



August 13, 2019

VIA ELECTRONIC MAIL

www.regulations.gov

Roger Severino
Director
Office for Civil Rights
Department of Health and Human Services (HHS)
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW, Washington, DC 20201.

RE: RIN 0945-AA11, Nondiscrimination in Health and Health Education Programs or Activities

Dear Mr. Severino,

On behalf of the Adventist Health Policy Association (AHPA), we appreciate the opportunity to provide a response to the Office of Civil Rights' (OCR) proposed rule on Nondiscrimination in Health and Health Education Programs or Activities. Our organization of five Seventh-day Adventist affiliated health systems includes 85 hospitals and more than 300 other health facilities in 16 states. Our patients reflect the communities we serve; diverse in age, race, ethnicity, income and payor. With such diverse facilities, populations served and geographical locations, we strive to provide an objective and sound policy voice across health care providers.

The proposed rule proposes to revise policies implementing Section 1557 of the Affordable Care Act (ACA), which protects individuals from being excluded from participation in, be denied the benefits of, or be subjected to discrimination under any health program or activity receiving federal financial assistance. AHPA strongly supports the protections under Section 1557. As a faith-based organization, our mission is "promoting wholeness to live God's healing love" by providing whole-person care to all individuals regardless of race, color, nationality, religion, age, disability, sex or gender identity. With this commitment as our compass, we provide comments on the following two sections of the proposed rule:

- Discrimination on the Basis of Sex
- Access for Individuals with Limited English Proficiency

Discrimination on the Basis of Sex

In its Section 1557 regulation released in 2016 (81 FR 31390), OCR defined discrimination “on the basis of sex” to cover, among other things, discrimination on the basis of sex stereotyping, gender identity and termination of pregnancy. In this rule, OCR is proposing to repeal the definition of “on the basis of sex” that was adopted in 81 FR 31390. According to the Agency, because the Supreme Court will be addressing this definition in the near future, OCR is reluctant to define “on the basis of sex” under the proposed regulation.

AHPA strongly believes that individuals should *not* be denied access to health care services based on any individual characteristic, including sex or gender identity. Our member hospitals are committed to providing compassionate and timely care to *all* individuals. As noted by the Office of Disease Prevention and Health Promotion, numerous studies have demonstrated that Lesbian, Gay, Bisexual, and Transgender (LGBT) individuals face health disparities linked to societal stigma and discrimination.¹ This has been associated with high rates of psychiatric disorders,² substance abuse³ and suicide.⁴ It is therefore unacceptable for a health care facility to deny medical care to a patient on the basis of the patient’s sexual orientation or transgender status. At the same time, appropriate protections should provide for the reasonable accommodation of the rare nurse or other provider who may assert a sincere conscientious objection to participating in a particular medical procedure.

Access for Individuals with Limited English Proficiency

OCR proposes several changes to the standards governing access to language assistance services for individuals with Limited English Proficiency (LEP). Below we provide comments in relation to these changes.

¹ Office of Disease Prevention and Health Promotion. [Lesbian, Gay, Bisexual and Transgender Health](#). Accessed July 31, 2019.

² McLaughlin KA, Hatzenbuehler ML, Keyes KM. Responses to Discrimination and Psychiatric Disorders Among Black, Hispanic, Female, and Lesbian, Gay, and Bisexual Individuals. *Am J Public Health*. 2010;100(8):1477-84.

³ Banez GE, Purcell DW, Stall R, et al. Sexual Risk, Substance Use, and Psychological Distress in HIV-Positive Gay and Bisexual Men Who Also Inject Drugs. *AIDS*. 2005;19(suppl 1):49-55.

⁴ Remafedi G, French S, Story M, et al. The Relationship Between Suicide Risk and Sexual Orientation: Results of a Population-Based Study. *Am J Public Health*. 1998;88(1):57-60.

Non-Discrimination Notices

OCR proposes to eliminate the requirement that non-discrimination notices include the availability of language assistance services and taglines in the top 15 languages spoken by individuals with LEP in the state. To meet this requirement, providers are currently required to physically post the information at their facilities, on their website and in any “significant” publications and communications.

AHPA supports this proposal as we believe that it would significantly reduce the administrative burden placed on providers. The term “significant” has never been defined by OCR, which has resulted in providers using the 15 taglines in nearly every document provided to patients. This is not only administratively burdensome but also counterproductive, as patients already receive numerous notices mandated by HHS and can become overwhelmed.

Video Interpreting Services

OCR proposes to replace the requirements for remote English-language video interpreting services with comparably effective requirements with respect to audio-based services.

AHPA supports the use of comparably effective audio-based interpreting services when it is not feasible to use video. For example, while facilities have invested in iPads and software to offer video interpreting services, access to these services is sometimes limited by technical issues such as the lack of reception in rural areas. Therefore, the proposed change would address this issue while still ensuring that patients receive comparably effective audio-based interpreting services.

Four-Factor Test

Under the proposed rule, providers would continue to be required to take reasonable steps to ensure meaningful access to their programs or activities by individuals with LEP. However, to assess compliance with this requirement, OCR proposes to apply a flexible standard based on the circumstances of the facility. OCR would consider the following four factors to determine whether a provider is offering meaningful access to individuals with LEP:

1. The number or proportion of LEP individuals eligible to be served or likely to be encountered;
2. The frequency with which LEP individuals are in contact with the entity’s covered program;
3. The nature and importance of the entity’s program;
4. The resources available to the entity and costs.

If this proposal is finalized, we recommend that OCR provide further clarity on factor four and the definition of “resources available.” For example, for facilities that are part of a health system, would the provider have to consider only the resources available within its own facility or within the entire health system? Guidance on this issue would help providers better understand and comply with the requirement.

Conclusion

AHPA commends HHS for seeking to clarify the policies implementing Section 1557 of the ACA. If you have any questions or would like further information, please do not hesitate to contact me at Carlyle.Walton@AdventistHealthPolicy.org or Julie Zaiback-Aldinger, Director of Public Policy and Community Benefit, at Julie.Zaiback@AdventHealth.com.

Sincerely,

A handwritten signature in black ink that reads "Carlyle Walton". The signature is written in a cursive, flowing style.

Carlyle Walton, FACHE
President
Adventist Health Policy Association