rights
1331 Pennsylvania Ave., NW,
Suite 1150
Washington, DC 20425

Dear Madam Chairwoman:

Thank you for your letter dated December 28, 2017, on behalf of the U.S. Commission on Civil Rights, to former Acting Secretary and current Deputy Secretary for the U.S. Department of Health and Human Services, Eric D. Hargan. Your letter has been sent to the Department's Office for Civil Rights for reply.

Your letter indicates that, pursuant to 42 U.S.C. § 1975a(c)(l), the Commission will be examining the Department's civil rights enforcement efforts. The Commission will gather this information for a report to the President, the Congress, and the general public scheduled for release in September 2019. Correspondingly, you asked the Department to designate a staff person to coordinate and facilitate the Commission's research, meetings, and the Department's responses to interrogatories and document requests.

We are happy to work with the Commission as it collects information for this report. Accordingly, I am designating March Bell, Chief of Staff at the Department's Office for Civil Rights, to work with the Commission. He can be reached at 202-619-0403 and March.Bell@hhs.gov. He will contact Ms. Sewell, as requested.

Thank you again for reaching out to the Department. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Roger Severino
Director

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Eric D. Hargan
Deputy Secretary

FROM: Roger T. Severino
Director, Office for Civil Rights

DATE: July 24, 2018

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

July 12, 2017

Ms. Janet Trautwein
CEO
National Association of Health Underwriters
1212 New York Avenue NW, Suite 1100
Washington, D.C. 20005

Dear Ms. Trautwein:

Thank you for your letter dated June 21, 2017, regarding the experiences that members of the National Association of Health Underwriters (NAHU) have had implementing Section 1557 of the Affordable Care Act (Section 1557) and its implementing regulation. Your letter addresses the requirement to include language assistance taglines in significant publications and communications. More specifically, your letter raises concerns about the tagline requirement's burdens on health insurance operations and consumer engagement. Although your letter states that NAHU included a draft Frequently Asked Question for OCR's consideration, the draft question was not included with your incoming letter.

Under the Section 1557 regulation, covered entities must post taglines in the top 15 languages spoken by individuals with limited English proficiency in the States in which the covered entities operate health programs or activities. Covered entities must also post notices advising consumers about their civil rights. Your letter states that the regulation allows a covered entity to include taglines in over 60 languages. To clarify, the rule permits an entity that operates a health program or activity in more than one State to add together the number of individuals with limited English proficiency who speak the same language in the collective States served to derive the top 15 languages in which the entity must post taglines. *See* https://www.hhs.gov/sites/default/files/2016_10_21_faqs_taglineagg-_final.pdf.

I am pleased to hear about the language assistance services that the health insurance industry offers to serve culturally and linguistically diverse populations. I share your goal to make health programs accessible to limited English proficient individuals in a manner that balances the benefits of access against the burdens of providing that access. I appreciate NAHU sharing its implementation concerns and welcome additional feedback that NAHU wishes to provide.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Roger Severino

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

DATE: September 14, 2017

TO: Thomas E. Price, M.D., Secretary

THROUGH: Paula Stannard, Senior Counselor to the Secretary
Ann C. Agnew, Executive Secretary

FROM: Roger T. Severino
Director, Office for Civil Rights

SUBJECT: Request a Public Safety Hiring Freeze Exemption to Permit a 120 Day Temporary Promotion to Fill the Acting Midwest Regional Manager Position (11AT04) - **DECISION**

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DECISION

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Thomas E. Price, M.D., Secretary Date

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Eric D. Hargan
Deputy Secretary

FROM: Roger T. Severino
Director, Office for Civil Rights

DATE: August 29, 2018

SUBJECT: **REGULATORY SPRINT: Pre-Development Memorandum for HIPAA Request for Information to Support, and Remove Barriers to, Coordinated Care**

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

May 15, 2018

The Honorable Michael C. Burgess, M.D.
U.S. House of Representatives
2336 Rayburn House Office Building
Washington, DC 20515

OCR Transaction Number: (b)(6)

Dear Dr. Burgess:

Thank you for the opportunity to speak with you about the role of the Office for Civil Rights, Health and Human Services and HIPAA with respect to the tragedies of gun violence and opioid addiction. As a follow up to our discussion, attached is the joint guidance I referenced that was issued by HHS and the U.S. Department of Education as well as some additional information on topics that we discussed.

Parental rights

Under HIPAA parents generally are considered the "personal representatives" of their minor children and have a right to obtain their minor children's health records (with certain limited exceptions). 45 CFR § 164.502(g). Parents do not retain these access rights once a minor reaches the age of majority or is legally emancipated, including with respect to information collected while the child was a minor.

However, a health care provider may continue to share information with parents if the adult child:

> (a) consents to sharing the information **with a family member involved in their care** or does not object after having the opportunity to do so, or the provider reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure, or
>
> (b) is unable to agree or object because of incapacity or emergency and the provider determines, based on professional judgment, that disclosure of relevant information is in the patient's best interests; or,
>
> (c) presents a serious and imminent threat to their health or safety or to those of others, and the family member can prevent or lessen the threat.

45 CFR §§ 164.510(b)(2), (b)(3), and (j), respectively.

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Deceased individuals
HIPAA requires a covered entity to comply with the Privacy Rule as it relates to any deceased individual's protected health information for 50 years following death. 45 CFR § 164.502(f). As stated above, HIPAA defers to state law regarding who qualifies as an individual's personal representative for disclosure purposes, and this includes after a person's death. CFR § 164.502(g)(4).

Students
Student health information maintained by schools is generally covered by the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, not HIPAA. 45 CFR § 160.103. As we discussed, my office is working with the Department of Education to update our joint guidance (see attached) on this issue.

Congressional oversight
The HIPAA Privacy Rule permits covered entities to share protected health information with health oversight authorities that are authorized by law to oversee the health care system. 45 CFR § 164.512(d).

HIPAA and Mental and Behavioral Health
HHS's Office for Civil Rights has produced extensive guidance materials for covered entities, individuals, and families, to help them understand how HIPAA permits the sharing of information to protect health and safety and to prevent and address emergencies, including mental health crises and opioid overdoses. We are working with partners in HHS, including SAMHSA, to increase our training and outreach on these topics and will continue working to address the misconceptions about HIPAA that may be preventing some health care providers from sharing information with families and caregivers when necessary to protect the health and safety of patients and the public.

We hope we have been of assistance and welcome any further questions and suggestions.

Sincerely,

Roger Severino
Director

Enclosure

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Eric D. Hargan
Deputy Secretary

FROM: Roger T. Severino
Director, Office for Civil Rights (OCR)

DATE: September 11, 2018

SUBJECT: **PRE-DEVELOPMENT MEMORANDUM FOR HIPAA PRIVACY RULE: PRESUMPTION OF GOOD FAITH OF COVERED ENTITIES**

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Roger Severino

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DECISION TO MOVE FORWARD

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Eric D. Hargan Date
Deputy Secretary

ATTACHMENTS

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

DATE: January 12, 2018

TO: Eric D. Hargan
Acting Secretary

THROUGH: Paula M. Stannard

FROM: Roger T. Severino
Director, Office for Civil Rights

SUBJECT: Notice of Proposed Rulemaking: Federal Health Care Conscience — **DECISION**

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DECISION

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Eric D. Hargan Date

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TAB A

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TAB B

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Incentive Awards Program
Office for Civil Rights (OCR)
Policy # OCR-H-02

General

This document has been formulated to provide comprehensive OCR policies and procedures for the implementation of an Incentive Awards Program.

Issue Date

June 23, 2017

Applicability

This policy applies to OCR employees except for the Public Health Service Commissioned Corps personnel who should refer to HHS Commissioned Personnel Manual 25.1 Instruction 5 for guidance.

Responsibility

OCR office charged with policy and oversight: Human Resources, Operations and Resources Division.

Assignment of Specific Duties

Awards Committee Facilitator: Chief of Human Resources, Operations and Resources Division.

Delegation of Authority

Authority within OCR to establish further policy below the Director level is not granted. This policy is specifically established with the intention of governing across OCR without modification.

Approval

This issuance is effective immediately and supersedes all previous OCR guidance issued on this subject. Implementation of this guidance must be carried out in accordance with applicable laws, regulations, HHS-NTEU Consolidated Collective Bargaining Agreement, and HHS policy.

Roger Severino
Director
Office for Civil Rights

6/21/17
Date

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I. Purpose

The purpose of this policy is to set conditions whereby OCR employees are appropriately rewarded, through use of Incentive Awards, for meritorious accomplishments in a judicious and equitable manner. To that end, this policy describes the various categories of awards, instructions on how to submit nominations, formulation and operations of the OCR Incentive Awards Committee ("Committee"), and approval procedures. Many types of awards are available to recognize superior work. This policy addresses the various monetary awards available as well as one type of non-monetary award, the Time-off Award (TOA). OCR leaders and other personnel who choose to make award nominations are encouraged to evaluate each type of award included herein and choose the appropriate type to best recognize excellence in each particular situation.

II. Background

Government-wide award regulations give agencies the authority and flexibility to recognize Federal employees' contributions and to provide incentives for achieving organizational goals. Regulations provide agencies the authority to reward employees individually or as members of a group for a variety of contributions. Beyond the primary goal of rewarding hardworking employees, incentives are also an effective tool in hiring and retaining agency talent. Providing incentives, recognizing performance, and acknowledging contributions are thus critical organizational functions. There are many ways to acknowledge contributions and good performance, from a simple sincere statement of appreciation, to a Certificate of Achievement, to formal cash or time-off incentive awards. OCR is committed to recognizing the outstanding work of its employees. OCR recognizes its employees for their unwavering commitment to the OCR and HHS mission through a fair, equitable, and transparent awards program.

Incentive awards should be based on merit and are suitable for a wide variety of purposes, including contributions to quality and efficiency, exceptional customer service, cost or resource savings, significant process or procedural improvements, outstanding project success, and more. No quotas or predetermined distribution rates will be established for the size and number of awards considered or granted. It is important to note that this policy applies only to incentive awards. OCR Director's Honor Awards and all HHS Departmental Awards programs are treated in separate policy documents, as are Performance Management Appraisal Program (PMAP) awards.

III. References

A. DHHS Awards Program Policy, Instruction 451-1, January 2010 [http://www.hhs.gov/asa/ohr/manual/files/451-1.pdf]

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B. 5 USC 45
[https://www.gpo.gov/fdsys/granule/USCODE-2011-title5/USCODE-2011-title5-partIII-subpartC-chap45]

C. OPM Incentives and Employee Recognition, September 2005
[https://www.opm.gov/policy-data-oversight/human-capital-management/reference-materials/talent-management/incentivesrecognition.pdf]

IV. Definitions

A. **Awards:** Something given (e.g., cash or a certificate) or an action taken (e.g., granting time off with pay or holding a ceremony) to provide incentive or recognition for individual or team achievements that contribute to meeting organizational goals or improving the efficiency, effectiveness, or economy of the Government.

B. **Awards Committee ("Committee"):** For OCR, this is a committee comprised of bargaining unit (BU) and non-bargaining unit (NBU) employees. Section V, paragraph C of this policy contains a detailed list of Committee responsibilities and duties.

C. **Awards Program:** Specific requirements established by an agency to grant awards, including the basis for awards. Within its overall awards program, an agency may establish specific awards, usually with a distinctive name, for a particular purpose or to grant a particular type of an award. The Awards Program is OCR's (and the Federal Government's) principal means of providing variable pay to employees.

D. **Deciding Official:** The individual within OCR who has final approval authority over all OCR monetary and non-monetary awards. The Deciding Official is the OCR Director. However, the Director may delegate this duty.

E. **Non-Monetary Award:** An award given in a form other than cash (e.g., time-off, plaque, item of symbolic value, etc).

F. **On-the-Spot (OTS) Award:** Recognition of a significant employee accomplishment that is normally supplied close in time to its occurrence. The award can be monetary (cash) or non-monetary (time-off, plaque, certificate, etc).

G. **Recognition:** Provides after the fact acknowledgement to employees for their accomplishments when there was no previous promise of reward and signals the types of achievements the organization values.

H. **Special Act or Service Award:** An award, monetary or non-monetary, granted to recognize specific accomplishments by individuals or teams of employees.

I. **Time-off Award (TOA):** A non-monetary award that provides time off from work without charge to leave or loss of pay granted to a Federal employee as a form of incentive or recognition.

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HHS 2019-00568-000049
HHS-19-0190-A-000049

V. Policy

OCR's incentive awards program will be governed by a range of policies encompassing guiding principles, types of awards, Awards Committee, funding, and more, which are discussed in detail below. Unless exceptions are outlined, the rules are meant to be compulsory.

A. Guiding Principles

1. All employees, BU and NBU, who meet relevant requirements are eligible to be considered for all award categories.

2. The awards program shall be administered in a fair and equitable manner and all properly submitted awards will be evaluated based exclusively on merit.

3. Confidentiality is vital.

   a. Consultations. The Committee may consult the nominee's supervisory chain if desired to discuss the contents of the award nomination form. Only process participants (nominator, supervisory chain, Committee, appropriate headquarters staff charged with processing and certifying the submissions, executives, and the Deciding Official) will be privy to award nominations and related information. All participants in the process are expected to keep all materials and conversations confidential and not disclose such information to anyone outside the process.

   b. Announcements. Only award recipient names and a brief description of the justification will be announced once awards are fully approved by the Deciding Official. All communications surrounding awards are confidential and no information concerning award deliberations will be released or publicized.

4. Awards and recognition will be presented to recipients as close in time as possible to the achievement being rewarded.

5. To preclude actual conflict of interest or the perception and appearance thereof, Committee members will recuse themselves from consideration in several cases, including any nomination for which s/he is the nominee or the nominator, any award nomination involving an employee assigned within a Committee member's division, region, or team (i.e. CRD, HIP, region, HQ team, etc.), and any nomination for which s/he has a familial relationship or any other personal relationship that might give rise to a conflict of interest.

6. Awards are meant to be singular based on any given achievement. Therefore, employees may not receive more than one award or recognition item for the same accomplishment, except that each accomplishment may be recognized by a combination of monetary and time off awards as appropriate.

7. Incentives help focus employees on the organization's goals and provide specific rewards to employees who attain specified results that significantly help to achieve those goals. Recognition provides after the fact acknowledgement to employees for their accomplishments and signals the types of achievements the organization values. Incentives and recognition may involve individual employees, groups, or the entire organization.

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HHS 2019-00568-000050
HHS-19-0190-A-000050

B. Types of Awards

1. Special Act or Service (SAS) Award

a. A SAS may be granted to an individual or group for a one-time occurrence comprised of a single action or series of actions, performed either within or outside the employee's normal responsibilities, when that occurrence merits recognition under the standards set out in B(1)c below. The determining factor in distinguishing what constitutes a special act or service is the one-time nature of the contribution itself. An aspect of the job can be recurring, but a special act or service award may be appropriate for a one-time special effort in performing that aspect of the job that would not otherwise be appropriately recognized through a performance award.

b. Specific usages, criteria, and points of consideration:

1) A SAS may be awarded in the form of cash, and/or in conjunction with a time off award (TOA), which is defined later in this document.

2) Generally, a nomination may be submitted for an amount between $275 and $750 for individuals and between $275 and $3,000 for teams. Nominations may also be submitted for higher amounts. In the case of a team award, the total amount will be split between the team members according to the nomination document.

3) The period of performance of the special act or service will not normally exceed 120 days.

c. A SAS is appropriate to recognize noteworthy contributions to the quality, efficiency, or economy of government operations. Examples include, but are not limited to: noteworthy non-recurring contribution either within or outside of job responsibilities; an act of heroism; high quality contribution involving a difficult or important project or assignment; special initiative and skill in completing an assignment or project before the deadline; initiative and creativity in making improvements in a product, activity, program, service, or current practice; ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload; or recognition of an employee or group's disclosure of fraud, waste or abuse resulting in tangible or intangible benefits to the government.

2. On-the-Spot (OTS) Award

a. An OTS award recognizes individuals for one or more specific instances of contributions within or beyond normal duties, but for which higher level recognition is not appropriate.

b. Specific usages, criteria, and points of consideration:

1) An OTS may be awarded in the form of cash, and/or in conjunction with a TOA which is defined later in this document.

2) Generally, a nomination may be submitted for a TOA up to 8 hours or an amount between $100 and $250 for individuals and a TOA up to 8 hours per team member for teams or between $300 and $1,000 to be shared by the entire team. In the case of a team, the total

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dollar amount and or TOA hours will be split between the team members according to the nomination document.

3) The period of performance of the special act or service will not normally exceed 120 days.

c. An OTS is appropriate to recognize noteworthy contributions to the quality, efficiency, or economy of government operations. Examples include, but are not limited to: noteworthy non-recurring contribution either within or outside of job responsibilities; an act of heroism; high quality contribution involving a difficult or important project or assignment; special initiative and skill in completing an assignment or project before the deadline; initiative and creativity in making improvements in a product, activity, program, service, or current practice; ensuring the mission of the unit is accomplished during a difficult period by successfully completing additional work or a project assignment while maintaining the employee's own workload; or recognition of an employee or group's disclosure of fraud, waste or abuse resulting in tangible or intangible benefits to the government.

3. Time off Award (TOA)

a. The Office of Personnel Management (per US Code, Title 5, Par 4502e) may, by regulation, permit agencies to grant employees time off from duty, without loss of pay or charge to leave, as an award. Agencies may use TOAs as incentives or as recognition.

b. Specific usages, criteria, and points of consideration:

1) TOAs are a unique form of non-monetary awards that can be given separately or in conjunction with a monetary award. TOAs do not require additional funding or cash disbursement by agencies. However, salary dollars are being paid for time not worked so there is an organizational cost involved. Agencies may grant TOAs along with other forms of awards as long as the total value of the award given is commensurate with the contribution being recognized.

2) TOAs may not be converted to cash payment. Neither agencies nor individuals can convert TOAs to cash under any circumstances. Agencies need to ensure employees will value and be able to use a TOA.

3) TOAs are nontransferable. Unlike other forms of pay for time not worked (e.g., annual and sick leave), employees are not entitled to a TOA. If an employee transfers from one agency to another, the gaining agency is not obligated to "honor" the TOA. Therefore, any unused TOA is not transferable unless a special arrangement is made with the receiving agency to honor the TOA granted by the employee's former agency. Also, the losing agency may not convert the TOA to cash (5 CFR 451.104f).

4) Agencies and organizations must monitor all TOAs. TOAs must be centrally managed as the Code of Federal Regulations requires agencies to document all time-off awards (5 CFR 451.106e) in compliance with instructions in the OPM Operating Manual: *The Guide to Processing Personnel Actions*.

5) Full-time employees may not be granted more than 80 hours of time off through incentive awards during a single leave year; part-time employees may not be granted more than the average number of hours worked biweekly during a single leave year.

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6) Organizations should consider a possible public perception of TOAs. It could appear that an agency that gives substantial, frequent, or large numbers of TOAs could be overstaffed since it can complete its mission while these employees are frequently absent.

c. Examples of bases for possible TOA awards include, but are not limited to: a suggestion, invention, superior accomplishment, productivity gain, or other personal effort that contributes to the efficiency, economy, or other improvement of government operations; achieving a significant reduction in paperwork; or a special act or service in the public interest in connection with or related to official employment.

C. Awards Committee ("Committee")

The Committee's primary responsibility is to serve as a key entity in the formulation and operations of the OCR Incentive Awards Program. Key responsibilities are proposing policy changes and reviewing all award nominations in order to make recommendations to the Deciding Official. The committee will remain in continuous readiness to meet as necessary to review and make recommendations on all incentive award nominations in order to forward them to the Deciding Official in a timely manner.

1. Composition

The Committee will be made up of an equal number of bargaining unit (BU) and non-bargaining unit (NBU) personnel.

a. BU membership

1) The Union will designate two (2) OCR individuals who are members of the BU to serve on the Committee. This appointment will commence for the current/upcoming fiscal year and will continue for future fiscal years until a new individual is appointed.

