

August 13, 2019

The Honorable Alex M. Azar, II  
Secretary  
U.S. Department of Health and Human Services  
Office for Civil Rights  
Attention: Section 1557 NPRM, RIN 0945-AA11  
Hubert H. Humphrey Building, Room 509-F  
200 Independence Avenue, SW  
Washington, DC 20201

Re: Nondiscrimination in Health and Health Education Programs or Activities, [Docket No.: HHS-OCR-2019-0007], RIN 0945-AA11

Dear Secretary Azar:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) appreciates the opportunity to comment on the Department of Health and Human Services' (HHS) proposed rule to modify the current regulations implementing Section 1557 of the Affordable Care Act (ACA) and certain other provisions of law.

## **PATIENT ACCESS TO CARE**

Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability under any health program or activity that receives federal financial assistance, or under any program or activity that is administered by an executive agency or by an entity established under title I of the ACA (e.g., Health Insurance Marketplaces). Current Section 1557 regulations explicitly state that their proscription of discrimination based on sex encompasses discrimination based on gender identity or sex stereotypes.

Separate and apart from Section 1557 regulations, current regulations governing certain programs administered by the Centers for Medicare & Medicaid Services – i.e.,



Programs of All-Inclusive Care for the Elderly (PACE), Medicaid and numerous provisions concerning health insurance coverage – expressly prohibit discrimination based on gender identity or sexual orientation.

**The AHA urges HHS not to finalize its proposed changes that seek to end protection under its regulations against discrimination based on an individual's gender identity or sexual orientation or based on sex stereotypes. The AHA is concerned that narrowing the current regulations' protections against discrimination based on sex, including gender identity, sexual orientation and sex stereotypes, could have an adverse impact on access to care and the health of individuals.** Hospitals and health systems value every individual they have the opportunity to serve, and oppose discrimination against patients based on characteristics such as race, national origin, religion or sex, including gender identity or sexual orientation.

Hospitals and health systems' core mission is to provide care, within their capabilities, to those in need. Federal and state laws reinforce this mission by imposing obligations on providers to ensure that patients have appropriate access to necessary care (e.g., Emergency Medical Treatment and Labor Act, Medicare Conditions of Participation and state licensure requirements). In addition, health professionals have unique and specific codes of ethics and obligations to their patients.

A cornerstone of hospitals and health systems' core mission is a commitment to diversity, inclusion and health equity. Without ensuring that the needs of all members of the community are equitably served, hospitals and health systems cannot fulfill their fundamental purpose.

The proposed rule's blanket elimination of protections of individuals from discrimination based on their gender identity or sexual orientation or based on sex stereotypes is not consistent with hospitals and health systems' longstanding commitment to serve their communities. To achieve the shared goal of a healthier society, the health care system must ensure that it can be meaningfully accessed by the entire community. Accordingly, we cannot support the proposed diminution of protections for individuals in these specific populations.

We recognize that a federal district court has preliminarily enjoined HHS from enforcing the current Section 1557 regulations' protections against discrimination based on sex, as currently interpreted. At the same time, other federal courts have reached a different legal conclusion in comparable cases, and multiple lawsuits are currently proceeding. We urge HHS to retain these protections while this question is settled by the courts.

We also are concerned by the proposed changes that would limit the circumstances in which prohibitions against discrimination would apply to health insurers. Without

meaningful access to coverage, there is no meaningful access to care. Indeed, meaningful health care coverage is critical to living a productive, secure and healthy life. Studies confirm that coverage improves access to care; supports positive health outcomes, including an individual's sense of his or her health and well-being; incentivizes appropriate use of resources; and reduces financial strain on individual finances.

As described above, the proposed rule would narrow the current regulations' protections against discrimination based on gender identity or sexual orientation in a number of contexts specifically concerning health insurance coverage – ranging from Health Insurance Marketplaces to Qualified Health Plans (QHPs) to agents and brokers who assist in enrolling individuals in health plans. It would do likewise with respect to the PACE and Medicaid programs. But the proposed rule would go even further in narrowing the current regulations' protections against discrimination. It would eliminate the protections of the Section 1557 regulations in their entirety (i.e., beyond those concerning gender identity and sex stereotypes) for the operations of a federally funded entity primarily engaged in the business of health insurance. It would do so by declaring that such operations are not a health program or activity under Section 1557. This proposed rollback would particularly impact non-QHP enrollees, and therefore could effectively limit coverage for a group for whom HHS has sought to expand coverage options.

HHS should not diminish the scope of the protections that currently help ensure that everyone has access to coverage – and therefore care. The AHA urges that these proposals not be finalized.

### **ASSISTING PATIENTS WITH LIMITED ENGLISH PROFICIENCY**

The AHA continues to support the current regulations' emphasis on ensuring that those who are less proficient in English know that they can access translation services to aid in their care. All individuals, regardless of their primary language, should be able to understand that there is someone who can help them communicate with the doctors, nurses and therapists who are treating them.

We continue to believe that developing a universally recognized icon to convey that translation services are available would be helpful. Posting that symbol in various locations around the hospital and on the hospital's website could communicate quickly and effectively that translation services will be made available to the individual. We urge HHS to develop and seek international recognition of such an icon.

In the meantime, hospitals and health systems will continue to alert their communities in the languages spoken by those they serve, to the availability of translation services. We believe, however, that the current regulations' blanket mandate to provide translations in 15 different languages, regardless of the languages spoken in the communities served,

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is not a good use of resources. **The proposed change to remove that blanket mandate will enable the many hospitals, especially in rural areas, that serve communities in which many fewer languages are spoken, to devote their resources to translation services that are most meaningful for the individuals they serve.**

In closing, the AHA reiterates that our core value of providing service to all will continue to guide our care for patients and our commitment to treat all in the community with dignity and respect.

We appreciate your consideration of these issues. Please contact me if you have any questions or feel free to have a member of your team contact Maureen Mudron, AHA deputy general counsel, at (202) 626-2301 or [mmudron@aha.org](mailto:mmudron@aha.org).

Sincerely,

/s/

Thomas P. Nickels  
Executive Vice President