



August 9, 2019

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

RE: HHS Docket No. HHS-OCR-2019-000, RIN 0945-AA11, Comments in Response to Section 1557 NPRM

Dear Mr. Severino:

Thank you for the opportunity to submit these comments on behalf of the American Network of Community Options and Resources (ANCOR) in response to the Notice of Proposed Rulemaking on Section 1557 of the Affordable Care Act (ACA). ANCOR is a national trade association representing over 1,600 private providers of community services for people with intellectual and developmental disabilities (I/DD) and 57 state provider trade associations. Our members provide services to people with I/DD throughout the lifespan in all areas of life and thus changes in Section 1557 impact our service delivery in a multitude of ways.

We appreciate this opportunity to share our views on these proposed policy changes in interpreting and enforcing the nondiscrimination provision of the Affordable Care Act (ACA). We write to express concern regarding the U.S. Department of Health and Human Services (HHS) proposed rule on Section 1557. The proposed rule could cause major harm to people with disabilities and their families and communities.

Section 1557 and its implementing rules are critical because people with disabilities have historically faced discrimination in the provision of health care. Community and private providers of disability services formed to address the history of discrimination and ensure that people with I/DD had access to the same health quality outcomes as non-disabled populations. We are aware that HHS underwent an extensive process to develop regulations for Section 1557, including a Request for Information, proposed rule, and final rule. HHS considered more than 24,875 public comments submitted for the 2016 rule. Therefore, proposed changes should be considered very carefully in light of the already significant public input.

We request that HHS retain the current definition of a “covered entity.” The proposed rule seeks to radically narrow the scope and applicability of Section 1557, contrary to the plain meaning of the statute. Congress made clear in Section 1557 that if one part of an entity receives federal financial assistance, the entire entity should be covered. It also clearly intended Section 1557 to address discrimination in health insurance. People with disabilities should have access to coverage for services including autism therapies or durable medical equipment – these are essential for high quality health outcomes.

We disagree with HHS' proposal to delete the current requirement that covered entities provide notice, with every significant communication to individuals, that they do not discriminate based on disability or other prohibited grounds; that they provide auxiliary aids and services for people with disabilities, including qualified interpreters and information in alternate formats; and how to obtain those auxiliary aids and services. Without the notice, members of the public will have limited means of knowing that auxiliary aids and services are available, how to request them, what to do if they face discrimination, and their right to file a complaint. As HHS itself notes in the proposed rule, "repealing the notice of nondiscrimination requirement may result in additional societal costs, such as decreased utilization of auxiliary aids and services by individuals with disabilities due to their reduced awareness of such services." We agree, and therefore object to removing this requirement.

HHS should retain strong, clear language prohibiting insurance companies from discriminating on the basis of race, color, national origin, sex, age, or disability in a number of areas, including marketing plans, designing benefits, coverage claims, or imposing additional costs. These protections are especially important for people with disabilities and those with serious or chronic conditions. Eliminating this regulatory provision could result in health insurers illegally excluding important benefits, designing their prescription drug formularies in a way that limits access to medically necessary care, or cherry-picking healthier enrollees through marketing practices. It may make it harder for people who experience discrimination to enforce their rights through administrative and judicial complaints.

We urge HHS to retain the language in the 2016 Final Rule regarding effective communication for individuals with disabilities. In the proposed rule, HHS changes the definition of auxiliary aids and services, and does so without explanation. HHS claims to import the definition of auxiliary aids and services from the regulations for Title II of the Americans with Disabilities Act, but deletes "[a]cquisition or modification of equipment and devices; and [o]ther similar services and actions" from the list of examples of aids and services. This could create confusion, as it takes what is now a clearly illustrative list and implies that it is exhaustive. HHS should retain the definition of "auxiliary aids and services" from the 2016 final rule. The individuals that ANCOR members work with often have significant disabilities, may be nonverbal, and require effective communicative devices to communicate. It is essential that this access is protected to ensure they can be active in decision making for their health and to reach the best outcomes.

The current Sec. 1557 final rule was the subject of a lengthy development process that included substantial public input and comment. Revisiting all of the previously settled issues in the final rule, particularly those far beyond the justification offered in the NPRM, creates uncertainty and further weakens finality. We thank you for considering our comments on this proposed rule and are happy to be a resource on any of the above mentioned issues if it serves to be of assistance.

Sincerely,

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