2) If a designated individual is unable to serve for any reason, the Union will appoint another individual to serve in either a temporary or permanent capacity.

b. NBU membership

1) The Chief of Staff will designate two (2) OCR individuals who are not part of the BU to serve on the Committee. This appointment will commence for the current/upcoming fiscal year and will continue for future fiscal years until a new individual is appointed.

2) If a designated individual is unable to serve for any reason, the Chief of Staff will appoint another individual to serve in either a temporary or permanent capacity.

2. Policy Responsibility

It is the responsibility of the Committee to consider and, if appropriate, propose an annual update to this policy. In offering new policy guidelines, the Committee should abide by the Guiding Principles set forth above and the below objectives as paramount to the success of the OCR award program:

a. The policy clearly states that the purpose of the document is to provide for an OCR award program whereby meritorious service and achievement on the part of OCR personnel is rewarded in a judicious and equitable manner.

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b. The policy prescribes a simple and transparent process whereby all nominations, without exception, are received, processed, reviewed by the Committee, and forwarded to the Deciding Official for consideration.

c. The policy emphasizes the need for and puts into place measures that ensure awards are granted as close in time as possible to the achievements being rewarded.

d. The Committee will reach recommendation by consensus. If no consensus is reached, the Committee will so annotate on the award nomination and submit it to the Deciding Official without a recommendation.

e. The Deciding Official will consider the Committee's recommendations and accept, modify or reject them. If the recommendations are rejected or modified, the Deciding Official will provide the Committee with her/his written rationale in order to guide future deliberations. If the Committee is unable to meet or does not provide a recommendation, the Deciding Official will proceed with a decision.

f. Employees may not receive more than one reward or recognition item for the same special act or service.

g. No Committee member may participate in the review and discussion of any nomination for which s/he is the nominator or nominee, any award nomination involving an employee assigned within a Committee member's division, , region, or team (i.e. CRD, HIP, , region, HQ team, etc.), or for which s/he has a familial relationship or any other relationship that may give rise to a conflict of interest.

D. Funding

1. All monetary award approvals are contingent upon the availability of funds. Each individual award will be certified for funds availability on the appropriate document prior to submission to human resources for processing.

2. Pay Pools

a. The overall pool for all forms of OCR awards will be established based upon a percentage of BU and NBU salaries as of the beginning of the fiscal year. The percentage used will be the same for both the BU and NBU pools.

b. Each OCR award pool will further be divided between performance awards and incentive awards. The incentive award pool will be no less than 15% of the funds from the established overall award pool. The Deciding Official will determine if the percentage set aside for the incentive awards pool will be greater than the required 15%.

c. The award pools will be based upon a percentage of bargaining unit salaries as of the beginning of the fiscal year. The Agency will notify the Union as soon as funding levels for award pools have been determined and will provide sufficient data to demonstrate the proper calculation and allocation of the award pools. The Committee will be provided this information as well.

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VI. Procedures

The procedures outlined below provide detailed guidance on notification, award submission, award processing, award review, and award approval. The principal parties involved in these procedures are the nominator, OCR's Human Resources (HR) Team, OCR's Budget Team, the Awards Committee, and the Deciding Official.

A. Annual Policy Update

The committee will meet as necessary and as desired in order to consider and, if appropriate, submit an updated proposed policy to the OCR Awards Committee Facilitator for the Director's consideration no later than July 1st annually. The Director will consider any proposal and determine whether to publish an updated policy that will be effective not later than September 30th.

B. Awards Program Cycle

1. The Incentive Awards Program will operate on a quarterly cycle. This will allow for four iterations of the process annually and thus timely consideration of all nominations.

2. A "Fiscal Year Awards Log" will be maintained by the OCR Human Resources Team to track all award submissions and determinations.

3. Award nominations will be due to the OCR HR Team on the last workday prior to January 1st, April 1st, July 1st, and October 1st. The goal will be to finish each quarterly cycle by the end of the first month of the quarter. This schedule will be adhered to as best as possible, but all parties must realize that unforeseen circumstances could cause delays. When delays occur, steps in the process will be completed with expediency to try and stay on schedule to the maximum extent possible.

4. The 4 cycles (January, April, July, October) each year will be conducted according to the following timeline:

Timing	Action	Requirement	Responsibility
No later than the 1st of previous month	Announcement of nomination deadline	30 calendar days prior to receipt deadline	OCR HR Team
Depends on timing of 1st Committee Meeting, but generally that will be around the 10th so notification should occur around the 25th of the previous month	Announcement of nomination deadline	at least fourteen (14) days in advance of the meeting	Awards Committee
Last business day of the previous month	Nominations Due	last business day of the quarter	Nominators
7th	Preparation for Committee review	within 7 days after nominations were due	OCR HR Team
10th	Committee review	first business day after the 10th of the month	Awards Committee
20th	Committee recommendations complete	within 10 days of initial meeting	Awards Committee
23rd	Preparation for Deciding Official Review	within three calendar days	OCR HR Team
29th, 30th, or 31st	Decision	by the end of the month	Deciding Official

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C. Submission of Nominations

1. Nominations may be submitted at any time of the year. They will be accepted by the OCR HR Team and maintained in readiness for the next scheduled time the Committee convenes to review awards. The deadline to be considered in the upcoming cycle will be the last business day of each month that closes a quarter. In general, there will be no exceptions to this deadline, but the Chief of Staff may provide special dispensation if s/he so chooses.

2. OCR will make a quarterly agency-wide announcement informing all employees of an impending Committee session which will include a description of each type of award available, the deadline by which award nominations must be submitted, and to whom they should be submitted. The announcement will be issued one month prior to the nomination deadline.

3. The Committee will also provide an announcement of each awards cycle to all eligible OCR employees at least 14 days in advance of the first Committee meeting during each quarterly cycle.

4. Nomination forms must include a supervisor's review/signature. The review is for awareness only and to ensure the nominee did not previously receive an award for the same accomplishment.

5. Nominations must be fully complete and received by the deadline or they will be considered in the next cycle.

6. All nominations, if sent via email, should be encrypted. If you require assistance, please consult with a PIMRA, office administrator, or IT personnel.

7. Anyone in OCR may nominate anyone in OCR. Additionally, self-nominations are allowed.

D. Preparation for Committee Review

1. The OCR HR Team will be responsible for nomination consolidation. All nominations will be collected, reviewed for completeness, and readied for Committee review within seven (7) days after the award nomination deadline. All nominations will be entered into the Awards Log.

2. Should there be any questions concerning a nomination, the OCR HR Team will address them with the nominator and/or supervisory chain as appropriate.

E. Award Review by the Committee

1. The Awards Committee Facilitator will take necessary steps and contact Committee members to set up Committee meetings. The Committee will initially convene by the 10th of the month that begins each cycle and meet as many times as needed in the following ten days to review and arrive at a recommendation on all nominations.

2. The Committee will reach individual award recommendations by consensus. If no consensus is reached by the Committee members on an individual award nomination, the Committee will communicate that fact to the Deciding Official. [Note: If the Committee is unable to meet or does not provide a recommendation, the Deciding Official will proceed with a decision.]

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3. The Committee will complete its proceedings each cycle by the 20th of the month and forward all recommendations to the OCR HR Team who will prepare them for Deciding Official Review.

4. The recommendation by the Committee is not binding or final. The final decision on each award will be made by the Deciding Official.

F. Preparation for Deciding Official Review

1. The nomination recommendation will be entered into the Awards Log.

2. Should there be any questions concerning a recommendation, the OCR HR Team will address them with the Committee.

3. Within three (3) calendar days of receiving the Committee's recommendations, the OCR HR Team will consolidate all recommendations and package them for further review by the Deciding Official.

G. Award Decision

1. The Deciding Official will consider the Committee's recommendations and accept, modify, or reject them. If the recommendations are modified or rejected, the Deciding Official will provide his/her rationale in order to guide the Committee's future deliberations. [Note: If the Committee is unable to meet or does not provide a recommendation, the Deciding Official will proceed with a decision.]

2. The Deciding Official will complete his/her review and provide a decision on each award nomination by the end of the month that begins each quarterly cycle.

H. Award Processing

1. Disapproved Nominations

   a. The award decision will be entered into the Awards Log.

   b. The nominator and the corresponding supervisory chain will be notified that the award has not been approved.

2. Approved Awards.

   a. The award decision will be entered into the Awards Log.

   b. The award will be certified for funds availability.

   c. The OCR HR Team will work to get the award information entered into the HHS Personnel System as soon as possible.

   d. The awardee, the nominator, and his/her supervisory chain will be notified of the approved award.

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(b)(2); (b)(5)

AMERICAN OVERSIGHT

(b)(2); (b)(5)

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

DATE: October 10, 2017

TO: Eric D. Hargan
Acting Secretary

THROUGH: Paula M. Stannard, Senior Counselor
Ann C. Agnew, Executive Secretary

FROM: Roger Severino, Director, Office for Civil Rights (OCR)

SUBJECT: Proposed Reorganization within Office for Civil Rights – **DECISION**

(b)(2); (b)(5)

AMERICAN OVERSIGHT

(b)(2); (b)(5)

AMERICAN OVERSIGHT

(b)(2); (b)(5)

AMERICAN OVERSIGHT

(b)(2); (b)(5)

[redacted]

(b)(6)

[redacted]

Roger Severino

DECISION

Approved _____ Disapproved_____

_____ _____

Eric D. Hargan Date

(b)(5)

[redacted]

AMERICAN OVERSIGHT

(b)(2); (b)(5)

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(b)(2); (b)(5)

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

DATE: October 24, 2017

TO: Eric D. Hargan
Acting Secretary

THROUGH: Paula M. Stannard, Senior Counselor
Ann C. Agnew, Executive Secretary

FROM: Roger Severino, Director, Office for Civil Rights (OCR) RS by

SUBJECT: Proposed Reorganization within Office for Civil Rights – **DECISION**

ISSUE

The Office for Civil Rights (OCR) proposes to establish a Conscience and Religious Freedom Division (CRFD) within OCR under the direction of the Director of OCR. This new Division will specialize in the implementation and enforcement of, and will ensure compliance with, laws protecting conscience and the free exercise of religion and prohibiting coercion and religious discrimination. The reorganization of OCR will entail:

- Establishing a new division within OCR;
- Reinvesting functions, personnel, and resources from within OCR; and
- Coordinating with other Departmental components concerning areas of potential overlap.[1]

BACKGROUND

The purpose of this proposed reorganization is to establish the CRFD within existing delegated authorities to enforce, and ensure compliance with, federal conscience, anti-coercion, religious freedom, and religious nondiscrimination laws applicable to programs and activities conducted,

[1] Note: OCR will continue to seek legal advice from the Office of the General Counsel on policy and enforcement matters related to the new division as it does with existing divisions.

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funded, or administered by the Department. Additionally, OCR seeks delegation of authority with respect to several HHS statutory provisions relating to religious freedom or conscience for which such authority has not been delegated to OCR and/or for which delegations of such authority have not been located.

The protection of conscience and religious freedom is among the Department's highest priorities in light of the Religious Freedom Restoration Act of 1993 (RFRA), the Church, Coats-Snowe and Weldon Amendments, Section 1553 of the Affordable Care Act, the President's May 4, 2017, Executive Order Promoting Free Speech and Religious Liberty, the Attorney General's Guidance on Federal Law Protections for Religious Liberty issued on October 6, 2017, and the Department's Draft Strategic Plan. Under 45 C.F.R. Part 88, OCR is currently responsible for receiving and, in coordination with the funding components of HHS, handling and investigating complaints concerning the federal health care provider conscience protection statutes, *i.e.*, the Church, Coats-Snowe, and Weldon Amendments. In addition, as noted on its website, OCR is responsible for enforcing certain nondiscrimination laws that include prohibition on discriminating on the basis of religion. *See* https://www.hhs.gov/civil-rights/for-individuals/religion/index.html.

Religious freedom and conscience rights are protected by the U.S. Constitution and numerous federal laws. These rights represent fundamental, inalienable liberties. A core component of OCR's mission is the enforcement of the aforementioned federal laws that protect these rights in health care and human services. OCR and the Department more generally, currently lack a component to provide subject matter expertise and coordination on these laws. This lack has resulted in inconsistent policies and practices across the Department, contributed to numerous lawsuits, court orders, and injunctions against the Department, as well as generated significant Congressional and public concern.

The CRFD will more effectively fulfill OCR's existing obligation to enforce federal laws concerning conscience and religious discrimination and will streamline information, guidance, and compliance activities inside and outside the Department. Additionally, in consultation with the Department's Center for Faith-Based and Neighborhood Partnerships, the CRFD will provide important outreach and education on conscience and religious freedom to individuals and entities across the country.

BUDGET

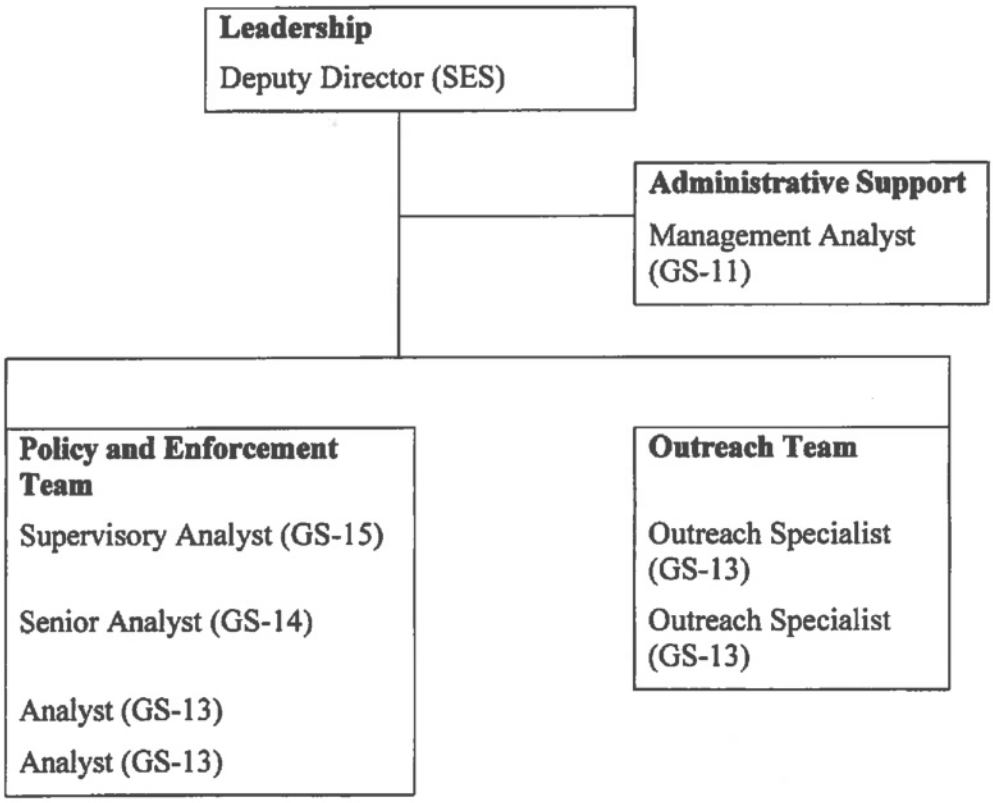
OCR's proposed reorganization relies upon the budget request for OCR for FY 2019, which is unchanged from the overall request under the President's FY 2018 Budget, and less than the current budget authorization under the Continuing Resolution. The FY 2019 request recognizes the CRFD and would dedicate $1,649,000 to it, through reinvestment of existing resources under the President's FY 2018 Budget. The CRFD will have eight FTEs, consisting of one SES Deputy Director and seven GS civilians. Funding will consist of civilian compensation, associated overhead support costs, and operational travel.

The CRFD complements OCR's two other existing programmatic divisions – the Civil Rights Division (CRD) and the Health Information Privacy Division (HIP) – to ensure that OCR focuses

AMERICAN OVERSIGHT

appropriate attention on the important priority of conscience and religious liberty, without diminishing OCR's efforts to further its mission in the areas of civil rights and health information privacy and security. A total of eight currently unfilled positions (one each from CRD and HIP; six from OCR's Operations and Resources Division) will be realigned from the existing divisions to stand up the CRFD. Together, these three programmatic divisions will ensure that OCR, and the Department at large, are contributing to the Department's overall mission and the Administration's priorities in each of these areas. The proposed structure of the CRFD is as follows:

Proposed CRFD Organizational Chart



To allow for a rapid stand up of the Division, OCR plans on initially staffing the CRFD with a mix of FTEs and contractors.

HUMAN CAPITAL

There is no significant impact in the human resources area. As a result of this reorganization, the overall OCR FTE level remains unchanged, and no current employees will be adversely affected. There will be no loss of grade, reduction of salary, or loss of physical offices for any employees.

As previously stated, the CRFD will be staffed by a realignment of positions from the existing divisions. The realigned positions are all currently vacant, so the creation of the CRFD will not

AMERICAN OVERSIGHT

impact current employees, although interested current employees may apply for the new positions. Grade levels of the employees hired to fill the positions in the CRFD will be designated based on the scope and complexity of the work assigned. Finally, a career SES level position will be requested to lead this organization through the appropriate Departmental process.

COLLECTIVE BARGAINING OBLIGATION

Collective bargaining obligations have been met with regard to the proposed organizational changes. There does not appear to be any change to the conditions of employment for bargaining unit employees. No employee will be displaced due to these changes in the organization structure, and employees will remain bargaining unit members with no change in pay or benefits. Employees' commuting duty station will also remain unchanged.

If any unforeseen changes to the conditions of employment arise as a result of the reorganization, they will be negotiated before implementation, in accordance with the Collective Bargaining Agreement. Office of Business Management and Transformation will coordinate with the Office of Human Resources' Division of Workforce Relations to work directly with labor union officials to ensure that all requirements pursuant to our Collective Bargaining Agreement are met.

DELEGATIONS OF AUTHORITY

Pending further delegations, directives, or orders by the Secretary or OCR Director, all delegations and redelegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors. All delegations of authority have been reviewed and proposed changes are to be implemented within 90 days after the reorganization, if needed. OCR requests approval of additional Secretarial delegations of authority regarding RFRA and Section 1303(b)(4) of the Patient Protection and Affordable Care Act (42 U.S.C. 2000bb *et seq.* and 42 U.S.C. 18023(b)(4), respectively).[2]

[2] RFRA provides that the federal government may not substantially burden a person's religious exercise without a compelling governmental interest pursued by the least restrictive means. No Departmental component has been delegated specific RFRA authority. Section 1303(b)(4) provides that "no qualified health plan offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions." The language in this provision is substantially similar to that found in the Weldon Amendment (enforcement delegated to OCR), which denies funding to federal agencies or programs, or State or local government if such entity subjects individual or institutional health care providers to discrimination "on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." Thus, although the CMS Administrator was delegated general authority over Section 1303, along with other provisions of the ACA, in 2001, 76 FR 53903, OCR has been coordinating the handling of complaints with CMS under Section 1303(b)(4) since 2001. The draft delegation would clarify and expand OCR's role.

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RECOMMENDATION

I recommend that you approve OCR's plan to document and formalize its reorganization by signing this memorandum, the attached *Federal Register* notice (Tab E) and the attached Delegations of Authority and Memoranda to the OCR Director (Tabs F - I).

