

August 13, 2019

Office of Civil Rights
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, D.C., 20201

Re: Section 1557 NPRM, RIN 0945-AA11, “Nondiscrimination in Health and Health Education Programs or Activities”

Dear Secretary Azar:

The National Association of Social Workers (NASW) appreciates the opportunity to comment on the **Nondiscrimination in Health and Health Education Programs or Activities** proposed rule.

NASW is the largest membership organization of professional social workers in the United States, representing the interests of over 750,000 social workers who provide critically needed mental health and other services in a broad range of settings. NASW works to enhance the professional growth and development of its members to create and maintain professional social work standards, and to advance sound policies. Thus, the association has a dual mission of advocating for the social work profession and advocating for the individuals, families, and communities served by social workers.

Given our profession’s commitment to promoting fair and equal treatment for all, NASW strongly opposes the Department of Health and Human Services’ (HHS) proposed revisions to the regulations of section 1557 of the Affordable Care Act (ACA). The proposed rule will create harmful barriers to health care access for several population groups, including women and LGBTQ individuals. If finalized, HHS’s proposed changes would substantially narrow, and in many cases entirely eliminate, the regulations’ existing protections against discrimination in meaningful ways.

NASW believes that the final rule on the ACA implemented by HHS in 2016 appropriately implemented these protections. We therefore urge that the original rules remain in place and that HHS’ Office of Civil Rights withdraw the new proposed rule.

Specifically, NASW strongly opposes the proposed revisions to eliminating the general prohibition on discrimination based on gender identity, as well as specific health insurance coverage protections for transgender individuals. These include:

- Adopting blanket abortion and religious freedom exemptions for health care providers;

- Eliminating the provision preventing health insurers from varying benefits in ways that discriminate against certain groups, such as people with HIV or LGBTQ people;
- Weakening protections that provide access to interpretation and translation services for individuals with limited English proficiency;
- Eliminating provisions affirming the right of private individuals to challenge alleged violations of § 1557 in court and to obtain money damages, as well as requirements for covered entities to provide non-discrimination notices and grievance procedures;
- Narrowing the intent of the current regulations by only covering specific services and patient activities that receive federal funding, but not health insurers operations which do not directly engage in the providing health care;
- Changing certain provisions intended to ensure equal access for people with disabilities, and
- Extrapolating prohibitions on discrimination based on gender identity and sexual orientation in 10 other Medicaid, private insurance, and education program regulations outside Section 1557.

It is deeply troubling that HHS would compromise protections against bias in accessing health care. The Health Care Rights Law (HCRL), which declared that Section 1557 of the Affordable Care Act (ACA), is a cornerstone civil rights law. This law prohibits discrimination based on race, color, national origin, sex, age or disability in health care programs and activities receiving federal financial assistance. Moreover, the original intent of Section 1557 is to ensure that health insurance is equally available and that insureds are protected from discrimination.

Below are further comments on specific proposed revisions to HCRL Section 1557.

LGBTQ Individuals

NASW's official policy position is that discrimination and prejudice directed against any individuals on the basis of gender identity or gender expression, whether actual or perceived, are damaging to the social, emotional, psychological, physical, and economic well-being of the affected individuals, as well as society as a whole¹

NASW is deeply concerned by the fact that the proposed regulation removes gender identity and sex stereotyping from the definition of prohibited sex-based discrimination in the ACA. In addition to eliminating nondiscrimination protections against LGBTQ individuals in general, this change especially jeopardizes transgender people's access to all forms of healthcare. Further, the new rule includes adopting blanket abortion and religious freedom exemptions for health care providers that will have a deleterious impact on LGBTQ individuals' access to healthcare.

¹ "Transgender and Gender Nonconforming People." In *Social Work Speaks: National Association of Social Workers Policy Statements, 2018-2020*, 323-31. Washington, D.C: NASW Press, 2018.

