November 24, 2017

Center for Faith-Based and Neighborhood Partnerships
Office of Intergovernmental and External Affairs
U.S. Department of Health and Human Services
Attention: RFI Regarding Faith-Based Organizations
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking Request for Information Removing Barriers for Religious and Faith-Based Organizations To Participate in HHS Programs and Receive Public Funding, HHS-9928-FRI 82 FR 4900

Dear Ms. Royce:

On behalf of Catholic Charities USA (CCUSA), I respectfully submit the following Comments in response to the above cited Request for Information.

CCUSA is a national membership organization representing more than 160 diocesan Catholic Charities agencies. These member agencies operate more than 2,900 service locations across 50 states, the District of Columbia and five U.S. territories. Their diverse array of social services reached more than 8.3 million individuals in need last year.

Catholic Charities agencies, as well as other nonprofit and faith-based organizations, have long worked with local, state and federal government agencies in providing professional, compassionate and effective responses to local needs. Through these partnerships, Catholic Charities ministries are able to supplement government resources with millions of dollars of charitable, volunteer and in-kind support, while at the same time contributing their unique knowledge of local community needs. Last year alone, Catholic Charities agencies provided pregnancy support to more than 155,000 women, behavioral health services to 422,099 individuals (including 107,317 people with addiction services), and supervised living services for 6,454 children in foster care. In the end, this collaborative relationship improves community health and saves valuable governmental resources.

CCUSA has worked with its member agencies to determine some of the barriers and restrictions in the daily operations of providers, especially those agencies serving large and varied constituencies with limited staff and resources. CCUSA submits the following responses to the department's *Request for Information* questions:

1) **What are some of the obstacles that faith-based organizations (Catholic Charities agencies) face in delivery of services under the Department of Health and Human Services (HHS)?**

Catholic Charities agencies engage in a wide-array of programs when it comes to partnering with HHS programs. Collectively, 58 percent of Catholic Charities agencies partner on a project

administered by HHS. This diversity in practice reflects the specific local needs and organizational decisions by local Catholic Charities agencies, thereby providing a range of experiences in deciding whether and how best to partner on HHS related programs.

For more than 100 years Catholic Charities agencies have been leaders in providing safe and loving homes for children through adoption and foster care support. Last year alone, Catholic Charities agencies provided adoption placement services to more than 1,700 children and foster care support to 6,454 children. Despite these efforts, Catholic Charities agencies increasingly face challenges in providing adoption and foster care support programs. Many of these challenges are the result of the increasing costs for adoptions, the use of private adoption services, and the growing regulatory burdens for adoptions and foster care providers. However, our agencies also face growing obstacles to identifying and placing children in homes in a manner consistent with their experience and religious belief.

Catholic Charities agencies across the country also participate in a number of HHS programs related to mental health counseling, care for victims of trafficking and other health-related HHS programs. Many of these agencies continue to identify burdensome regulations, insufficient reimbursement policies and inconsistent guidance related to health care referral practices as obstacles to entering or continuing to participate in HHS related programs.

For example, the overwhelmingly and needlessly complex regulations for healthcare (CMS regulations), as well as a billing and compliance system that requires multiple organizations (NGOs, electronic records contractors, consultants) to design systems that allow for accurate billing, etc., has created an administratively burdensome system that takes vital resources away from patient care. In addition, Medicaid funding continues to prioritize payments by type of service provided rather than cost reimbursement that focuses on outcomes. These realities, along with the lack of supplemental funds for administrative costs for reporting and submission requirements, lead to existing personnel spending time negotiating a system that appears designed to promote errors, which are aggressively sought out to recoup funds from providers rather than spending time providing services to those in need. The healthcare regulations and billing system of payment and oversight needs fundamental reform.

In addition, the increasing requirements for participation and the lack of full reimbursement for counseling-related health care services, such as those for licensed and accredited counseling agencies compared to private practitioners, present unnecessary and costly hurdles for Catholic Charities agencies participating in HHS counseling-related programs.

While many of the stated regulatory concerns related to health care also impact nonfaith-based organizations, the realities of these concerns are disproportionately felt by mission and community-based social service providers, such as Catholic Charities agencies, whose dedication to serve low-income communities means their work is not supplemented by clients able to share costs.

Catholic Charities agencies also face challenges related to uncertainty in HHS interpretation and enforcement of provisions related to providing services consistently with the agencies' mission and religious belief. The Weldon amendment, for example, has long provided an important means

for encouraging organizations that do not provide abortions to participate in HHS related programs. Inconsistent interpretation and enforcement of the Weldon amendment by HHS and state and local governments results in agencies fearful of potential litigation or reluctant to partner with HHS in the provision of local services.