RS by Thomas

Roger Severino

DECISION

Approved ✓ Disapproved _____

Eric Hargan 12/7/2017

Eric D. Hargan Date

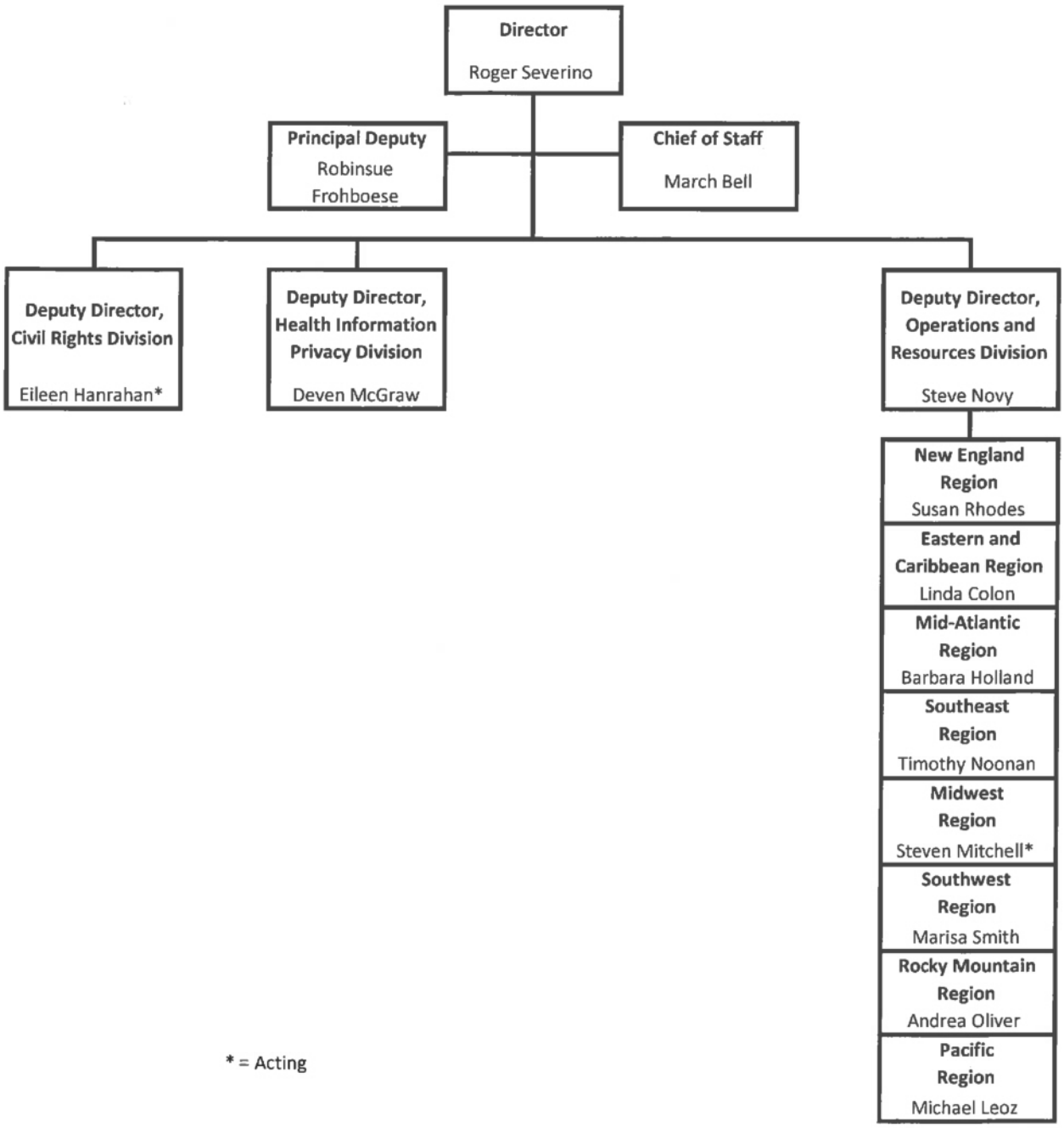
Attachments:
Tab A – OCR Organizational Chart - Current
Tab B – OCR Organizational Chart - Proposed
Tab C – OCR Funding and FTEs by Division
Tab D – Workforce Breakdown Chart (Current and Proposed)
Tab E – *Federal Register* Notice
Tab F – Draft Secretarial Delegation of Authority regarding the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*
Tab G – Memo from the Secretary on Delegation of Authority regarding the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*
Tab H – Secretarial Delegation of Authority regarding Section 1303(b)(4) of the Patient Protection and Affordable Care Act, 42 U.S.C. 18023(b)(4)
Tab I – Memo from the Secretary on Delegation of Authority regarding Section 1303(b)(4) of the Patient Protection and Affordable Care Act, 42 U.S.C. 18023(b)(4)

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Tab A

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OCR Organizational Chart – Current (as of October 1, 2017)



* = Acting

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Current OCR Organizational Chart (text version)

Office for Civil Rights

- Director, Roger Severino
    - Chief of Staff, March Bell
    - Principal Deputy Director, Robinsue Frohboese

The following offices report directly to the Director:

- Deputy Director, Civil Rights Division, Eileen Hanrahan (Acting)
- Deputy Director, Health Information Privacy Division, Deven McGraw
- Deputy Director, Operations and Resources Division, Steve Novy

The following regional managers report to the Deputy Director, Operations and Resources Division:

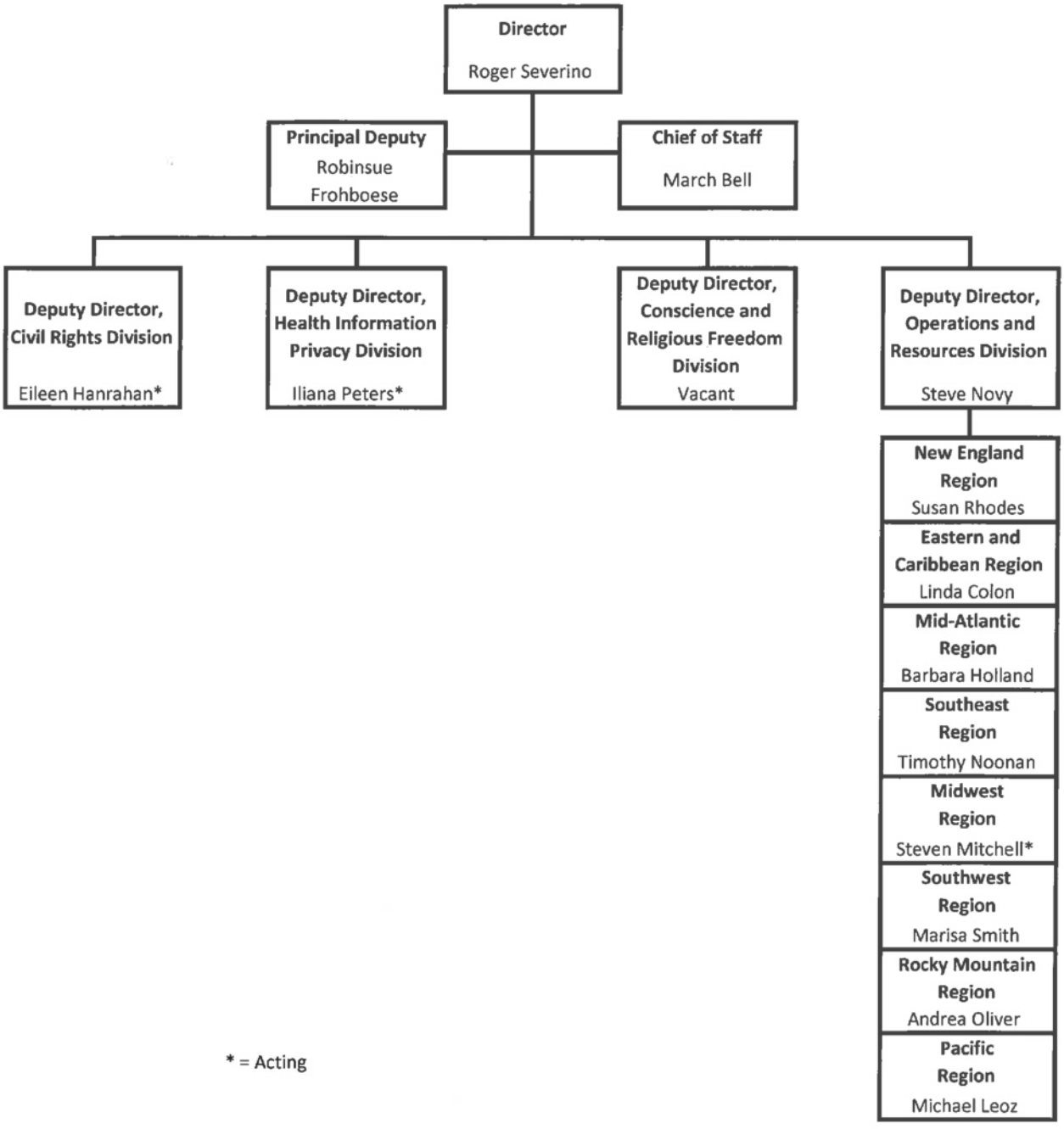
- New England Regional Office, Susan Rhodes
- Eastern & Caribbean Regional Office, Linda Colon
- Mid-Atlantic Regional Office, Barbara Holland
- Southeast Regional Office, Timothy Noonan
- Midwest Regional Office, Steven Mitchell (Acting)
- Southwest Regional Office, Marisa Smith
- Rocky Mountain Regional Office, Andrea Oliver
- Pacific Regional Office, Michael Leoz

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Tab B

AMERICAN OVERSIGHT

OCR Organizational Chart – Proposed



* = Acting

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Proposed OCR Organizational Chart (text version)

Office for Civil Rights

- Director, Roger Severino
    - Chief of Staff, March Bell
    - Principal Deputy Director, Robinsue Frohboese

The following offices report directly to the Director:

- Deputy Director, Civil Rights Division, Eileen Hanrahan (Acting)
- Deputy Director, Health Information Privacy Division, Iliana Peters (Acting)
- Deputy Director, Operations and Resources Division, Steve Novy
- Deputy Director, Conscience and Religious Freedom Division, Vacant

The following regional managers report to the Deputy Director, Operations and Resources Division:

- New England Regional Office, Susan Rhodes
- Eastern & Caribbean Regional Office, Linda Colon
- Mid-Atlantic Regional Office, Barbara Holland
- Southeast Regional Office, Timothy Noonan
- Midwest Regional Office, Steven Mitchell (Acting)
- Southwest Regional Office, Marisa Smith
- Rocky Mountain Regional Office, Andrea Oliver
- Pacific Regional Office, Michael Leoz

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Tab C

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OCR Funding and FTEs by Division

OCR Funding by Division:

Division	FY 2018 President's Budget	FY 2019 Budget Request	FY 2019 Budget Request +/- FY 2018 President's Budget
Civil Rights Division	3,213,000	2,793,000	-420,000
Health Information Privacy Division	3,413,000	2,954,000	-459,000
Conscience and Religious Freedom Division	-	1,649,000	+1,649,000
Operations and Resources Division	25,904,000	25,134,000	-770,000
Total, OCR Discretionary Budget Authority	**32,530,000**	**32,530,000**	**-**

Authorized OCR FTEs by Division (includes vacant positions):

Division	FY17	FY18	FY19	+/-
Civil Rights Division	17	17	16	-1
Health Information Privacy Division	17	16	15	-1
Conscience and Religious Freedom Division	-	-	8	+8
Operations and Resources Division	145	129	123	-6
Total	**179**	**162**	**162**	**-**

HHS 2019-00568-000089

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Tab D

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Workforce Breakdown Chart (Current and Proposed)

Breakdown of Current On Board Workforce (as of 10/13/2017)

Federal Employees	Career	Political	Total
SES	3	1	4
GS-15	16	3	19
GS-14	23	1	24
GS-13	34	-	34
GS-12	46	-	46
GS-11	3	-	3
GS-9	10	-	10
GS-8	2	-	2
GS-7	1	-	1
GS-6	1	-	1
Commissioned Corps	1	-	1
TOTAL	140	5	145

OCR Breakdown of Proposed On Board Workforce including New Division[1]

Federal Employees	Career	Political	Total
SES	4	1	5
GS-15	17	3	20
GS-14	24	1	25
GS-13	38	-	38
GS-12	46	-	46
GS-11	4	-	4
GS-9	10	-	10
GS-8	2	-	2
GS-7	1	-	1
GS-6	1	-	1
Commissioned Corps	1	-	1
TOTAL	148	5	153

[1] Figures do not reflect attrition or likely backfilling of some vacant positions in the existing divisions.

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Tab E

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4153-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Office for Civil Rights, Office of the Secretary, HHS

SUMMARY: This notice establishes the Conscience and Religious Freedom Division in the Office for Civil Rights of the Department of Health and Human Services.

SUPPLEMENTARY INFORMATION:

In accordance with Executive Order 13798 Promoting Free Speech and Religious Liberty (May 4, 2017), 82 FR 21675, and the Attorney General's Guidance on Federal Law Protections for Religious Liberty (October 6, 2017), Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS), as last amended at 81 FR 95622 (December 28, 2016), is being amended at Chapter AT, Office for Civil Rights (OCR) to reflect the restructuring of OCR as follows:

I. Under Chapter AT, Office for Civil Rights (OCR), in the outline section at the beginning of the Chapter that reads:

"AT.00 Mission

AT.10 Organization

AT.20 Functions"

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II. Under Chapter AT, Office for Civil Rights (OCR), delete "Section AT.00 Mission" in its entirety and replace with the following:

"**AT.00 Mission**

OCR, a Staff Division of the U.S. Department of Health and Human Services (HHS), ensures that individuals receiving services from HHS-funded programs are not subject to unlawful discrimination; that individuals and entities are free from coercion and can exercise their conscience and religious freedom rights; and that people can trust the privacy, security, and availability of their health information. By rooting out invidious discrimination and removing unlawful barriers to HHS-funded services, OCR carries out the HHS mission of improving the health and well-being of all Americans and providing essential human services. By ensuring individuals and institutions can exercise their conscience and religious freedom rights, OCR furthers justice and tolerance in a pluralistic society. By promoting the right to access health information and protecting the privacy and security of this information, OCR helps empower people's health care decision-making and helps ensure the integrity of the health care system and thereby promotes better health outcomes for the nation.

OCR accomplishes this by:

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- Enforcing laws, investigating complaints, conducting compliance reviews, promulgating regulations, developing policy, providing technical assistance, and engaging in public education and outreach to ensure understanding of and compliance with all the laws OCR has authority over;

- Ensuring that recipients of HHS federal financial assistance comply with federal civil rights laws that prohibit discrimination on the bases of race, color, national origin, disability, age, sex, and religion;

- Ensuring that federal agencies, state and local governments, health care providers, health plans, and others comply with federal laws guaranteeing the free exercise of religious beliefs and moral convictions and the right to be free from coercion in HHS-conducted or funded programs; and

- Ensuring the practices of health care providers, health plans, health care clearinghouses, and their business associates adhere to federal privacy, security, and breach notification regulations under the Health Insurance Portability and Accountability Act (HIPAA) through the investigation of complaints, self-reports of breaches, compliance reviews, and audits."

III. Under Chapter AT, Office for Civil Rights (OCR), delete "Section AT.10 Organization" in its entirety and replace with:

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"**AT.10 Organization**

A. Office of the Director (AT)

B. Operations and Resources Division (ATA)

C. Civil Rights Division (ATB)

D. Health Information Privacy Division (ATC)

E. Conscience and Religious Freedom Division (ATD)"

IV. Under Chapter AT, Office for Civil Rights (OCR), Section "**AT.20 Functions**" delete subsection "A. Office of the Director (AT)" in its entirety and replace with the following:

"A. Office of the Director (AT). The Director is the Department's chief officer and adviser to the Secretary concerning implementation of, compliance with, and enforcement of civil rights and conscience and religious freedom laws applicable to HHS-funded or conducted programs or activities, and privacy, security, and breach notification rules under HIPAA. The Director provides leadership, priorities, guidance, and supervision to OCR and is responsible for its overall policy, programs, and operations. The Director is also responsible for representing the Secretary and the Department, in coordination and consultation with the Assistant Secretary for Legislation, before Congress and the Executive Office of the President on matters relating to civil rights, conscience and religious freedom, and health information privacy and for liaising with other federal departments and agencies responsible for similar or related matters."

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V. Under Chapter AT, Office for Civil Rights (OCR), Section "**AT.20 Functions**" at subsection "B. Operations and Resources Division (ATA)" add ", conscience and religious freedom," after "ORD is responsible for responding to stakeholder calls and triaging civil rights."

VI. Under Chapter AT, Office for Civil Rights (OCR), Section "**AT.20 Functions**" at subsection "C. Civil Rights Division (ATB)," delete "original" after "on the basis of race, color, national" and replace with "origin" and delete "; the Division also enforces provider conscience laws" after "sex, disability, and age."

VII. Under Chapter AT, Office for Civil Rights (OCR), Section "**AT.20 Functions**" add a new subsection E as follows:

AT.20 Functions

* * * * *

"E. Conscience and Religious Freedom Division (ATD). The Conscience and Religious Freedom Division (CRFD) is headed by the Deputy Director for Conscience and Religious Freedom, who reports to the Director. The CRFD is responsible for OCR's national conscience and religious freedom program, including enforcement of and compliance with laws protecting conscience and the free exercise of religion and prohibiting coercion and religious discrimination.

AMERICAN OVERSIGHT

These laws include, but are not limited to, the Church Amendments (42 U.S.C. § 300a-7); the Coats-Snowe Amendment (42 U.S.C. § 238n); the Weldon Amendment (e.g., Pub. L. 115-31, Div. H, § 507(d) (2017)); Sections 1303(b)(4) and 1553 of the Affordable Care Act (42 U.S.C. §§ 18023(b)(4) and 18113, respectively); the Religious Freedom Restoration Act (42 U.S.C. § 2000bb et seq.); the employment religious nondiscrimination provisions in the Public Telecommunications Financing Act of 1978 (47 U.S.C. § 398(b)) and the religious nondiscrimination provisions in various block grant authorizing statutes. The CRFD conducts OCR's nationwide enforcement and compliance activities including investigating and developing cases; negotiating case resolution agreements; developing enforcement and litigation strategies; promulgating regulations, policies, and guidance; and conducting compliance reviews of covered entities and HHS Operating and Staff Divisions, in consultation with the HHS Center for Faith-Based and Neighborhood Partnerships, as appropriate. The CRFD also identifies and designs conscience and religious freedom-specific training programs for Departmental staff, provides subject-matter expertise for public education and outreach activities to stakeholders nationwide, and liaises with, and provides conscience and religious freedom technical assistance and advisory services to, HHS Operating and Staff Divisions, national advocacy, beneficiary, and provider groups, religious organizations, faith-based organizations, and for profit and non-profit organizations, state and local governments, and to other federal departments and agencies, including by serving on intra- and interagency workgroups."

AMERICAN OVERSIGHT

VIII. Pending further delegations, directives, or orders by the Secretary or the OCR Director, all delegations and redelegations of authority to positions of the affected organizations in effect prior to the date of this notice shall continue in effect in them or their successors, provided they are consistent with this reorganization.

Dated: 12/7/2017

Eric D. Hargan

Acting Secretary,

Department of Health and Human Services.

AMERICAN OVERSIGHT

Tab F

AMERICAN OVERSIGHT

4153-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Delegation

Notice is hereby given that I have delegated to the Director of the Office for Civil Rights, or his or her successor, the authorities vested in the Secretary concerning enforcement of and compliance with Section 1303(b)(4) of the Patient Protection and Affordable Care Act, 42 U.S.C. 18023(b)(4). This delegation transfers, but only for the authorities pursuant to Section 1303(b)(4) and not for other authorities under Section 1303, the previous delegation to the Administrator, Centers for Medicare & Medicaid Services, or his or her successor, noticed at 76 FR 53903 (Aug. 30, 2011).

Pursuant to this delegation, the OCR Director shall have the authority to:

(1) accept and investigate complaints filed by individuals or entities alleging a failure to comply with Section 1303(b)(4);

(2) conduct Section 1303(b)(4) compliance reviews;

(3) provide technical assistance to departmental components and qualified health plans regarding Section 1303(b)(4) compliance;

AMERICAN OVERSIGHT

(4) evaluate the effectiveness of subsection 1303(b)(4) complaint processing by OCR and provide reports to appropriate oversight organizations; and

(5) initiate such other actions as may be necessary to facilitate and ensure compliance with Section 1303(b)(4).

