

Section 1557 Proposed Rule Letter to Secretary Azar

Wednesday, July 31, 2019

VIA ELECTRONIC SUBMISSION

Secretary Alex Azar
U.S. Department of Health and Human Services
Herbert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

RE: Docket ID HHS-OCR-2019-0007, RIN 0945-AA11, Nondiscrimination in Health and Health Education Programs or Activities

Dear Secretary Azar:

American Muslim Health Professionals (AMHP) submits these comments in response to the Department of Health and Human Services' ("HHS", "Department") and the Center for Medicare and Medicaid Services ("CMS") Notice of Proposed Rulemaking ("proposed rule," "NPRM") to express our concerns with the proposed rule entitled "Nondiscrimination in Health and Health Education Programs or Activities," published in the Federal Register on July 14, 2019.

AMHP is a non-profit organization bringing together and strengthening the impact of Muslim health professionals to improve the health and wellness of all Americans. We have a national listserv of over 2,000 members—many of whom are healthcare providers and have a stake in a more transparent healthcare system. Therefore, we are deeply concerned with the proposed rule that seeks to remove nondiscrimination protections in healthcare that would disproportionately affect our community.

While Section 1557 is still the law, this proposed rule attempts to change the administrative implementation in ways that are contrary to the plain language of the law. While unlawful, the NPRM's proposed changes could impose wide-ranging harm, disproportionately impacting our most underserved populations who already struggle to access health care. The proposed rule is just the latest attack from the current administration on individuals with limited English proficiency, including immigrants, those living with disabilities, and people of color. Moreover, this rule would embolden compounding levels of discrimination against those who live at the intersection of these identities. The proposed rule is dangerous and contravenes the plain language of Section 1557, specifically, and the ACA broadly.

22% of the U.S. population does not speak English at home, according to a report from the Migration Policy Institute. The proposed rule dramatically rolls back language access protections, making it more difficult for individuals with limited English proficiency to navigate an already complicated health care system.

Protections around language access have long included recommendations around the development of

language access plans to help covered entities better meet the needs of people with LEP. The 2016 final rule did not require covered entities to develop language access plans but said if an entity has a language access plan, the Office of Civil Rights (“OCR”) must consider it when evaluating compliance. The proposed rule attempts to eliminate recommendations that entities develop language access plans and remove the consideration requirement. The development of language access plans should remain an item that supports an entity’s compliance with the law.

By eliminating critical protections for LEP individuals seeking care, the administration is discouraging entities from meeting individuals where they are, making health care access inaccessible and often convoluted for marginalized or linguistically isolated communities. Language proficiency should not determine whether or not people have access to care or the quality of a person’s care.

The proposed rule to rollback health care protections for various communities under Section 1557 also tries to unlawfully incorporate a religious exemption to undermine claims of discrimination on the basis of sex. By doing so, this administration is once again trying to improperly expand an irrelevant religious exemption from another statute to undermine the prohibition against sex discrimination.

The proposed rule does not reflect the ACA’s clear intent and its overriding purpose of eliminating discrimination in health care against individuals with limited English proficiency, immigrants, and those living with disabilities, and people of color, therefore AMHP finds the proposed rule to be discriminatory and recommends it not be finalized.

Thank you for the opportunity to submit comments on the proposed rule. Please do not hesitate to contact Lujain Al-Khawi, Health Policy & Advocacy Intern at advocacy@amhp.us to provide further information.

Sincerely,

American Muslim Health Professionals (AMHP)