Executive Order 13559, *Fundamental Principles and Policy making Criteria for Partnerships with Faith-Based and other Neighborhood* Organizations, and *Health and Human Services Grants Regulations* (81 FR 89393) are two examples of HHS polices that require additional clarification so as to remove unnecessary hurdles for participation and provide better protections for mission-based hiring and service delivery.

While we support Executive Order 13559's reaffirmation that faith-based providers not be discriminated in the ability to partner in governmental programs and the confirmation that faith-based providers not be required to remove religious symbols from facilities, the Order has a number of requirements related to religious activity and referrals of service that places undue challenges and burdens on faith-based organizations. Executive Order 13559, for example, requires the service provider to give beneficiaries written notice of their protections and their ability to receive services from a non-faith based provider. In addition, the Order requires that all explicitly religious activities be separated by time or location from the programs or activities. This is particularly problematic in facilities where religious activities, such as a prayer before a meal or religious services (i.e. Mass), are located on the premises. Greater clarity and flexibility of these requirements will help to better balance the needs of service providers and the government so that program delivery and integrity are maintained.

Executive Order 13559 also requires that referrals for service be made by faith-based providers for individuals who opt for an alternative provider due to their objection to the religious character of the provider. The provider is required to locate alternative services in geographic proximity with current capacity and acceptable quality of services, to maintain written records of that referral, and to follow-up. This places an undue burden on the provider and an increased cost to service delivery. For example, agencies that provide meals on site and in the home, and operate mostly with volunteers on very irregular hours, do not have the infrastructure or the staffing capacity to meet the referral record-keeping and notice requirements.

In addition to the already substantial regulatory requirement faced by not-for–profit service providers, the following requirements impose new layers of hurdles in order to provide the same service: the establishment of new policies and procedures, providing written notices, maintaining a data base of alternate providers, mandating that the referring organization notify the government of the referral and determine whether the beneficiary has contacted the alternate provider. Furthermore, these provisions vastly increase the documentation, privacy and quality assurance burdens and record retention obligations.

Revising Executive Order 13559 so as to remove unnecessary burdens and provide greater balance of interest for faith-based and government interests would contribute to providing more timely and efficient services.

Interpretation and implementation of *Health and Human Services Grants Regulations* (81 FR 89393) is another example where lack of clarity in the HHS's regulations results in faith-based organizations being unwilling or uncertain about partnering in HHS programs. While Catholic Charities agencies strive to meet the needs of all people in need without distinction, this regulation when read with current statutory and Constitutional precedent, creates uncertainty as to the ability of agencies to participate in HHS programs while maintaining their employment and service practices.

2) What changes in HHS regulations or guidance might encourage more faith-based organizations to participate in HHS funded Programs?

While many of the recommendations were presented above, one practical step HHS could take to encourage faith-based participation in HHS programs is to provide greater representation by faith-based social service providers on advisory councils and grant application review boards. In addition, HHS should educate grant reviewers on the role of the religious community in providing social services and provide clear guidance to reviewers on faith-based organization participation in HHS programs.

We also urge you to continue to provide faith-based and social service providers with agency and Executive Office points of contact to improve communication and ensure faith-based providers' voices are included in administration policy.

Finally, we urge HHS to continue its Center for Faith-based and Neighborhood Partnership and to work for a renewal of the White House Office of Faith-based and Neighborhood Partnerships as means for collaboration and for improving communications on grants and resources for faith-based social service providers.

3) What HHS grantee or State/local government restrictions or burdens hinder faith based organizations participating in HHS programs?

As presented earlier in these comments, lack of clarity and additional state and local requirements for participation in HHS-related programs continue to be an obstacle for participating in HHS programs. A Catholic Charities agency, for example, reports receiving mixed messages from state and local contacts around mission-based referral and service delivery requirements: state officials reported to a local Catholic Charities agency that it was excluded from such funding for providing services because of its status as a faith-based organization. When pressed for clarity, state officials identified church and state separation requirements and provided inconsistent and inaccurate information on how the agencies can partner in the program while maintaining their religious beliefs.

Other such examples highlight how the messaging being communicated to faith-based organizations varies within and between states. Greater clarity in participation and enforcement of existing statutory requirements for faith-based organizations can reduce uncertainty and unnecessary hurdles to participation in HHS related programs.

We hope that our comments will help ensure implementation of policies that achieve the best outcome not only for faith-providers but also for those who are served through Catholic Charities ministries and programs.

Sincerely,

Brian R Corbin

Brian R. Corbin
Executive Vice President, Member Services
Catholic Charities USA