This authority may be redelegated. If the OCR Director chooses to redelegate this authority, the OCR Director will maintain primary responsibility and accountability for implementation of this section. This delegation is effective upon date of signature. I hereby affirm and ratify any actions taken by the Director of OCR or subordinates which involved the exercise of the authorities delegated herein prior to the effective day of this delegation.

Dated: 12/7/2017

Eric D. Hargan

Acting Secretary,

Department of Health and Human Services.

AMERICAN OVERSIGHT

Tab G

AMERICAN OVERSIGHT

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

TO: Director, Office for Civil Rights

FROM: The Acting Secretary

SUBJECT: Delegation of Authority for implementation of and compliance with the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*, relating to programs or activities funded, conducted, or administered by the Department

AUTHORITIES DELEGATED

I hereby delegate to the Director, Office for Civil Rights (OCR), with authority to re-delegate, the authorities vested in the Secretary of the Department of Health and Human Services for implementation of and compliance with the Religious Freedom Restoration Act, 42 U.S.C. 2000bb *et seq.*, relating to programs or activities funded, conducted, or administered by the Department.

I hereby affirm and ratify any actions taken by the OCR Director, or other OCR officials, which involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

12/7/2017
Date

Eric D. Hargan
Acting Secretary

AMERICAN OVERSIGHT

Tab H

AMERICAN OVERSIGHT

4153-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Delegation

In accordance with Executive Order 13798 Promoting Free Speech and Religious Liberty (May 4, 2017), 82 FR 21675, and the Attorney General's Guidance on Federal Law Protections for Religious Liberty (October 6, 2017), notice is hereby given that I have delegated to the Director of the Office for Civil Rights (OCR), or his or her successor, authority over implementation of and compliance with the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb et seq., relating to programs or activities funded, conducted, or administered by the Department.

Pursuant to this delegation, the OCR Director shall have the authority to:

(1) accept and investigate complaints filed by individuals or entities alleging a failure by any departmental component to comply with RFRA;

(2) conduct RFRA compliance reviews of departmental programs or activities;

(3) provide technical assistance to departmental components regarding RFRA compliance;

AMERICAN OVERSIGHT

HHS-19-0190-A-000106

(4) evaluate the effectiveness of RFRA complaint processing by OCR and provide reports to appropriate oversight organizations; and

(5) initiate such other actions as may be necessary to facilitate and ensure compliance with RFRA.

This authority may be redelegated. If the OCR Director chooses to redelegate this authority, the OCR Director will maintain primary responsibility and accountability for implementation of this section. This delegation is effective upon date of signature. I hereby affirm and ratify any actions taken by the Director of OCR or subordinates which involved the exercise of the authorities delegated herein prior to the effective day of this delegation.

Dated: 12/7/2017

Eric D. Hargan

Acting Secretary,

Department of Health and Human Services.

AMERICAN OVERSIGHT

Tab I

AMERICAN OVERSIGHT

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

TO: Director, Office for Civil Rights

FROM: The Acting Secretary

SUBJECT: Delegation of Authority for enforcement of and compliance with Section 1303(b)(4) of the Patient Protection and Affordable Care Act, 42 U.S.C. 18023(b)(4)

AUTHORITIES DELEGATED

I hereby delegate to the Director, Office for Civil Rights (OCR), or his or her successor, with authority to re-delegate, the authorities vested in the Secretary concerning enforcement of and compliance with Section 1303(b)(4) of the Patient Protection and Affordable Care Act, 42 U.S.C. 18023(b)(4). This delegation transfers, but only for the authorities pursuant to Section 1303(b)(4) and not for other authorities under Section 1303, the previous delegation to the Administrator, Centers for Medicare & Medicaid Services (CMS), or his or her successor, noticed at 76 FR 53903 (Aug. 30, 2011).

I hereby affirm and ratify any actions taken by the OCR Director, or other OCR officials, which involved the exercise of this authority prior to the effective date of this delegation.

This delegation is effective upon date of signature.

12/7/2017
Date

Eric D. Hargan
Acting Secretary

AMERICAN OVERSIGHT

Director
Office for Civil Rights
Washington, D.C. 20201

DATE: August 27, 2018

TO: Eric D. Hargan,
Deputy Secretary

FROM: Roger Severino
Director, Office for Civil Rights

SUBJECT: Creation of 21st Century Cures Working Group — **DECISION**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

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(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

June 7, 2017

The Honorable Lamar Smith
United States House of Representatives
Washington, DC 20515

Dear Representative Smith:

Thank you for your recent correspondence and willingness to personally meet with the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) concerning both the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009. The discussion focused on OCR's regulations and guidance governing the permissible fees that may be charged to individuals who exercise their right to direct a copy of their protected health information (PHI) to a third party. You have also provided a memorandum from a third party about possible approaches to resolving cost issues relating to third party access to PHI. This letter responds to your proposals and offers to continue the discussions between your office and OCR so that the important goals of HIPAA and the HITECH Act can be achieved.

Since its promulgation in 2000, the HIPAA Privacy Rule has recognized a broad right for individuals (or their personal representatives) to access and receive a copy of their PHI maintained in paper or electronic records (the "right of access") for any purpose they wish. This right recognizes the importance of this information for individuals and is critical to enabling them to take ownership of their health and well-being—a goal I know you share. The HIPAA Privacy Rule also has always limited the fees that covered entities could charge individuals requesting a copy of their PHI to ensure that individuals could take advantage of this important right.[1]

Congress strengthened the right of access in the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 by specifying that individuals may opt to have a copy of their PHI stored in an electronic health record sent directly to a third party of their choice.[2] The individual's right to direct a covered entity to transmit a copy of their PHI directly to a third party (such as another health care provider, a caregiver, a mobile health app, or a researcher) ensures that individuals can exercise their access rights in a way that is convenient for them and supports their priorities. After a thorough review by the Office of General Counsel the Department has concluded that neither the HITECH Act nor the HIPAA Privacy Rule

[1] See 65 Fed. Reg. 82462, 82554-57 (December 28, 2000).
[2] Pub. L. No. 111-5 § 13405(e)(l). Following enactment of the HITECH Act, HHS modified the HIPAA Privacy Rule to uniformly apply this right to PHI in electronic or paper form, consistent with the Privacy Rule's longstanding, media-neutral approach, based on its authority under the HITECH Act (electronic form) and its inherent regulatory authority under HIPAA (paper form). See 78 Fed. Reg. 5566, 5634 (2013) and 45 CFR § 164.524(c)(3)(ii).

AMERICAN OVERSIGHT

condition the right of an individual to direct a copy of their PHI to a third party based upon the purpose of the individual's request or the identity of the recipient.

The access guidance OCR issued in February 2016 ("Access Guidance") provides additional clarification on existing provisions of the HIPAA Privacy Rule, including the fees that HIPAA covered entities may charge individuals for copies of their information. We issued the guidance in part to address the many complaints we had received from individuals over the years about some covered entities and release of information vendors charging excessive fees to provide individuals with copies of their information. With respect to directing PHI to third parties, and consistent with the HITECH Act and the Privacy Rule, the guidance explains that individuals may be charged only the fees permitted by the HIPAA Privacy Rule when individuals direct that their PHI be shared with a person or entity of their choosing pursuant to their right of access, regardless of the purpose of the request or the identity of the recipient. We believe this guidance is helping to remove cost barriers that may have prevented individuals from fully exercising their access right, including their right to direct copies of their information to family members, caregivers, mobile apps for monitoring their own health, and researchers, among others.

At the same time, we are aware that, to recoup the costs of providing low-cost or free copies of records to individuals (and, in many cases, health care providers), health care entities charge higher fees for requests made by commercial third parties on the third parties' own behalf. Because of this, I recognize and share your concerns about unintended consequences to the health care sector of commercial entities taking advantage of the fee limitations that are intended to protect individuals. Therefore, the guidance sought to alleviate some of these concerns while remaining consistent with the text of the HITECH Act and its provision of rights to individuals to request that copies of their health information be sent directly to third party designees.

Specifically, the guidance addressed the misperception that the fee limitations for individual access under the Privacy Rule would also apply to commercial requesters. In cases where requests for access are initiated by the individual or the individual's personal representative (generally, a person with authority under state law to make health care decisions for the individual) exercising the right of access, the fee limitations apply (as do other access requirements, such as providing access in a timely manner); in cases where requests for records are initiated by a third party on its own behalf, the fee limitations and other requirements for providing access to individuals do not apply.

As we also explained in the guidance, where it is unclear to a covered entity, based on the form of the request, whether the request is initiated by the individual exercising his or her right of access or is a third party request for records with a HIPAA authorization signed by the individual to disclose PHI to the third party, the entity may clarify with the individual whether the request was directed by the individual or was a request from the third party on its own behalf. Pursuant to HITECH, when the request is presented by a third party, based on an individual exercising his or her right to have copies send to a third party, the fee limitations apply. OCR is looking at ways to further clarify the distinction between requests initiated by the individual to provide a copy of PHI to a third party and requests made by a third party on its own behalf. OCR is open to engaging further with your office and other stakeholders on ways to address this issue.

AMERICAN OVERSIGHT

Thank you again for your interest in these important issues, and I hope that this information is helpful. If you or your staff have any questions, please feel free to contact Barbara Clark, Acting Assistant Secretary for Legislation, at (202) 690-7627.

Yours truly,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

June 7, 2017

The Honorable Todd Rokita
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rokita:

Thank you for your letter about guidance published last year by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) concerning the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. You have raised concerns about OCR's explanation of the permissible fees that may be charged to individuals who exercise their right to direct a copy of their protected health information (PHI) to a third party. This letter responds to the issues raised in your letter and describes plans the Department is considering to address this issue.

Since its promulgation in 2000, the HIPAA Privacy Rule has recognized a broad right for individuals (or their personal representatives) to access and receive a copy of their PHI maintained in paper or electronic records (the "right of access") for any purpose they wish. This right recognizes the importance of this information for individuals and is critical to enabling them to take ownership of their health and well-being. The HIPAA Privacy Rule also has always limited the fees that covered entities could charge individuals requesting a copy of their PHI to ensure that individuals could take advantage of this important right.[1]

Congress strengthened the right of access in the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 by specifying that individuals may opt to have a copy of their PHI stored in an electronic health record sent directly to a third party of their choice.[2] The individual's right to direct a covered entity to transmit a copy of their PHI directly to a third party (such as another health care provider, a caregiver, a mobile health app, or a researcher) ensures that individuals can exercise their access rights in a way that is convenient for them and supports their priorities. After a thorough review by the Office of General Counsel the Department has concluded that neither the HITECH Act nor the HIPAA Privacy Rule conditions the right of an individual to direct a copy of their PHI to a third party on the purpose of the individual's request or the identity of the recipient.

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[1] See 65 Fed. Reg. 82462, 82554-57 (December 28, 2000).

[2] Pub. L. No. 111-5 § 13405(e)(l). Following enactment of the HITECH Act, HHS modified the HIPAA Privacy Rule to uniformly apply this right to PHI in electronic or paper form, consistent with the Privacy Rule's longstanding, media-neutral approach, based on its authority under the HITECH Act (electronic form) and its inherent regulatory authority under HIPAA (paper form). See 78 Fed. Reg. 5566, 5634 (2013) and 45 CFR § 164.524(c)(3)(ii).

AMERICAN OVERSIGHT

The access guidance OCR issued in February 2016 ("Access Guidance") provides additional clarification on existing provisions of the HIPAA Privacy Rule, including the fees that HIPAA covered entities may charge individuals for copies of their information.[3] We issued the guidance in part to address the many complaints we had received from individuals over the years about some covered entities and release of information vendors charging excessive fees to provide individuals with copies of their information. With respect to directing PHI to third parties, and consistent with the HITECH Act and the Privacy Rule, the guidance explains that individuals may be charged only the fees permitted by the HIPAA Privacy Rule when individuals direct that their PHI be shared with a person or entity of their choosing pursuant to their right of access, regardless of the purpose of the request or the identity of the recipient. We believe this guidance is helping to remove cost barriers that may have prevented individuals from fully exercising their access right, including their right to direct copies of their information to family members, caregivers, mobile apps for monitoring their own health, and researchers, among others.

At the same time, we are aware that, to recoup the costs of providing low-cost or free copies of records to individuals (and, in many cases, health care providers), health care entities charge higher fees for requests made by commercial third parties on the third parties' own behalf. Because of this, I recognize and share your concerns about unintended consequences to the health care sector of commercial entities taking advantage of the fee limitations that are intended to protect individuals. Therefore, the guidance sought to alleviate some of these concerns while remaining consistent with the text of the HITECH Act and its provision of rights to individuals to request that copies of their health information be sent directly to third party designees.

Specifically, the guidance addressed the misperception that the fee limitations for individual access under the Privacy Rule would also apply to commercial requesters. In cases where requests for access are initiated by the individual or the individual's personal representative (generally, a person with authority under state law to make health care decisions for the individual) exercising the right of access, the fee limitations apply (as do other access requirements, such as providing access in a timely manner); in cases where requests for records are initiated by a third party on its own behalf, the fee limitations and other requirements for providing access to individuals do not apply.

As we also explained in the guidance, where it is unclear to a covered entity, based on the form of the request, whether the request is initiated by the individual exercising his or her right of access or is a third party request for records with a HIPAA authorization signed by the individual to disclose PHI to the third party, the entity may clarify with the individual whether the request was directed by the individual or was a request from the third party on its own behalf. Pursuant to HITECH, when the request is presented by a third party, based on an individual exercising his or her right to have copies send to a third party, the fee limitations apply. OCR is looking at ways to further clarify the distinction between requests initiated by the individual to provide a copy of PHI to a third party and requests made by a third party on its own behalf. OCR is open to engaging further with your office and other stakeholders on ways to address this issue.

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[3] https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html.

AMERICAN OVERSIGHT

Thank you again for your interest in these important issues, and I hope that this information is helpful. If you or your staff have any questions, please feel free to contact Barbara Clark, Acting Assistant Secretary for Legislation, at (202) 690-7627.

Yours truly,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Thomas E. Price, M.D., Secretary

THROUGH: Paula M. Stannard, Senior Counselor

FROM: Roger Severino, Director, Office for Civil Rights

SUBJECT: OCR Breach Reporting – Proposed Changes to Web Pages – **DECISION**

DATE: June 7, 2017

(b)(5)

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

June 7, 2017

The Honorable John McCain
United States Senate
Washington, DC 20510

Dear Senator McCain:

Thank you for your letter about guidance published last year by the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) concerning the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. You have raised concerns about OCR's explanation of the permissible fees that may be charged to individuals who exercise their right to direct a copy of their protected health information (PHI) to a third party. This letter responds to your questions about potential implications of the guidance for patients' ability to access their health information and what plans the Department is considering to address this issue.

Since its promulgation in 2000, the HIPAA Privacy Rule has recognized a broad right for individuals (or their personal representatives) to access and receive a copy of their PHI maintained in paper or electronic records (the "right of access") for any purpose they wish. This right recognizes the importance of this information for individuals and is critical to enabling them to take ownership of their health and well-being—a goal I know you share. The HIPAA Privacy Rule also has always limited the fees that covered entities could charge individuals requesting a copy of their PHI to ensure that individuals could take advantage of this important right.[1]

Congress strengthened the right of access in the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 by specifying that individuals may opt to have a copy of their PHI stored in an electronic health record sent directly to a third party of their choice.[2] The individual's right to direct a covered entity to transmit a copy of their PHI directly to a third party (such as another health care provider, a caregiver, a mobile health app, or a researcher) ensures that individuals can exercise their access rights in a way that is convenient for them and supports their priorities. After a thorough review by the Office of General Counsel the Department has concluded that neither the HITECH Act nor the HIPAA Privacy Rule conditions the right of an individual to direct a copy of their PHI to a third party on the purpose of the individual's request or the identity of the recipient.

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[1] See 65 Fed. Reg. 82462, 82554-57 (December 28, 2000).

[2] Pub. L. No. 111-5 § 13405(e)(l). Following enactment of the HITECH Act, HHS modified the HIPAA Privacy Rule to uniformly apply this right to PHI in electronic or paper form, consistent with the Privacy Rule's longstanding, media-neutral approach, based on its authority under the HITECH Act (electronic form) and its inherent regulatory authority under HIPAA (paper form). See 78 Fed. Reg. 5566, 5634 (2013) and 45 CFR § 164.524(c)(3)(ii).

AMERICAN OVERSIGHT

The access guidance OCR issued in February 2016 ("Access Guidance") provides additional clarification on existing provisions of the HIPAA Privacy Rule, including the fees that HIPAA covered entities may charge individuals for copies of their information.[3] We issued the guidance in part to address the many complaints we had received from individuals over the years about some covered entities and release of information vendors charging excessive fees to provide individuals with copies of their information. With respect to directing PHI to third parties, and consistent with the HITECH Act and the Privacy Rule, the guidance explains that individuals may be charged only the fees permitted by the HIPAA Privacy Rule when individuals direct that their PHI be shared with a person or entity of their choosing pursuant to their right of access, regardless of the purpose of the request or the identity of the recipient. We believe this guidance is helping to remove cost barriers that may have prevented individuals from fully exercising their access right, including their right to direct copies of their information to family members, caregivers, mobile apps for monitoring their own health, and researchers, among others.

At the same time, we are aware that, to recoup the costs of providing low-cost or free copies of records to individuals (and, in many cases, health care providers), health care entities charge higher fees for requests made by commercial third parties on the third parties' own behalf. Because of this, I recognize and share your concerns about unintended consequences to the health care sector of commercial entities taking advantage of the fee limitations that are intended to protect individuals. Therefore, the guidance sought to alleviate some of these concerns while remaining consistent with the text of the HITECH Act and its provision of rights to individuals to request that copies of their health information be sent directly to third party designees.

Specifically, the guidance addressed the misperception that the fee limitations for individual access under the Privacy Rule would also apply to commercial requesters. In cases where requests for access are initiated by the individual or the individual's personal representative (generally, a person with authority under state law to make health care decisions for the individual) exercising the right of access, the fee limitations apply (as do other access requirements, such as providing access in a timely manner); in cases where requests for records are initiated by a third party on its own behalf, the fee limitations and other requirements for providing access to individuals do not apply.

As we also explained in the guidance, where it is unclear to a covered entity, based on the form of the request, whether the request is initiated by the individual exercising his or her right of access or is a third party request for records with a HIPAA authorization signed by the individual to disclose PHI to the third party, the entity may clarify with the individual whether the request was directed by the individual or was a request from the third party on its own behalf. Pursuant to HITECH, when the request is presented by a third party, based on an individual exercising his or her right to have copies send to a third party, the fee limitations apply. OCR is looking at ways to further clarify the distinction between requests initiated by the individual to provide a copy of PHI to a third party and requests made by a third party on its own behalf. OCR is open to engaging further with your office and other stakeholders on ways to address this issue.

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[3] https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html.

AMERICAN OVERSIGHT

Thank you again for your interest in these important issues, and I hope that this information is helpful. If you or your staff have any questions, please feel free to contact Barbara Clark, Acting Assistant Secretary for Legislation, at (202) 690-7627.

Yours truly,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Assistant Secretary for Legislation

FROM: Roger Severino
Director

DATE: March 23, 2018

SUBJECT: Annual Report to Congress on Implementation of the Age Discrimination Act of 1975 for Fiscal Year 2017 - **INFORMATION**

ISSUE

Attached for your transmittal to Congress is the Annual Report to Congress on Implementation of the Age Discrimination Act of 1975, as amended (Age Act) for Fiscal Year 2017, as required by Section 308(b) of the Age Act. The Report has been prepared by the Office for Civil Rights and is due to Congress by March 31.