In the United States, transgender and gender nonconforming people already carry a higher burden of exposure to discrimination when accessing healthcare, housing, employment, and education². For transgender and gender nonconforming individuals, this continuous exposure to discrimination in daily living increases risk for suicidality and negatively impacts both mental health and physical health among individuals who are already disproportionately at risk of homelessness and poverty³. Fear of discrimination already causes LGBTQ identified individuals to avoid seeking healthcare and studies show that LGBTQ people are not consistently treated with the respect that all patients deserve.⁴

Women's Reproductive Health

NASW supports advocating for reproductive choice which includes safe access to the full range of reproductive health services for all women, including abortion.⁵

Social workers seek to improve the quality of reproductive health care and services for all women by identifying barriers to health care access, increasing the availability of health coverage, and advocating to improve socioeconomic conditions, thereby furthering healthy outcomes.

The proposed regulation undermines access to care for women with reproductive health needs by attempting to eliminate protections against discrimination on the basis of termination of pregnancy. The proposed rule seeks to allow health care providers to discriminate against individuals who have or had an abortion and could result in patients being denied critical care. In addition, by narrowing the scope of covered entities, the proposed rule would allow more insurance plans to refuse to cover reproductive health services, such as pregnancy care or fertility coverage.

The proposed regulation attempts to incorporate a broad religious exemption to HCRL protections against discrimination on the basis of sex. Adding a religious exemption, will permit discriminatory practices and embolden health care providers to deny patients care, threatening the health and well-being of all patients seeking reproductive health care.

Limited English Proficiency (LEP) Individuals

Language and cultural diversity are recognized as issues that are intrinsic to the mission of NASW and commitment to advocacy of access to services, to quality of care and outcomes are fundamental. NASW

² Human Rights Campaign. "Trump Admin Plan to Eliminate LGBTQ Non-Discrimination Protection." Human Rights Campaign. Accessed August 12, 2019. <https://www.hrc.org/blog/trumpence-admin-announces-plan-to-eliminate-lgbtq-non-discrimination-prot>.

³ "Transgender People Are Facing Incredibly High Rates of Poverty." National Women's Law Center. December 09, 2016. Accessed August 12, 2019. <https://nwlc.org/blog/income-security-is-elusive-for-many-transgender-people-according-to-u-s-transgender-survey/>.

⁴ Human Rights Campaign. "Trump Admin Plan to Eliminate LGBTQ Non-Discrimination Protection." Human Rights Campaign. Accessed August 12, 2019. <https://www.hrc.org/blog/trumpence-admin-announces-plan-to-eliminate-lgbtq-non-discrimination-prot>.

⁵ "Reproductive Justice." In *Social Work Speaks: National Association of Social Workers Policy Statements, 2018-2020*, 365-75. Washington, D.C: NASW Press, 2018.

considers the use of various languages as a right and a resource that is closely aligned with the ethical principles of service and social justice.⁶

The proposed regulation weakens protections for individuals with LEP and reduces the established criteria governing access to language assistance services, including oral interpretation and written translation. Implementation of these changes will reduce access to healthcare for LEP individuals.

Language barriers play a significant role in how health and mental health services are delivered, received and understood. The absence of language services give rise to barriers and reduce the quality of care for individuals with LEP causing their medical treatment to be significantly compromised. Studies have shown a prevalence for LEP patients to have a higher incidence of medical errors and patient noncompliance when there is an absence of language services⁷. Also, it has been noted, individuals with LEP are less likely to use primary and preventive care visits, and more likely to use emergency rooms for their health care services.

Summary

Given the social work profession's crucial role on the frontlines of intervention with vulnerable populations (including but not limited to LGBT, women, disabled, limited English proficient, people living in poverty) we recognize the crucial importance of health care civil rights protections.

NASW urges the Office for Civil Rights to withdraw the new proposed regulation that will weaken the current regulation's interpretation of HCRL and lead to discrimination, misunderstanding and hardship.

Thank you again for the opportunity to comment. If you have any questions or need additional information, please let me know.

Sincerely,



Sarah Christa Butts, LMSW
Director, Public Policy

⁶ "Language Diversity in the United States." In *Social Work Speaks: National Association of Social Workers Policy Statements, 2018-2020*, 204-06. Washington, D.C: NASW Press, 2017.

⁷ "The Importance of Addressing Language Barriers in the US Health System." Duke Personalized Health Care. August 22, 2018. Accessed August 12, 2019. <https://dukepersonalizedhealth.org/2018/07/the-importance-of-addressing-language-barriers-in-the-us-health-system/>.