BACKGROUND

The Report summarizes the trends in age discrimination complaints, compliance reviews, and technical assistance and outreach activities of twenty-eight federal departments and agencies related to age discrimination in Fiscal Year 2017. This includes information about the number of age complaints, compliance reviews, and cases referred to the Federal Mediation and Conciliation Services. The Report also identifies twenty-eight agencies that published regulations or are developing regulations. The Report is non-controversial, and we do not anticipate any significant reaction from Congress.

RECOMMENDATION

I recommend that you sign the attached letters and forward the Report to the President of the Senate and Speaker of the House of Representatives, as required by statute.

Roger Severino

Attachments:
Tab A – Letters to the President of the Senate and Speaker of the House of Representatives
Tab B – Report to Congress

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Andy Harris
U.S. House of Representatives
Washington, DC 20515

Dear Representative Harris:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

Consistent with the President's May 4, 2017 Executive Order, Promoting Free Speech and Religious Liberty, HHS is committed to enforcing federal laws protecting the free exercise of religion and the moral convictions of individuals, medical professionals, and entities in health and human services. To this end, pursuant to 45 C.F.R. § 88.2, among other enforcement authorities, OCR is designated to receive and investigate complaints on conscience, under the Weldon Amendment, the Church Amendments, the Coates-Snow Amendment, and Section 1553 of the ACA. As you may know, HHS recently announced the creation of the new Conscience and Religious Freedom Division within OCR for the purpose of enforcing those federal conscience and religious freedom laws. Additionally, HHS has issued a new proposed rule to provide OCR with the tools to more vigorously enforce existing conscience and religious freedom laws. OCR now maintains a webpage dedicated to conscience laws. Complaints may be filed with OCR through various means including online and by mail.

Your letter also requested an update regarding the Department's reconsideration of the Section 1557 final rule and the status of the draft proposed rule going through the clearance process within the Executive Branch. HHS continues to reevaluate the reasonableness, necessity, and efficacy of the Rule and, as part of that process, is assessing the issues identified by the Court in granting Plaintiffs a preliminary injunction in the *Franciscan Alliance, Inc. v. Price* litigation. A draft of a proposed rule continues going through the clearance process within the Executive Branch, which includes review by the Department of Justice under Executive Order 12250 ("Leadership and Coordination of Nondiscrimination Laws") and an inter-agency clearance process managed by the Office of Management and Budget (OMB) under Executive Order 12866. HHS anticipates that after the clearance process is complete, future rulemaking proceedings will involve notice and comment. The time required to complete both the clearance process and notice and comment rulemaking proceedings will depend largely on inter-agency coordination and on the public comments on the proposed rule. HHS continues to abide by the Court's preliminary injunction and therefore is not enforcing the Rule's prohibition against discrimination on the basis of gender identity or termination of pregnancy.

AMERICAN OVERSIGHT

Thank you again for taking the time to write and share your concerns on religious liberty and conscience. HHS remains committed to continuing to work with you and your colleagues to ensure that HHS properly safeguards the religious and moral convictions of all who participate in our programs or are otherwise subject to our jurisdiction. If you or your staff have questions, please feel free to contact Matthew Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Daniel Webster
U.S. House of Representatives
Washington, DC 20515

Dear Representative Webster:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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AMERICAN OVERSIGHT

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Randy Weber
U.S. House of Representatives
Washington, DC 20515

Dear Representative Weber:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Brad R. Wenstrup
U.S. House of Representatives
Washington, DC 20515

Dear Representative Wenstrup:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Joe Wilson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Wilson:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Ted Yoho
U.S. House of Representatives
Washington, DC 20515

Dear Representative Yoho:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Pete Olson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Olson:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Steven M. Palazzo
U.S. House of Representatives
Washington, DC 20515

Dear Representative Palazzo:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Robert Pittenger
U.S. House of Representatives
Washington, DC 20515

Dear Representative Pittenger:

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Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable John Ratcliffe
U.S. House of Representatives
Washington, DC 20515

Dear Representative Ratcliffe:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Phil Roe
U.S. House of Representatives
Washington, DC 20515

Dear Representative Roe:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Francis Rooney
U.S. House of Representatives
Washington, DC 20515

Dear Representative Rooney:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

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Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Steve King
U.S. House of Representatives
Washington, DC 20515

Dear Representative King:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

Consistent with the President's May 4, 2017 Executive Order, Promoting Free Speech and Religious Liberty, HHS is committed to enforcing federal laws protecting the free exercise of religion and the moral convictions of individuals, medical professionals, and entities in health and human services. To this end, pursuant to 45 C.F.R. § 88.2, among other enforcement authorities, OCR is designated to receive and investigate complaints on conscience, under the Weldon Amendment, the Church Amendments, the Coates-Snow Amendment, and Section 1553 of the ACA. As you may know, HHS recently announced the creation of the new Conscience and Religious Freedom Division within OCR for the purpose of enforcing those federal conscience and religious freedom laws. Additionally, HHS has issued a new proposed rule to provide OCR with the tools to more vigorously enforce existing conscience and religious freedom laws. OCR now maintains a webpage dedicated to conscience laws. Complaints may be filed with OCR through various means including online and by mail.

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AMERICAN OVERSIGHT

Thank you again for taking the time to write and share your concerns on religious liberty and conscience. HHS remains committed to continuing to work with you and your colleagues to ensure that HHS properly safeguards the religious and moral convictions of all who participate in our programs or are otherwise subject to our jurisdiction. If you or your staff have questions, please feel free to contact Matthew Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Doug LaMalfa
U.S. House of Representatives
Washington, DC 20515

Dear Representative LaMalfa:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Doug Lamborn
U.S. House of Representatives
Washington, DC 20515

Dear Representative Lamborn:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Barry Loudermilk
U.S. House of Representatives
Washington, DC 20515

Dear Representative Loudermilk:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Mark Meadows
U.S. House of Representatives
Washington, DC 20515

Dear Representative Meadows:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Ralph Norman
U.S. House of Representatives
Washington, DC 20515

Dear Representative Norman:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Vicky Hartzler
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hartzler:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Jody Hice
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hice:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Randy Hultgren
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hultgren:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Roger Severino
Director
Office for Civil Rights

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Mike Johnson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Johnson:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Walter B. Jones
U.S. House of Representatives
Washington, DC 20515

Dear Representative Jones:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Mike Kelly
U.S. House of Representatives
Washington, DC 20515

Dear Representative Kelly:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

Consistent with the President's May 4, 2017 Executive Order, Promoting Free Speech and Religious Liberty, HHS is committed to enforcing federal laws protecting the free exercise of religion and the moral convictions of individuals, medical professionals, and entities in health and human services. To this end, pursuant to 45 C.F.R. § 88.2, among other enforcement authorities, OCR is designated to receive and investigate complaints on conscience, under the Weldon Amendment, the Church Amendments, the Coates-Snow Amendment, and Section 1553 of the ACA. As you may know, HHS recently announced the creation of the new Conscience and Religious Freedom Division within OCR for the purpose of enforcing those federal conscience and religious freedom laws. Additionally, HHS has issued a new proposed rule to provide OCR with the tools to more vigorously enforce existing conscience and religious freedom laws. OCR now maintains a webpage dedicated to conscience laws. Complaints may be filed with OCR through various means including online and by mail.

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AMERICAN OVERSIGHT

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Bob Gibbs
U.S. House of Representatives
Washington, DC 20515

Dear Representative Gibbs:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Paul A. Gosar
U.S. House of Representatives
Washington, DC 20515

Dear Representative Gosar:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Glenn Grothman
U.S. House of Representatives
Washington, DC 20515

Dear Representative Grothman:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Garret Graves
U.S. House of Representatives
Washington, DC 20515

Dear Representative Graves:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Scott DesJarlais
U.S. House of Representatives
Washington, DC 20515

Dear Representative DesJarlais:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Jeff Duncan
U.S. House of Representatives
Washington, DC 20515

Dear Representative Duncan:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Blake Farenthold
U.S. House of Representatives
Washington, DC 20515

Dear Representative Farenthold:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Charles J. Fleischmann
U.S. House of Representatives
Washington, DC 20515

Dear Representative Fleischmann:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Office for Civil Rights

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Bill Flores
U.S. House of Representatives
Washington, DC 20515

Dear Representative Flores:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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Director
Office for Civil Rights

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Robert Aderholt
U.S. House of Representatives
Washington, DC 20515

Dear Representative Aderholt:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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AMERICAN OVERSIGHT

Thank you again for taking the time to write and share your concerns on religious liberty and conscience. HHS remains committed to continuing to work with you and your colleagues to ensure that HHS properly safeguards the religious and moral convictions of all who participate in our programs or are otherwise subject to our jurisdiction. If you or your staff have questions, please feel free to contact Matthew Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Ralph Abraham
U.S. House of Representatives
Washington, DC 20515

Dear Representative Abraham:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

Consistent with the President's May 4, 2017 Executive Order, Promoting Free Speech and Religious Liberty, HHS is committed to enforcing federal laws protecting the free exercise of religion and the moral convictions of individuals, medical professionals, and entities in health and human services. To this end, pursuant to 45 C.F.R. § 88.2, among other enforcement authorities, OCR is designated to receive and investigate complaints on conscience, under the Weldon Amendment, the Church Amendments, the Coates-Snow Amendment, and Section 1553 of the ACA. As you may know, HHS recently announced the creation of the new Conscience and Religious Freedom Division within OCR for the purpose of enforcing those federal conscience and religious freedom laws. Additionally, HHS has issued a new proposed rule to provide OCR with the tools to more vigorously enforce existing conscience and religious freedom laws. OCR now maintains a webpage dedicated to conscience laws. Complaints may be filed with OCR through various means including online and by mail.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Rick W. Allen
U.S. House of Representatives
Washington, DC 20515

Dear Representative Allen:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

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AMERICAN OVERSIGHT

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Brian Babbin
U.S. House of Representatives
Washington, DC 20515

Dear Representative Babbin:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

Consistent with the President's May 4, 2017 Executive Order, Promoting Free Speech and Religious Liberty, HHS is committed to enforcing federal laws protecting the free exercise of religion and the moral convictions of individuals, medical professionals, and entities in health and human services. To this end, pursuant to 45 C.F.R. § 88.2, among other enforcement authorities, OCR is designated to receive and investigate complaints on conscience, under the Weldon Amendment, the Church Amendments, the Coates-Snow Amendment, and Section 1553 of the ACA. As you may know, HHS recently announced the creation of the new Conscience and Religious Freedom Division within OCR for the purpose of enforcing those federal conscience and religious freedom laws. Additionally, HHS has issued a new proposed rule to provide OCR with the tools to more vigorously enforce existing conscience and religious freedom laws. OCR now maintains a webpage dedicated to conscience laws. Complaints may be filed with OCR through various means including online and by mail.

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AMERICAN OVERSIGHT

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Jim Banks
U.S. House of Representatives
Washington, DC 20515

Dear Representative Banks:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

Consistent with the President's May 4, 2017 Executive Order, Promoting Free Speech and Religious Liberty, HHS is committed to enforcing federal laws protecting the free exercise of religion and the moral convictions of individuals, medical professionals, and entities in health and human services. To this end, pursuant to 45 C.F.R. § 88.2, among other enforcement authorities, OCR is designated to receive and investigate complaints on conscience, under the Weldon Amendment, the Church Amendments, the Coates-Snow Amendment, and Section 1553 of the ACA. As you may know, HHS recently announced the creation of the new Conscience and Religious Freedom Division within OCR for the purpose of enforcing those federal conscience and religious freedom laws. Additionally, HHS has issued a new proposed rule to provide OCR with the tools to more vigorously enforce existing conscience and religious freedom laws. OCR now maintains a webpage dedicated to conscience laws. Complaints may be filed with OCR through various means including online and by mail.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 12, 2018

The Honorable Marsha Blackburn
U.S. House of Representatives
Washington, DC 20515

Dear Representative Blackburn:

Thank you for your letter to former Acting Secretary Hargan regarding concerns about the regulation implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA). The Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) published the regulation in the *Federal Register* on May 18, 2016.

Consistent with the President's May 4, 2017 Executive Order, Promoting Free Speech and Religious Liberty, HHS is committed to enforcing federal laws protecting the free exercise of religion and the moral convictions of individuals, medical professionals, and entities in health and human services. To this end, pursuant to 45 C.F.R. § 88.2, among other enforcement authorities, OCR is designated to receive and investigate complaints on conscience, under the Weldon Amendment, the Church Amendments, the Coates-Snow Amendment, and Section 1553 of the ACA. As you may know, HHS recently announced the creation of the new Conscience and Religious Freedom Division within OCR for the purpose of enforcing those federal conscience and religious freedom laws. Additionally, HHS has issued a new proposed rule to provide OCR with the tools to more vigorously enforce existing conscience and religious freedom laws. OCR now maintains a webpage dedicated to conscience laws. Complaints may be filed with OCR through various means including online and by mail.

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Sincerely,

Roger Severino
Director
Office for Civil Rights

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

Director
Office for Civil Rights
200 Independence Ave, SW
Washington, DC 20201

June 2, 2017

MEMORANDUM

To: OCR Calendar Year (CY) 2016 Awards Committee
Heather Lawson, Bargaining Unit
Shawnee Swinton, Bargaining Unit
Serena Mosley-Day, Management
Lisa Alston, Management

Subject: OCR CY 2016 Performance Awards Decision

(b)(2)

Roger Severino
Director

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DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

Director
Office for Civil Rights
200 Independence Ave, SW
Washington, DC 20201

MEMORANDUM

To: OCR Deputy Directors and Regional Managers

Subject: FY17 Mid-year Review of Budget Allocations

Thanks for your participation in the FY17 Mid-year Review designed to re-evaluate the annual budget allocations in accordance with division and region requirements and spending progress. The updated allocations are attached. Continue to plan your expenditures carefully to balance your various training, travel, and other needs while ensuring spending is aligned with current priorities and goals.

Looking ahead towards the end of the fiscal year, allocations will be finalized in late summer, well prior to the actual close-out on September 30th. Because only minor changes should be necessary at that point, please coordinate with the Budget Team on final adjustments in early August.

Roger Severino
Director

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Director
Office for Civil Rights
Washington, D.C. 20201

TO: Thomas E. Price, M.D., Secretary

THROUGH: Paula M. Stannard, Senior Counselor

FROM: Roger Severino, Director, Office for Civil Rights

SUBJECT: OCR Breach Reporting – Proposed Changes to Web Pages – **DECISION**

DATE: June 14, 2017

ACTION REQUESTED

This memorandum requests that you approve our proposed reconfiguration of OCR website pages that report all breaches of protected health information involving 500 or more people.

SUMMARY

Under Section 13402(e) (3) and (4) of the HITECH Act, breaches of unsecured protected health information (PHI) affecting 500 or more individuals must be reported to the Secretary of HHS. The Act further requires that the reported breaches be posted to an HHS website. The relevant statutory language is quoted below:

* * *

(3) Notice to Secretary
Notice shall be provided to the Secretary by covered entities of unsecured protected health information that has been acquired or disclosed in a breach. If the breach was with respect to 500 or more individuals then such notice must be provided immediately. If the breach was with respect to less than 500 individuals, the covered entity may maintain a log of any such breach occurring and annually submit such a log to the Secretary documenting such breaches occurring during the year involved.

(4) Posting on HHS public website
The Secretary shall make available to the public on the Internet website of the Department of Health and Human Services a list that identifies each covered entity involved in a breach described in subsection (a) in which the unsecured protected health information of more than 500 individuals is acquired or disclosed.

The HITECH statute is silent as to the specific requirements regarding the website appearance of the reported breaches.

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Each reported breach is posted on the OCR breach portal[1] in a chart. OCR policy is to open an investigation of each reported breach and each case is resolved employing a solution that may range from technical advice from OCR to the requirement that the entity take corrective action or, in the case of a serious HIPAA violation, payment of an agreed upon resolution amount to settle the investigation or assessment of civil monetary penalties (CMPs) by OCR. Each entry on the breach chart includes a dropdown entry that shows, where applicable, a brief summary of the breach and how the case was resolved.

The Problem

As noted above, the HITECH Act requires that all breaches affecting 500 or more individuals be posted to HHS's website. The website currently presents the reported breaches in chronological order since 2009, and also includes a function that allows a search for any entity on the list by name, type of entity, date, or breach type.

To date, OCR has not removed any listed breaches from the website. This has created the appearance that once a covered entity is on the list, it is on forever – even if many years have passed since the breach and the entity has taken corrective action (if necessary to come into compliance). Many entities have complained about this, often referring to the website as "the wall of shame."

Proposed Solution

(b)(5)

1. Option one – Automatic archive option:

   Replace the current website page citing breach reports with a new page that explains the statutory requirement to report breaches and includes additional information for consumers (such as encouraging them to check their health information for accuracy and linking to FTC's identitytheft.gov website, which provides excellent identity theft resources).

   The new page would list all breaches reported in the last 24 months. All unresolved breaches older than 24 months and all resolved breaches (regardless of when they are resolved) would be archived and available for research through a separate link. These archived reports would note the status of each investigation and would include information about the resolution of each.

[1] https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

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(b)(5)

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(b)(5)

RECOMMENDATION

I recommend you approve Option 1 and sign this implementation plan for reconfiguring OCR webpages reporting breaches of unsecured protected health information involving 500 or more people.

Roger Severino

DECISION

Approved ✓ Disapproved _____ Need More Information _____

Thomas E. Price, M.D.

JUN 30 2017
Date

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DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE SECRETARY

Director
Office for Civil Rights
200 Independence Ave, SW
Washington, DC 20201

March 26, 2018

TO: All OCR Personnel

FROM: Roger Severino
Director, Office for Civil Rights (OCR)

SUBJECT: Delegations of Authority

Background/Purpose:

The origin of the OCR Director's authority is documented in delegations granted by the Secretary of the Department of Health and Human Services and rest on the staff division head's management responsibility. Refer to the HHS General Administration Manual for additional guidance.

This document identifies responsible officials and delegates specified authorities from the OCR Director to subordinate Authorized Officials.

Table of Delegations:

By the OCR Director's signature below, the following authorities are hereby granted to the listed individuals on an ex officio basis. This memo refers to OCR positions, and so grants authority to incumbents during their time of service in OCR. Designations refer to the final approval level and do not abrogate the need for intermediate reviews and approvals.

Pursuant to the HHS General Administration Manual (GAM) Chapter 8-100-50, "Delegation of Authority Process", the table delegates authority to perform the indicated human resources, travel, financial management, regional operations, and other actions to the OCR positions identified.

Pursuant to the HHS GAM Chapter 8-77-30, "Interagency Agreements", the table delegates authority to approve such agreements. These agreements include, but are not limited to, Interagency/Intra-agency agreements (IAAs), Customer Service Agreements (CSA), Memoranda of Understanding (MOU), Task Orders (TO), and Reimbursable Work Authorizations (RWA).

Additionally, also included is a table on regional operations outlining responsibilities and delegations for a variety of functions.

Limitations:

If a duty position listed on the delegation tables is either vacant or eliminated, the authority reverts to the next higher level during the time of the temporary or permanent organizational change.

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To avoid conflict of interest issues, transactions that personally benefit or affect the cited Officials must be approved by the individual's supervisor or designee to whom such authority has been delegated in writing.

Unless otherwise stated, the limits cited in the below table include all related modifications, amendments, and/or orders.

This Delegation of Authority does not affect the need to first obtain funds certification/approval by the applicable budget official.

Delegated authorities must be exercised in accordance with applicable law, regulation, and HHS and/or OS policy, guidance, or other directive.

Communication with the Director and Chief of Staff, Principal Deputy Director, or other applicable leaders, about planned actions is encouraged for significant or material issues.

Effective Date:

This Delegation of Authority supersedes all previously existing delegations of authority for the above-cited business transactions and is effective as of the date of the signature below.

Expiration Date:

The delegated authority expires when the individual no longer holds the position cited in the table or when the authority is revoked in writing by an official authorized to take such action, whichever occurs first.

If you have any questions, please contact the below as appropriate.

Mary Gerald (202-774-2797 or mary.gerald@hhs.gov)
Alec Blakeley (202-774-2122 or alec.blakeley@hhs.gov)
Steve Novy (202-619-0403 or steve.novy@hhs.gov)

Roger Severino

3/28/18
Date

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OCR Delegations of Authority – Human Resources

(b)(5)

[redacted]

[1] Refer to the OCR Hiring Approval Levels and Required Actions Chart

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(b)(5)

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OCR Delegations of Authority – Regional Operations Functions

(b)(5)

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

MEMORANDUM

DATE: April 12, 2018

TO: All OCR Staff

FROM: Roger Severino, Director

SUBJECT: OCR Procedures for Handling and Tracking of Substantive Referrals or Questions of Law or Policy from Governmental Entities

Introduction and Overview

This memorandum clarifies OCR procedures for handling and tracking matters and inquiries from state or federal agencies, including HHS components, and state legislatures or Congress (Governmental Sources).

- The majority of letters OCR receives from Governmental Sources are routine inquiries and will continue to be processed as routine matters by the OCR Headquarters (HQ) Executive Secretariat.

- Any inquiry, referral, or correspondence from Governmental Sources that contains **particularized allegations of potential violations** of any of the laws we enforce shall be treated as a request for a compliance review and designated and tracked as a "Governmental Case." Correspondence from a Member of Congress where the Member merely forwards a complaint or status inquiry on behalf of a constituent (*i.e.*, without substantive comment), shall not be considered a Governmental Case, unless the matter is sensitive or otherwise has indicators of being a potentially high impact case.

- Correspondence from Governmental Sources concerning **questions of law or policy** will be designated and tracked as a "Governmental Matter" and the response will be developed by OCR HQ in conjunction with ASL and IEA as appropriate.

Procedures

All correspondence

There are multiple OCR potential intake points for correspondence from a Governmental Source including the Regions, the Director's office, the Divisions, and the OCR Executive Secretariat. All sources outside of the OCR Executive Secretariat should refer the correspondence

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immediately to the OCR Executive Secretariat, along with any subsequent correspondence, with a cc to the appropriate Division Deputy Director and the relevant front office Advisor. Requests that come directly to the OCR Executive Secretariat shall be forwarded to the appropriate Division Deputy Director and the relevant front office Advisor, as is now done for other clearances.

If the Division Deputy Director and the relevant front office Advisor believe the request should be on the HQ tracking list of "Governmental Cases and Matters," the Division Deputy Director will notify the OCR Executive Secretariat, who in turn will place the matter on the list and notify the Division Deputy Director, the ORD Deputy Director, the relevant front office Advisor, the Principal Deputy Director, the Chief of Staff, the Director, and the Regional Manager (if applicable), of the matter's addition to the tracking list.

Non-routine correspondence from a Governmental Source

Correspondence from a Government Source concerning questions of law or policy shall be handled by the relevant HQ Division (HIP, CR, or CRF), which will prepare a proposed response for the Director's signature, in collaboration with the Regions, ASL, IEA, and OGC, as appropriate, and thereafter follow the standard Executive Secretariat procedures as used for Congressional correspondence.

Correspondence from a Government Source raising particularized allegations of a potential violation shall be handled by the relevant HQ Division in collaboration with OGC, as appropriate, who will develop and propose recommended response to the Director, which may include seeking further information, providing technical assistance, initiating a compliance review, or taking no enforcement action.

Resolution of Compliance Reviews

At the conclusion of any compliance review initiated under this procedure, the OCR Executive Secretariat will send a copy of any closure letter (including reference(s) to any applicable resolution agreement on the OCR website) to the ASL or IEA officer assigned to OCR, as relevant, with a copy to the appropriate Division Deputy Director, the Principal Deputy Director, front office Advisor, the Chief of Staff, and the Director.

Effective Date

The procedures set forth in this memorandum shall be effective immediately.

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

May 25, 2018

Senator William Ligon
121-E State Capitol
Atlanta, Georgia 30334
William.Ligon@senate.ga.gov

Dear Senator Ligon:

Thank you for your letter to Department of Health and Human Services (HHS) Secretary Azar of February 13, 2018, regarding Georgia Senate Bill 375 (SB 375). The bill provides that, to the extent allowed by federal law, a child-placing agency may decline to accept foster care or adoption service referrals based on the agency's sincerely held religious beliefs, and in such cases the state would immediately refer those services to another child-placing agency. The bill would also prohibit certain adverse actions to be taken against the child-placing agency because of such agency's declination.

In your letter, you asked: (1) whether SB 375 is consistent with the Department's non-discrimination policies; (2) whether SB 375 is consistent with the Attorney General's October 6, 2017 memorandum and with the Title VI Child Welfare Guidance jointly issued by HHS and the U.S. Department of Justice (DOJ), dated October 2016; and (3) whether passage of this legislation would have any negative effect on federal funding.

Because your request concerns anti-discrimination laws enforced by HHS, Secretary Azar has asked me to respond to your letter.

HHS recognizes and values the rights of conscience and religious freedom for all Americans as enshrined in the First Amendment to the Constitution and in federal law. The federal government is committed to vigorously protecting these rights as exemplified by the President's Executive Order 13798 of May 4, 2017 (Promoting Free Speech and Religious Liberty) and the Attorney General's Memorandum to federal agencies of October 6, 2017, entitled "Federal Law Protections for Religious Liberty" (82 FR 49668).

HHS does not generally provide analyses of, or opinions on, pending state legislation. Senate Bill 375 says it operates only "to the extent allowed by federal law." Senate Bill 375 also provides that child placing agencies will comply with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act. By its own terms, therefore, the bill would only apply

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consistent with the requirements imposed by federal anti-discrimination laws you reference in your letter. To that extent, the bill's text suggests it would not result in a negative impact or limitation on the receipt of federal funding on that basis. Whether state courts would interpret Senate Bill 375 after it is enacted to apply in a way that could be said to conflict with federal anti-discrimination laws, or whether a state official may apply it in a conflicting manner, is something we cannot comment on when particular circumstances are not presented to us in a complaint, grant application, or other context where we would ordinarily have an opportunity to provide a more definitive analysis.

The Attorney General's memorandum of October 6, 2017, explains in part how federal conscience and religious freedom protections are to be applied by federal agencies. HHS intends to fully comply with the Attorney General's memorandum. In addition, OCR established a new Conscience and Religious Freedom Division in part to ensure that HHS develops and implements its own policies, procedures, guidance, and regulations in accordance with federal laws protecting American's rights of conscience and religious freedom. Any questions concerning the Attorney General's memoranda's applicability to SB 375, however, should be directed to the Department of Justice.

This letter addresses only the general answers provided and does not address any requirements or conditions on federal funds in the context of an application, existing grant or contract, or complaint. If you have any additional questions, please do not hesitate to reach out to us.

Sincerely,

Roger Severino
Director

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MEMORANDUM

TO: Roger T. Severino, Director
March Bell, Chief of Staff and Senior Advisor

THROUGH: Robinsue Frohboese, Principal Deputy Director
Eileen Hanrahan, Supervisory Civil Rights Analyst and
Acting Deputy Director for Civil Rights
Louis Brown, Senior Advisor

FROM: Molly Burgdorf, Civil Rights Analyst MMB 11/28/17

DATE: Nov. 28, 2017

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AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

DATE: September 21, 2017

TO: The Secretary
Through: DS _____
COS_____
ES_____

FROM: Roger T. Severino
Director, Office for Civil Rights

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AMERICAN OVERSIGHT

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Roger T. Severino
Director, Office for Civil Rights

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AMERICAN OVERSIGHT

TAB A

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Office for Civil Rights
Management Statement of Assurance
As of September 30, 2017

Office for Civil Rights(OCR) management is responsible for establishing and maintaining effective internal control and financial management systems that meet the objectives of the *Federal Managers' Financial Integrity Act of 1982 (FMFIA)* and Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*. These objectives are to ensure (1) reliable financial reporting; (2) effective and efficient operations; and (3) compliance with laws and regulations. The safeguarding of assets is a subset of these objectives.

In accordance with the Department of Health and Human Services' "2015 HHS Federal Managers Integrity Act Guidelines" manual, the Program Support Center (PSC), a component of the Office of the Assistant Secretary for Administration, is considered an operating division for the purpose of this activity and provides a statement of assurance under separate cover. The scope of this assurance statement excludes the PSC and the services it provides.

As required by OMB Circular A-123, OCR has evaluated its internal control and financial management systems to determine whether these objectives are being met. Accordingly, OCR] provides an unqualified statement of reasonable assurance that its internal control and financial systems meet the objectives of FMFIA.

Internal Control over Financial Reporting
OCR conducted its assessment of the effectiveness of internal control over financial reporting, which includes safeguarding of assets and compliance with applicable laws and regulations, in accordance with the requirements of OMB Circular A-123, Appendix A. Based on the results of this assessment, OCR provides reasonable assurance that internal controls were operating effectively as of June 30, 2017, and no material weaknesses were found in the design or operation of the internal control over financial reporting.

Internal Control over Operations and Compliance
OCR conducted its assessment of internal control over the effectiveness and efficiency of operations and compliance with applicable laws and regulations in accordance with OMB Circular A-123. Based on the results of this assessment, OCR provides reasonable assurance that internal control over operations and compliance with applicable laws and regulations was operating effectively as of September 30, 2017, and no material weaknesses were found in the design or execution of the internal control over operations and compliance.

Roger Severino
Director

Date 10/5/17

AMERICAN OVERSIGHT

Office for Civil Rights
Summary of Management Assurances
As of September 30, 2017

Effectiveness of Internal Control over Financial Reporting (FMFIA §2)						
Statement of Assurance	Unqualified					
Material Weaknesses	**Beginning Balance**	**New**	**Resolved**	**Consolidated**	**Reassessed**	**Ending Balance**
Total Material Weaknesses	0	0	0	0	0	0

Effectiveness of Internal Control over Operations (FMFIA §2)						
Statement of Assurance	Unqualified					
Material Weaknesses	**Beginning Balance**	**New**	**Resolved**	**Consolidated**	**Reassessed**	**Ending Balance**
Total Material Weaknesses	0	0	0	0	0	0

Conformance with Financial Management System Requirements (FMFIA §4)						
Statement of Assurance	Systems Conform					
Non-Conformances	**Beginning Balance**	**New**	**Resolved**	**Consolidated**	**Reassessed**	**Ending Balance**
Total Non-Conformances	0	0	0	0	0	0

Compliance with Section 803(a) of the *Federal Financial Management Improvement Act (FFMIA)*	
1. System Requirements	No Noncompliance Noted
2. Accounting Standards	No Noncompliance Noted
3. USSGL at Transaction Level	No Noncompliance Noted

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 7, 2019

The Honorable Todd Kaminsky
New York State Senate
55 Front Street, Room 1
Rockville Centre, NY 11570

Dear Senator Kaminsky:

I am responding to your letter to the Department of Health and Human Services regarding individuals with memory loss diseases, such as Alzheimer's and other dementias, and the impact of privacy protections established under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Your inquiry was referred to the Department's Office for Civil Rights (OCR) for a reply, and we apologize for the delay in response. OCR is responsible for the administration and enforcement of the HIPAA Privacy Rule. You have asked us to consider an exception to the HIPAA Privacy Rule to permit a hospital, in situations similar to the South Nassau Communities Hospital experience you relate, to use and disclose patient information to assist in identifying a patient with dementia who cannot provide identification. We appreciate the concern expressed in your letter, and want you to be assured that, as explained below, such disclosures are already permitted under HIPAA.

The HIPAA Privacy Rule recognizes circumstances in which individuals may be unable to agree or object to the disclosure of their information due to incapacity, such as a serious mental health condition or an emergency.[1] In such circumstances, the HIPAA Privacy Rule allows a health care provider to disclose an individual's health information to assist in that individual's identification, location of family members, or that individual's protection.

First, in many instances, a covered entity can disclose to law enforcement, or any other person or entity who can assist in notifying an individual's family member of the individual's location, general condition, or death when, in exercising professional judgment, it determines that doing so would be in the best interest of the individual. For example, a hospital may provide a law enforcement officer with information about an individual, which may include a photograph, when necessary to help locate and communicate with the family of an individual who may be missing.[2] Further, if a health care provider reasonably believes that the individual may be subject to abuse or neglect, for example, because the individual presented at a hospital

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[1] *See* 45 C.F.R. § 164.510(a)(3) and (b)(3); *See also* HIPAA FAQ: https://www.hhs.gov/hipaa/for-professionals/faq/2090/when-does-mental-illness-or-another-mental-condition-constitute-incapacity-under-privacy-rule.html for guidance on these regulations.

[2] *See* 45 C.F.R. § 164.510(b)(1)(ii), (b)(2), and (b)(3) and HIPAA FAQ: https://www.hhs.gov/hipaa/for-professionals/faq/491/may-a-doctor-disclose-information-to-a-person-that-can-notify-a-patients-family/index.html, as above.

AMERICAN OVERSIGHT

unaccompanied and without supervision, the health care provider may report information about the individual to an entity authorized by law to receive reports of abuse and neglect, such as a social service agency.[3]

Some health care providers may be subject to additional privacy requirements under other federal laws such as the federal Confidentiality of Substance Use Disorder Patient Records regulations at 42 CFR Part 2, applicable to federally assisted substance use disorder treatment programs and other lawful holders of substance use disorder patient information covered by Part 2.[4] If an entity is subject to both Part 2 and HIPAA, it is responsible for complying with the more protective Part 2 rules, as well as with HIPAA.[5] Additionally some providers may be subject to more stringent state law, and the HIPAA Privacy Rule does not override more stringent state law protections.[6] Thus, even where the HIPAA Privacy Rule permits information to be shared, health care providers still may be responsible for complying with restrictions or limitations in other applicable laws.

OCR recently released guidance focused on patients with mental health concerns. The new guidance discusses how covered entities may share information with friends, family members, and other involved in an individual's care to ensure the individual receives the best treatment and for the health and safety of others.[7]

OCR has issued a Request for Information (RFI) at: https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care, seeking recommendations and input from the public on how the HIPAA Privacy Rule could be modified to further the HHS Secretary's goal of promoting coordinated, value-based health care. We encourage you to provide your comments for the agency's consideration through Regulations.gov at: https://www.regulations.gov/.

We hope this information and the linked FAQs are helpful to you, South Nassau Communities Hospital, and others. Misconceptions about the HIPAA Rules persist, and create obstacles to information-sharing important to helping individuals and involving family members in the support of a loved one. OCR endeavors to create and maintain up-to-date and relevant guidance to assist health care providers, individuals, and their family members to be aware of how the HIPAA Rules often facilitate, rather than block, important information-sharing.

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[3] *See* 45 C.F.R. § 164.512(c) for additional requirements on reporting regarding whether reporting is required or authorized by law.
[4] *See* 42 C.F.R. Part 2. More information about the substance abuse confidentiality regulations is available at https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs.
[5] Because HIPAA permits, but does not require, disclosures in certain circumstances, such as emergencies, if Part 2 restricts certain disclosures in those same circumstances, or requires a written authorization in circumstances where HIPAA does not, an entity subject to both sets of requirements could comply with Part 2's restrictions without violating HIPAA.
[6] *See* 45 C.F.R. § 160.203(b).
[7] *See* https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf.

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Sincerely,

Roger Severino
Director

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Eric D. Hargan
Deputy Secretary

FROM: Roger T. Severino
Director, Office for Civil Rights

DATE: July 24, 2018

SUBJECT: **Regulatory Sprint: PRE-DEVELOPMENT MEMORANDUM FOR HIPAA Request for Information to Support, and Remove Barriers to, Coordinated Care**

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JMB for RTS

Roger T. Severino
Director, Office for Civil Rights

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Eric D. Hargan
Deputy Secretary

FROM: Roger T. Severino
Director, Office for Civil Rights

DATE: August 29, 2018

SUBJECT: **REGULATORY SPRINT: Pre-Development Memorandum for HIPAA Request for Information to Support, and Remove Barriers to, Coordinated Care**

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Roger Severino
Director, Office for Civil Rights

DECISION TO MOVE FORWARD

Approved _____ Disapproved _____ Need More Information _____

_____ _____
Eric D. Hargan Date
Deputy Secretary

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Eric D. Hargan
Deputy Secretary

FROM: Roger T. Severino
Director, Office for Civil Rights (OCR)

DATE: September 11, 2018

SUBJECT: **PRE-DEVELOPMENT MEMORANDUM FOR HIPAA PRIVACY RULE: PRESUMPTION OF GOOD FAITH OF COVERED ENTITIES**

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Marie C. Mazzaro for Roger Severino, with permission

Roger Severino

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DECISION TO MOVE FORWARD

Approved _____ Disapproved _____ Need More Information _____

_____ _____

Eric D. Hargan Date
Deputy Secretary

ATTACHMENTS

A: OCR Guidance: How HIPAA Allows Doctors to Respond to the Opioid Crisis (10/27/2017), https://www.hhs.gov/sites/default/files/hipaa-opioid-crisis.pdf

B: OCR Guidance: HIPAA Privacy Rule and Sharing Information Related to Mental Health including Opioid Overdose, https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Washington, D.C. 20201

DATE: January 23, 2019

TO: Eric D. Hargan
Deputy Secretary

THROUGH: Jennifer Moughalian
Acting Assistant Secretary for Financial Resources

Robert P. Charrow
General Counsel

FROM: Steven Wagner
Principal Deputy Assistant Secretary
Administration for Children and Families

Roger Severino
Director, Office for Civil Rights (OCR)

SUBJECT: ACF Request for Deviation for South Carolina's Title IV-E Program from Select Requirements under 45 CFR Part 75–**DECISION**

ACTION REQUESTED

ACF seeks to grant an exception from the religious nondiscrimination requirement in HHS Regulation 45 CFR § 75.300(c) for South Carolina's Title IV-E Foster Care Program, when subrecipients cannot, on the basis of sincere religious belief, assist in certain foster care placements. We recommend (b)(5)

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As required under HHS Grants Policy Administration Manual Part A, Chapter 4 b.(4)(iv), "Deviations from government-wide or HHS regulations must be submitted to OGPOE for approval and, possibly subsequent review by the Office of Management and Budget (OMB)." ACF seeks this exception as a case-by-case exception under 45 CFR § 75.102(b) that does not require OMB approval. That section states that "[e]xceptions on a case-by-case basis for individual non-Federal entities may be authorized by the HHS awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other

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approval is expressly required by this part."[2] (b)(5)

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SUMMARY

I. Background

South Carolina's Department of Social Services (SCDSS) currently holds the Title IV-E Foster Care Grant (Grant Number: 1801SCFOST). The CFDA Number associated with Title IV-E Foster Care is 93.658. In Fiscal Year 2017, SCDSS received $38,905,680 under the Title IV-E program. According to South Carolina, the State serves over 4,000 children in the foster care system, using a number of secular and faith-based Child Placing Agencies (CPAs) to recruit families for foster care placements. Such CPAs are subrecipients of federal funding under the grant, so according to § 75.300(a), ACF "must manage and administer the [grant] in a manner so as to ensure that Federal funding [received by CPAs] is expended and [the grant program] is implemented in full accordance with [§ 75.300(c) and (d)]."

The first two paragraphs of § 75.300 track OMB's Uniform Administrative Requirements, 2 CFR § 200.300(a) and (b), and require compliance with applicable statutes. The second two paragraphs, (c) and (d), were added by HHS in a Final Rule that was published on December 12, 2016 (81 FR 89393), and became effective January 11, 2017. Paragraphs (c) and (d) state the following:

> *(c) It is a public policy requirement of HHS 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 age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with this public policy requirement in the administration of programs supported by HHS awards.*
>
> *(d) In accordance with the Supreme Court decisions in* United States v. Windsor *and in* Obergefell v. Hodges, *all recipients must treat as valid the marriages of same-sex couples. This does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under state law as something other than a marriage.*

HHS relied on 5 U.S.C. § 301 (which relates to internal agency matters and which courts have treated as a housekeeping provision that does not authorize agencies to establish substantive

[2] The term "cognizant agency for indirect costs" is defined in 45 CFR § 75.2. Section 75.102(b), thus, means that the HHS awarding agency, or the cognizant agency for indirect costs, may grant a case-by-case exception to the requirements of 45 CFR Part 75 (with the exception of the requirements of subpart F, deviations/exceptions can be granted on a case-by-case basis when not prohibited by statute). Thus, the authority for exception does not apply solely with respect to "indirect costs."

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rules that apply to the general public) for authority to promulgate Part 75 and the amendments thereto. In the preamble to the proposed rule, HHS stated that the two provisions "are being proposed for consistency with law and current HHS policy." Health and Human Services Grants Regulation; Proposed Rule, 81 Fed. Reg. 45270, 45271 (July 13, 2016). Section 75.300(c) was justified as codifying "for all HHS service grants what is already applicable for all HHS service contracts, as required by the HHS Acquisition Regulation." *Id.* Section 75.300(d) was described as "codifying [HHS's] implementation of the decisions in *U.S. v. Windsor*, 570 U.S. ___ (2013), 133 S. Ct. 2675 and *Obergefell v. Hodges*, 576 U.S. ___ (2015), 135 S. Ct. 2584." *Id.* The statutes governing the SC Foster Care Program, however, do not impose many of the nondiscrimination requirements that paragraph (c) imposes as a "public policy requirement," including nondiscrimination on the basis of religion. The Supreme Court cases cited in paragraph (d) do not require the imposition on non-Federal funding recipients of the requirement contained in paragraph (d).

In January of 2018, SCDSS declined to renew Miracle Hill's license to provide foster services, because SCDSS asserted that Miracle Hill's requirement that potential foster parents with which it will work share Miracle Hill's religious mission and beliefs violates the religious nondiscrimination requirement of 45 CFR § 75.300(c).

On February 27, 2018, Governor Henry McMaster of South Carolina submitted a written request for a "deviation or waiver from current policy to recoup grant funds from SCDSS if the Department determines [45 CFR § 75.300(c) or (d)] are violated by any SCDSS CPA contracts due to religiously held beliefs." In a subsequent clarifying telephone conversation with Ms. Richele Taylor, the Governor's Chief Legal Counsel, Ms. Taylor narrowed the exception request to the religious nondiscrimination requirement of 45 CFR § 75.300(c), and agreed that the operational impediments identified therein would be alleviated by permitting SCDSS to require Miracle Hill or a similarly objecting subrecipient to refer people who seek child placements to other CPAs or to South Carolina Foster Care Program staff, when the subrecipient could not, as a matter of sincere religious exercise, provide placements with certain persons because of the persons' religious beliefs.

On December 18, 2018, Miracle Hill sent a letter to Secretary Azar, with a copy to OCR Director Severino, stating that the application of 45 CFR § 75.300(c) to Miracle Hill substantially burdens Miracle Hill's religiously motivated conduct in violation of the Religious Freedom Restoration Act; constrains Miracle Hill's selection of spiritual leaders in violation of *Hosanna-Tabor Evangelical Lutheran Church & School v. E.E.O.C.*, 565 U.S. 171 (2012); and exceeds the authority of the nondiscrimination provisions applicable to the SCDSS foster care program. Specifically, while Miracle Hill states that they are committed to serving all program beneficiaries "regardless of his or her race, color, ethnicity, national origin, age, sex, disability, religion, lack of religion, orientation, or identity," Miracle Hill, as "a Christian ministry, … believe[s] those who hold certain positions of spiritual influence and leadership—including foster parents—should share [Miracle Hill's] religious mission and beliefs." Miracle Hill does not license foster homes or place children in them but, instead, "recruits, qualifies, and encourages families to apply to the State to be licensed as foster families" and "offers ongoing training, encouragement, and administrative, spiritual, and practical support" to foster families.

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Additionally, Miracle Hill, in its letter, argues that the religious nondiscrimination requirement of 45 CFR § 75.300(c) (and other requirements of paragraphs (c) and (d)) are *ultra vires* to the extent they exceed the mandate of the statutes applicable to the foster care program,[3] or "impose requirements contrary to the Constitution and RFRA." Similarly, South Carolina argues that, because § 75.300(c) implements a religious nondiscrimination requirement that goes beyond those in the Title IV-E nondiscrimination statute or other applicable statutes, it is unlawful. For reference, 42 U.S.C. § 671(a)(18), which is applicable to the Title IV-E foster care and adoption program, provides:

> *(a) Requisite features of State plan. In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—*
>
> * * *
>
> *(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—*
>
> > *(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or*
> > *(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved[.]*

II. Justification for Deviation Request

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[3] The referenced statute is the nondiscrimination provision applicable to the Title IV-E foster care and adoption program. *See* 42 U.S.C. § 671(a)(18).

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B. Religious Liberty Analysis

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C. Statutory Authority

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III. Conclusion

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RECOMMENDATION

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(b)(5)

Steven Wagner
Principal Deputy Assistant Secretary
Administration for Children and Families

Roger Severino
Director, Office for Civil Rights

DECISION

Approved ✓ Disapproved _____ Need More Information_____

Eric D. Hargan

1/29/2019
Date

Attachments

TAB A:	Letter from Governor McMaster, dated February 27, 2018
TAB B:	Letter from Reid Lehman, President/CEO of Miracle Hill Ministries, dated December 18, 2018
TAB C:	Draft Response to Governor McMaster

AMERICAN OVERSIGHT

HENRY MCMASTER
GOVERNOR

February 27, 2018

The Honorable Steven Wagner
Acting Assistant Secretary
Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street, SW
Washington, D.C. 20201

Dear Acting Assistant Secretary Wagner:

South Carolina has more than 4,000 children in foster care, and we are thankful for all the wonderful Child Placing Agencies ("CPAs") that assist in recruiting foster families to serve these children. Today I write specifically on behalf of South Carolina's faith-based organizations that are called to serve and fill the crucial role of CPAs.

Title IV-E of the Social Security Act authorizes the Department of Health and Human Services ("Department") to provide states with funding to assist in caring for children placed in foster family homes. In South Carolina, the Department directs these funds to our Department of Social Services ("DSS"). In turn, DSS contracts with both secular and faith-based CPAs to fulfill grant services. Our faith-based CPAs are essential as our State needs more CPAs to recruit more families. Faith-based organizations have contracted with various government entities for years to serve vulnerable populations, such as contracting with faith-based hospitals provide Medicaid and Medicare funding.

All CPAs follow the requirements of Title IV-E, which mandates that CPAs may not deny a person the right to become an adoptive or foster parent on the basis of "race, color, or national origin." 42 U.S.C. § 671(a)(18). Effective January 11, 2017, the Department attempted to expand the law, adding two new subsections to an existing federal regulation. *See* 45 C.F.R. § 75.300(c), (d). However, Title IV-E already contains a statutory non-discrimination requirement. The Department cannot lawfully expand such statutory provisions through regulations, as a regulation must *implement* the statutory scheme, not *alter* or *amend* it.

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HHS-19-0190-A-000276

Moreover, the new regulatory subsections effectively require CPAs to abandon their religious beliefs or forgo the available public licensure and funding, which violates the constitutional rights of faith-based organizations. A regulation used to limit the free exercise of faith-based providers violates the Religious Freedom Restoration Act ("RFRA"). The purpose of RFRA is to ensure that the government cannot substantially burden the free exercise of religion, such as by pressuring an entity to abandon its religious convictions in order to comply with governmental regulations.

The Supreme Court has made clear that that faith-based entities may contract with the government without having to abandon their sincerely religious beliefs. In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, the Supreme Court held that the state policy of denying a "qualified religious entity a public benefit solely because of its religious character . . . goes too far" and violates the Establishment Clause. Upholding the new regulations would have the same effect, forcing a religious organization to choose between the tenets of its faith or applying for a CPA license to serve the children of South Carolina.

South Carolina needs to continue growing our CPAs, not to prevent them from serving our State's children. In fact, one faith-based CPA, Miracle Hill, is our State's largest provider of foster families for Level I foster children, recruiting 15% of the State's foster families. Therefore, on behalf of South Carolina and faith-based organizations like Miracle Hill, I ask that the Department provide a deviation or waiver from its current policy to recoup grant funds from DSS if the Department determines the new regulations are violated by any DSS CPA contracts due to religiously held beliefs. Faith-based CPAs should be allowed to hold their sincerely held religious beliefs and be licensed to recruit foster parents for our foster children.

I look forward to hearing from you on this very important issue.

Yours very truly,

Henry McMaster

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Miracle Hill
MINISTRIES

P. O. Box 2546 • Greenville, SC 29602
864.268.4357 | miraclehill.org

December 18, 2018

Via e-mail and overnight delivery
Hon. Alex M. Azar II
Secretary, U.S. Dept. of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Secretary@HHS.gov

RE: HHS regulation infringing on the First Amendment and statutory rights of faith-based community services providers.

Secretary Azar:

Miracle Hill Ministries is a faith-based ministry that serves the homeless, hungry, and needy in upstate South Carolina. Every year, we serve more than 3,000 people in our nine shelters, provide residential recovery centers for men and women seeking to overcome life-dominating addictions, and help hundreds of foster children by facilitating and supporting 220 families who are licensed as foster homes by the State. As has been our practice for 80 years, Miracle Hill gladly serves any adult or child in need, regardless of his or her race, color, ethnicity, national origin, age, sex, disability, religion, lack of religion, orientation, or identity. Likewise, we gladly work with volunteers without regard to such factors.

Notwithstanding the great need for these services and Miracle Hill's decades of widely-acclaimed and award-winning service to anyone in need, Miracle Hill's ability to serve is being threatened by a regulation promulgated by the Department of Health and Human Services ("HHS" or "the Department"). As explained below, the regulation not only poses a grave risk to an already strained foster care system by threatening to close Miracle Hill's foster program, it also violates the First Amendment and civil rights laws, including the Religious Freedom Restoration Act ("RFRA"), by imposing a substantial burden on our religious exercise without demonstrating a compelling governmental interest for doing so and without even attempting to do so in the least restrictive way.

Specifically, in January 2017, the Department amended an existing regulation, 45 C.F.R. § 75.300, which governs federal grants awarded to State governments for use in providing foster care to children in State custody. For decades, such grants—like the corresponding federal statute governing them—had required only that the State recipients not discriminate on the basis of race, color, or national origin. The 2017 amendment added a number of new requirements, including that no person "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 age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation." 45 C.F.R. § 75.300(c).

Shortly after this new requirement was finalized, the South Carolina Department of Social Services ("SCDSS") began vetting private foster services providers licensed in South Carolina to

AMERICAN OVERSIGHT

ensure the providers complied with these requirements. Miracle Hill was one of the licensed providers vetted by SCDSS. Miracle Hill does not license the foster homes or place children in them. Rather, SCDSS performs those roles. Instead, Miracle Hill recruits, qualifies, and encourages families to apply to the State to be licensed as foster families. If the State places a foster child in that family, Miracle Hill then offers ongoing training, encouragement, and administrative, spiritual, and practical support to the family.

As noted above, Miracle Hill gladly partners with anyone who wants to serve. Because Miracle Hill is a Christian ministry, however, we believe those who hold certain positions of spiritual influence and leadership—including foster parents—should share our religious mission and beliefs. Dozens of decisions from the Supreme Court and lower courts have held such practices are permissible under the First Amendment and civil rights laws, and Miracle Hill's practice does not deprive anyone of the ability to serve as a foster parent. Indeed, there are no fewer than nine other private foster care providers in our area, several of whom are located mere minutes away, plus SCDSS itself, all of whom work with any foster parents regardless of their religious beliefs or unbelief, orientation, or identity. Nevertheless, in January 2018, as a result of Miracle Hill's practice, SCDSS declined to renew our license to provide foster services, and instead granted us a provisional license that would be revoked if we continued our ministry consistent with our religious beliefs. The reason for SCDSS' decision: 45 C.F.R. § 75.300.[1]

The Department's regulation has put Miracle Hill to an impossible choice: either abandon our deeply and sincerely held religious beliefs or abandon children in desperate need. As a matter of religious conviction, we can do neither. Miracle Hill's ministry to abused, orphaned, or neglected children is compelled by our religious beliefs and is itself an exercise of our beliefs. Holy Scripture and Jesus himself command special care and solicitude be shown to children generally and to the needy and orphans particularly. Further, because we view this ministry as religious exercise, and because foster parents are our co-laborers in this religious exercise, we choose, as a matter of religious conviction, to partner only with foster parents who share our religious mission, motivation, and beliefs. Accordingly, a government demand that Miracle Hill either abandon our service to children in need or compromise the way we partner with the parents who serve them imposes a substantial burden on our religious exercise.

The burden HHS has placed on Miracle Hill is not only substantial—it is impermissible. By imposing this burden, HHS has violated the First Amendment by restricting Miracle Hill's ability to consider an individual's beliefs and behaviors when making decisions related to individuals whose role and functions include spiritual influence, guidance, and formation. *See Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012); *EEOC v. Roman Catholic Diocese of Raleigh*, 213 F.3d 795, 801 (4th Cir. 2000); *Shaliehsabou v. Hebrew Home of Greater Washington*, 363 F.3d 299, 308 (4th Cir. 2004); *Conlon v. InterVarsity Christian Fellowship*, 777

[1] SCDSS also relied on 45 C.F.R. § 87.3(d), which states an organization participating in programs involving HHS funding shall not "discriminate against a program *beneficiary* or prospective program *beneficiary* on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice." Even assuming this requirement applies to the SCDSS program in which Miracle Hill participates by supporting foster parents, SCDSS' reliance on it is misplaced. SCDSS seems to mistakenly believe foster parents are the beneficiaries of the program. They are not. The foster children are. Miracle Hill has never discriminated against foster children on any basis, including their religion, lack thereof, or refusal to hold a belief or participate in a practice.

AMERICAN OVERSIGHT

F.3d 829 (6th Cir. 2015). Further, to the extent the regulation restricts or penalizes Miracle Hill's right to make screening, training, or supervision decisions related to the foster homes with whom we will partner, the regulation violates Miracle Hill's freedom of association. *See Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000); *Roberts v. United States Jaycees*, 468 U.S. 609, 622–23 (1984).

In addition, the regulation violates RFRA, imposing a substantial burden on Miracle Hill's free exercise by applying governmental pressure to abandon our religious convictions or comply with the government's demands. *See Wisconsin v. Yoder*, 406 U.S. 205, 217–18 (1972); *Sherbert v. Verner*, 374 U.S. 398, 404 (1963); *Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 717–18 (1981). HHS has not identified a compelling interest to justify this burden, much less one "of the highest order" applicable specifically to Miracle Hill or even to other faith-based providers. *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, *2024 (June 26, 2017); *Gonzales v. O Centro Espirita Beneficente*, 546 U.S. 418, 430–31 (2006); *Atty. Gen. v. Desilets*, 636 N.E.2d 233, 238 (Mass. 1994).

Furthermore, the regulation is *ultra vires* by exceeding the statute's non-discrimination mandate and by imposing requirements contrary to the Constitution and RFRA. In addition, it is arbitrary and capricious because it "entirely failed to consider an important aspect of the problem," namely the free exercise and associational rights of faith-based providers. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Previous regulations have always left religious providers the freedom to select foster homes that share their faith. If HHS meant to alter this long-standing accommodation, the administrative record would surely contain some basis justifying the burden, explaining the compelling interest, and narrowly tailoring the restriction. It does not.

The numerous legal deficiencies of the amended regulation not only violate Miracle Hill's constitutional and statutory rights, they also bring about a perverse and unintended result, driving faith-based providers out of the arena and thus *shrinking* the pool of homes and services available to foster children at a time when the need is great and growing. The intent of the Department's amended regulation—that any qualified person should be able to foster and adopt—has already been realized in South Carolina and every other State. Accommodating Miracle Hill's ministry and alleviating the substantial burden HHS has placed upon it will not alter this fact. It will only ensure maximum participation and an increase in loving homes for children in need.

In conclusion, we ask you to issue guidance to explain 45 C.F.R. § 75.300 does not infringe on Miracle Hill's constitutional and statutory rights and to take steps to amend the regulation to make clear that it accommodates Miracle Hill's sincerely held religious beliefs. As we await resolution of this situation, we continue to suffer operational, financial, and lost opportunity costs. Our temporary license expires in a matter of weeks, and in the absence of such guidance, SCDSS will not license Miracle Hill. Thank you for your consideration and prompt attention to this matter.

Sincerely,

Reid Lehman
President/CEO, Miracle Hill Ministries

AMERICAN OVERSIGHT

CC: (via email and overnight delivery)
Roger T. Severino
Director, HHS Office of Civil Rights
200 Independence Avenue, S.W., Room 600E
Washington, D.C. 20201
Roger.Severino@HHS.gov

CC: (via U.S. Postal Mail)
Governor Henry McMaster
State House
1100 Gervais Street
Columbia, SC 29201

Senator Lindsey Graham
290 Russell Senate Office Building
Washington, D.C. 20510

Senator Tim Scott
717 Hart Senate Office Building
Washington, D.C. 20510

Representative Mark Sanford
322 Cannon House Office Building
Washington, D.C. 20515

Representative Joe Wilson
2229 Rayburn House Office Building
Washington, D.C. 20515

Representative Jeff Duncan
116 Cannon House Office Building
Washington, D.C. 20515

Representative Trey Gowdy
2418 Rayburn House Office Building
Washington, D.C. 20515

Representative Ralph Norman
2350 Rayburn House Office Building
Washington, D.C. 20515

Representative Tom Rice
223 Cannon House Office Building
Washington, D.C. 20515

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AMERICAN OVERSIGHT

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Matthew D. Bassett, Assistant Secretary for Legislation

FROM: Roger Severino, Director, Office for Civil Rights

DATE: February 19, 2019

SUBJECT: Office for Civil Rights: Report to Congress on HIPAA Privacy, Security, and Breach Notification Compliance for Calendar Years 2015, 2016, and 2017 – **INFORMATION**

ISSUE

Attached for transmittal to Congress are the 2015, 2016 and 2017 annual reports on the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security, and Breach Notification Rule Compliance (the Compliance Report). The Compliance Report was prepared by the Office for Civil Rights.

BACKGROUND

Section 13424(a) of the Health Information Technology for Economic and Clinical Health (HITECH) Act requires the Secretary of the Department of Health and Human Services to prepare and submit an annual report to Congress regarding compliance with the Privacy and Security Rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191).

Further, Section 13424(a)(2) of the HITECH Act requires that the Compliance Report be made available to the public on the website of the Department. As such, previous Compliance Reports and their transmittal letters may be found here: https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/reports-congress/index.html.

DISCUSSION

The attached Report was prepared in accordance with these statutory requirements. For the years for which the Compliance Report is prepared, the Report summarizes complaints received by the Department of alleged violations of the provisions of Subtitle D of the HITECH Act, as well as of the HIPAA Privacy, Security and Breach Notification Rules at 45 CFR Parts 160 and 164.

AMERICAN OVERSIGHT

The annual Compliance Report is non-controversial and not expected to garner attention outside of OCR's trade press. The Compliance Report will be sent to six Members of Congress: the Chairmen and Ranking Members of the House Committee on Energy and Commerce, the House Committee on Ways and Means, and the Senate Committee on Health, Education, Labor and Pensions, as required by the HITECH Act.

Although Congress has required OCR to issue annual reports on its HIPAA enforcement activities there has been a several year's long tradition of missing this deadline and I am putting an end to the practice. Additionally, a couple Senators have inquired about this delay recently in a letter to OCR, which makes it doubly important to not miss this year's deadline of February 19th.

RECOMMENDATION

I recommend that you sign the attached letters and forward the Compliance Report to Congress.

Roger Severino

Attachments:
Transmittal Letters to Congress
Report to Congress

AMERICAN OVERSIGHT

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Matthew D. Bassett, Assistant Secretary for Legislation

FROM: Roger Severino, Director, Office for Civil Rights

DATE: February 19, 2019

SUBJECT: Office for Civil Rights: Report to Congress on the Breach Notification Program for Calendar Years 2015, 2016, and 2017 - **INFORMATION**

ISSUE

Attached for transmittal to Congress is a Report to Congress on the 2015, 2016 and 2017 Health Insurance Portability and Accountability Act (HIPAA) Breach Notification Program (the Breach Report). The Breach Report was prepared by the Office for Civil Rights.

BACKGROUND

Section 13402(i) of the Health Information Technology for Economic and Clinical Health (HITECH) Act requires the Secretary of the Department of Health and Human Services to prepare and submit an annual report to Congress containing the number and nature of breaches reported to the Secretary, and the actions taken in response to those breaches, as required by the HIPAA Breach Notification Rule.

Further, Section 13424(a)(2) of the HITECH Act requires that the Breach Report be made available to the public on the website of the Department. As such, previous Breach Reports and their transmittal letters may be found here: https://www.hhs.gov/hipaa/for-professionals/breach-notification/reports-congress/index.html.

DISCUSSION

The attached Report was prepared in accordance with these statutory requirements. For the years for which the Breach Report is prepared, the Report provides an overview of the breach notification requirements, as well as discussion of the reports the Secretary received that occurred during the reporting period.

The Breach Report is non-controversial and not expected to garner attention outside of OCR's trade press. The Breach Report will be sent to eight Members of Congress: the Chairmen and Ranking Members of the House Committee on Energy and Commerce, the House Committee on

AMERICAN OVERSIGHT

Although Congress has required OCR to issue annual reports on its HIPAA enforcement activities, there has been a long tradition of missing this deadline, which OCR intends to end. Additionally, a couple Senators have inquired about this delay recently in a letter to OCR, which makes it important to submit the report timely this year.

RECOMMENDATION

I recommend that you sign the attached letters and forward the Breach Report to Congress.

Roger Severino

Attachments:
Transmittal Letters to Congress
Report to Congress

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Matthew D. Bassett
Assistant Secretary for Legislation

FROM: Roger Severino
Director

DATE: March 28, 2019

SUBJECT: Annual Report to Congress on Implementation of the Age Discrimination Act of 1975 for Fiscal Year 2018 - **INFORMATION**

ISSUE

Attached for your transmittal to Congress is the Annual Report to Congress on Implementation of the Age Discrimination Act of 1975, as amended (Age Act) for Fiscal Year 2018, as required by Section 308(b) of the Age Act. The Report has been prepared by the Office for Civil Rights and is due to Congress by March 31, 2018.

SUMMARY

The Report summarizes the trends in age discrimination complaints, compliance reviews, mediation, and technical assistance and outreach activities of twenty-eight federal departments and agencies related to age discrimination in Fiscal Year 2018. This includes information about the number of age complaints, compliance reviews, and cases referred to the Federal Mediation and Conciliation Services. The Report also identifies twenty-eight agencies that published regulations or are developing regulations. The Report is non-controversial, and we do not anticipate any significant reaction from Congress.

RECOMMENDATION

I recommend that you sign the attached letters and forward the Report to the President of the Senate and Speaker of the House of Representatives, as required by statute.

Roger Severino

Attachments:
Tab A – Letters to the President of the Senate and Speaker of the House of Representatives
Tab B – Report to Congress

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Troy Balderson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Balderson:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

Attached to this correspondence is the Department's position on some of the issues that you have raised, as set forth in litigation pleadings. As in all matters concerning OCR's enforcement of its regulations, the Department welcomes input from all affected parties to fully inform future rulemaking and guidance. Presently, OCR has issued a Request for Information seeking public input on how the Department could modify the HIPAA Rules to further the Secretary's goal of promoting coordinated, value-based health care. To address the concerns you raise, we also invite specific proposals as to what charges should be allowed when an individual requests paper medical records be directed to third parties, so that neither an individual's right of access, nor a covered entity's operations, are unduly burdened. Comments on the RFI are due February 12, 2019, and the RFI may be downloaded from the Federal Register at https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care.

If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Todd Young
United States Senate
Washington, DC 20510

Dear Senator Young:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

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If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Steve Stivers
U.S. House of Representatives
Washington, DC 20515

Dear Representative Stivers:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

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If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Bob Gibbs
U.S. House of Representatives
Washington, DC 20515

Dear Representative Gibbs:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

Attached to this correspondence is the Department's position on some of the issues that you have raised, as set forth in litigation pleadings. As in all matters concerning OCR's enforcement of its regulations, the Department welcomes input from all affected parties to fully inform future rulemaking and guidance. Presently, OCR has issued a Request for Information seeking public input on how the Department could modify the HIPAA Rules to further the Secretary's goal of promoting coordinated, value-based health care. To address the concerns you raise, we also invite specific proposals as to what charges should be allowed when an individual requests paper medical records be directed to third parties, so that neither an individual's right of access, nor a covered entity's operations, are unduly burdened. Comments on the RFI are due February 12, 2019, and the RFI may be downloaded from the Federal Register at https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care.

If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Steve Chabot
U.S. House of Representatives
Washington, DC 20515

Dear Representative Chabot:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

Attached to this correspondence is the Department's position on some of the issues you have raised, as set forth in litigation pleadings. As in all matters concerning OCR's enforcement of its regulations, the Department welcomes input from all affected parties to fully inform future rulemaking and guidance. Presently, OCR has issued a Request for Information seeking public input on how the Department could modify the HIPAA Rules to further the Secretary's goal of promoting coordinated, value-based health care. To address the concerns you raise, we also invite specific proposals as to what charges should be allowed when an individual requests paper medical records be directed to third parties, so that neither an individual's right of access, nor a covered entity's operations, are unduly burdened. Comments on the RFI are due February 12, 2019, and the RFI may be downloaded from the Federal Register at https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care.

If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Paul Mitchell
U.S. House of Representatives
Washington, DC 20515

Dear Representative Mitchell:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

Attached to this correspondence is the Department's position on some of the issues that you have raised, as set forth in litigation pleadings. As in all matters concerning OCR's enforcement of its regulations, the Department welcomes input from all affected parties to fully inform future rulemaking and guidance. Presently, OCR has issued a Request for Information seeking public input on how the Department could modify the HIPAA Rules to further the Secretary's goal of promoting coordinated, value-based health care. To address the concerns you raise, we also invite specific proposals as to what charges should be allowed when an individual requests paper medical records be directed to third parties, so that neither an individual's right of access, nor a covered entity's operations, are unduly burdened. Comments on the RFI are due February 12, 2019, and the RFI may be downloaded from the Federal Register at https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care.

If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Jeff Fortenberry
U.S. House of Representatives
Washington, DC 20515

Dear Representative Fortenberry:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

Attached to this correspondence is the Department's position on some of the issues you have raised, as set forth in litigation pleadings. As in all matters concerning OCR's enforcement of its regulations, the Department welcomes input from all affected parties to fully inform future rulemaking and guidance. Presently, OCR has issued a Request for Information seeking public input on how the Department could modify the HIPAA Rules to further the Secretary's goal of promoting coordinated, value-based health care. To address the concerns you raise, we also invite specific proposals as to what charges should be allowed when an individual requests paper medical records be directed to third parties, so that neither an individual's right of access, nor a covered entity's operations, are unduly burdened. Comments on the RFI are due February 12, 2019, and the RFI may be downloaded from the Federal Register at https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care.

If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Bill Johnson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Johnson:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

Attached to this correspondence is the Department's position on some of the issues that you have raised, as set forth in litigation pleadings. As in all matters concerning OCR's enforcement of its regulations, the Department welcomes input from all affected parties to fully inform future rulemaking and guidance. Presently, OCR has issued a Request for Information seeking public input on how the Department could modify the HIPAA Rules to further the Secretary's goal of promoting coordinated, value-based health care. To address the concerns you raise, we also invite specific proposals as to what charges should be allowed when an individual requests paper medical records be directed to third parties, so that neither an individual's right of access, nor a covered entity's operations, are unduly burdened. Comments on the RFI are due February 12, 2019, and the RFI may be downloaded from the Federal Register at https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care.

If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Thom Tillis
United States Senate
Washington, DC 20510

Dear Senator Tillis:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

OCR enforces the HIPAA Privacy, Security, and Breach Notification Rules, and also enforces federal civil rights laws which prohibit discrimination in the delivery of health and human services based on race, color, national origin, disability, age, sex, religion, and the exercise of conscience.

Attached to this correspondence is the Department's position on some of the issues you have raised, as set forth in litigation pleadings. As in all matters concerning OCR's enforcement of its regulations, the Department welcomes input from all affected parties to fully inform future rulemaking and guidance. Presently, OCR has issued a Request for Information seeking public input on how the Department could modify the HIPAA Rules to further the Secretary's goal of promoting coordinated, value-based health care. To address the concerns you raise, we also invite specific proposals as to what charges should be allowed when an individual requests paper medical records be directed to third parties, so that neither an individual's right of access, nor a covered entity's operations, are unduly burdened. Comments on the RFI are due February 12, 2019, and the RFI may be downloaded from the Federal Register at https://www.federalregister.gov/documents/2018/12/14/2018-27162/request-for-information-on-modifying-hipaa-rules-to-improve-coordinated-care.

If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Brad Wenstrup
U.S. House of Representatives
Washington, DC 20515

Dear Representative Wenstrup:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

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Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Richard Hudson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Hudson:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

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If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Doug Collins
U.S. House of Representatives
Washington, DC 20515

Dear Representative Collins:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

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If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Gary Palmer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Palmer:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

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If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

February 5, 2019

The Honorable Glenn Thompson
U.S. House of Representatives
Washington, DC 20515

Dear Representative Thompson:

Thank you for your letter to Secretary Alex M. Azar II, inquiring about the application of the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Clinical and Economic Health (HITECH) Act to the right of individuals to access their own protected health information. I am responding on behalf of the Secretary.

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If you or your staff have further questions or concerns, please contact Matthew D. Bassett, Assistant Secretary for Legislation, at (202) 690-7627. I will also provide this response to the co-signers of your letter.

Sincerely,

Roger Severino
Director

Enclosure

AMERICAN OVERSIGHT

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Alex M. Azar II

THROUGH: Robert P. Kadlec, M.D.

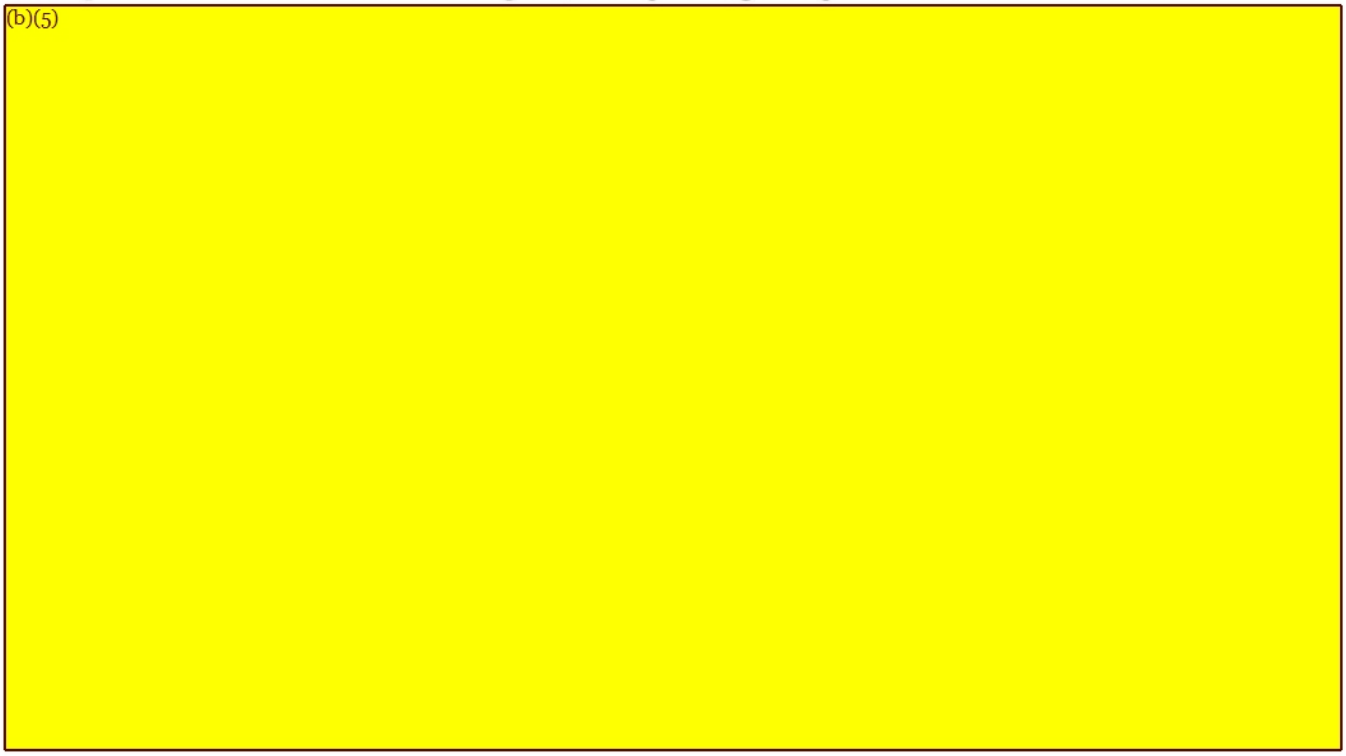
FROM: Roger Severino, Director, Office for Civil Rights

DATE: April 10, 2019

Re: Office for Civil Rights (OCR) Annual Continuity Program Report

In coordination with the Office of Emergency Management within the Assistant Secretary for Preparedness and Response, OCR conducted its annual evaluation of the 11 continuity elements and implementation using the requirements stated in Annex A, all Operating and Staff Division responsibilities, of the COOP Policy that apply to OCR. Attached is our annual assessment report and current continuity plan. It is our hope that this report and plan will assist with the continued development and enhancement of the HHS continuity program. In accordance with Federal Continuity Directive 1 and Homeland Security Exercise and Evaluation Program Guidance, OCR is providing this input to the HHS Improvement Plan as part of its Corrective Action Program, incorporating best practices and lessons learned.

(b)(5)



AMERICAN OVERSIGHT

Please direct any questions concerning the assessment to Steve Novy, 202-619-0403, Steve.Novy@hhs.gov, or Harold Henderson, 202-774-3012, Harold.Henderson@hhs.gov.

Sincerely,

Roger Severino
Director, Office for Civil Rights

AMERICAN OVERSIGHT

OCR Annual Continuity Program Report	
Program Management, Plans, & Procedures	
Essential Functions	
Orders of Succession	
Delegations of Authority	
Communications & Information Systems	
Essential Records Management	
Alternate Locations	
Human Resources	
Devolution	
Reconstitution	
Test, Training & Exercise Program	
Operational Phases and Implementation	
OVERALL PROGRAM RATING	

Amount of OCR funding allotted and obligated on Continuity of Operations program needs and requirements: $N/A

AMERICAN OVERSIGHT

Office for Civil Rights 2019 Annual Continuity Program Report

COOP Elements	Evaluation Criteria	Verified	Comments/ Status Explanation
Program Plans & Procedures	Met all Program Plans and Procedures requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Essential Functions	Met all Essential Functions requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Human Resources	Met all Human Resources requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Continuity Communications	Met all Continuity Communications requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Alternate Locations	Met all Alternate Locations requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Orders of Succession & Delegations of Authority	Met all Orders of Succession and Delegation s of Authority requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Devolution	Met all Devolution requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Budget & Acquisitions	Met all Budget and Acquisitions requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Risk Assessment	Met all Risk Assessment requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Operational Phases & Implementation	Met all Operational Phases and Implementation requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Reconstitution	Met all Reconstitution requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
Essential Records	Met all Essential Records requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	
TT&E	Met all training and exercise requirements established by the HHS COOP Policy and/or by the HHS COOP program team on an annual or as required basis	Y	

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Director
Office for Civil Rights
Washington, D.C. 20201

ANNEX B –CONTINUITY MANAGER OR POINT OF CONTACT (POC) DESIGNATION MEMORANDUM

TO: Steve Novy
Harold Henderson

FROM: Roger Severino
Director, Office for Civil Rights

SUBJECT: Designation as Continuity of Operations (COOP) Manager

DATE: April 10, 2019

The purpose of this memorandum is to designate Steve Novy as the Primary and Harold Henderson as the Alternate COOP Manager for the Office for Civil Rights. Therefore, for COOP situations, you are responsible for coordinating the performance of the duties and requirements outlined within the *HHS COOP Program Policy* and *HHS COOP Plan (currently known as the HHS COOP Framework)*.

As a Primary or Alternate COOP Manager or POC, you are responsible for coordinating the COOP activities and initiatives of our organization and for working with the Office of the Assistant Secretary for Preparedness and Response (ASPR) on COOP-related issues and program requirements. Managers or POCs are responsible for all provisions set forth in the *HHS COOP Program Policy* and related supporting documents. Some examples of these responsibilities are, but are not limited to the following:

- Serve as the Office for Civil Rights' representative on the HHS Continuity Working Group and related councils
- Maintain the Office for Civil Rights' workspaces at a COOP site that is operable at all times
- Identify the Office for Civil Rights' essential functions and complete documentation to identify supporting elements to performing those functions
- Support the Office for Civil Rights' identification of ERG members and continuity personnel supporting via telework
- Develop and maintain the COOP Implementation Plan for the Office for Civil Rights
- Maintain the Office for Civil Rights' senior executive order of succession and contact information, and all other alert and notification rosters (within automated alert system and in cascade format)

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- Monitor completion of mandatory COOP training courses by the Office for Civil Rights' employees
- Compile the Office for Civil Rights' responses to COOP-related requests for information or taskers
- Deploy to the Office for Civil Rights' COOP site or your telework site upon activation of the Office for Civil Rights' COOP Implementation Plan, and follow the processes identified within the plan
- Establish and maintain communication with ASPR after activation of the Office for Civil Rights' COOP Implementation Plan

Additionally, this memorandum serves to designate you as a member of the Office for Civil Rights' Emergency Relocation Group (ERG), as required by the U.S. Department of Health and Human Services (HHS) COOP Program.

By completing the form below, you acknowledge your acceptance as a COOP Manager or POC. Please return the completed form and direct any questions to Joseph Parsons, Continuity of Operations Branch, within ASPR at joseph.parsons@hhs.gov and hhscontinuity@hhs.gov.

ACKNOWLEDGEMENT – Letter of Designation as a COOP POC and ERG Member for the Office for Civil Rights				
Name (Typed or Printed):	Steve Novy	Date:	4/02/2019	Primary COOP POC Signature:
Email address:	Steve.Novy@hhs.gov	Tele #	202-619-0403	
Name (Typed or Printed):	Harold Henderson	Date:	4/02/2019	Alternate COOP POC Signature:
Email address:	Harold.Henderson@hhs.gov	Tele #	202-774-3012	
Organization	Office for Civil Rights	Office	509F	Office for Civil Rights' Head Signature:
Office for Civil Rights' Head Name:	Roger Severino	Date	4/02/2019	

AMERICAN OVERSIGHT

Director
Office for Civil Rights
Washington, D.C. 20201

TO: Alex M. Azar II, Secretary

THROUGH: Eric D. Hargan, Deputy Secretary
Ann C. Agnew, Executive Secretary
Paula M. Stannard, Senior Counselor

FROM: Roger T. Severino, Director, Office for Civil Rights

DATE: May 1, 2019

SUBJECT: Approval of Final Rule: *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority* – **DECISION**

ACTION REQUESTED

The purpose of this memorandum is to request your approval and signature on the Final Rule entitled *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority* ("Final Conscience Rule").

SUMMARY

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

(b)(5)

[redacted]

Roger T. Severino
Director, Office for Civil Rights

DECISION

Approved _____ Disapproved _____ Need More Information_____

_____ _____
Alex M. Azar II Date

AMERICAN OVERSIGHT