



Colorado Consumer Health Initiative

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November 9, 2015

U.S. Department of Health & Human Services
Office for Civil Rights
Attention: 1157 NPRM (RIN 0945-AA02)
Hubert H. Humphrey Building
Room 509F
200 Independence Avenue SW
Washington, DC 20201

RE: Comments on “Nondiscrimination in Health Programs and Activities: Proposed Rule” (RIN 0945-AA02)

To Whom It May Concern:

The Colorado Consumer Health Initiative (CCHI) is submitting these comments in response to the Notice of Proposed Rule Making for Section 1557 of the Affordable Care Act (ACA). We commend the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) for issuing proposed regulations that take critical steps toward realizing the promise of Section 1557 in ending discrimination in health care.

CCHI is a nonpartisan consumer health care advocacy coalition with 50 organizational members, representing well over 500,000 Coloradans. CCHI envisions a state in which all Coloradans can access high-quality, affordable, equitable health care; our mission is to advance the consumer perspective in the policy process to improve health care for all Coloradans.

CCHI strongly supports HHS’ proposed rule and applauds HHS’ efforts to advance health equity and reduce health care disparities through this historic rulemaking. We have focused our comments and recommendations on strengthening the application and scope of the proposed rule in terms of language access, sex discrimination, non-discrimination in health insurance, and compliance and enforcement and we oppose efforts to add exemptions to Section 1557.

1. Language Access

CCHI supports HHS’ proposed range of access and enforcement requirements that guarantee meaningful access for populations with limited English proficiency. In particular, we support the definition of qualified interpreter, and we suggest including a definition of a qualified translator. Further, we strongly support including specific thresholds for translating written documents to ensure minimum

standards exist that would directly aid in evaluating compliance and enforcement.

2. Sex Discrimination

We appreciate the explicit recognition that gender identity and sex stereotypes fall within the definition of sex in Section 1557. To effectively address the full scope of discrimination against LGBT individuals, however, we urge HHS to also clarify that the protections against sex discrimination in Section 1557 include discrimination on the basis of sexual orientation. Doing so would be consistent with HHS' stated goal of upholding "the most robust set of protections supported by the courts on an ongoing basis." Colorado is one of a growing number of states with policies in place that preclude the discriminatory treatment of individuals in health coverage based on sexual orientation. Accordingly, the final rule should be explicit that discrimination based on sex includes discrimination based on sexual orientation.

3. Non-discrimination in Health Insurance

We appreciate the recognition that caution must be taken to ensure that health insurers cannot circumvent the ACA's nondiscrimination protections by employing discriminatory benefit designs or marketing practices. We recommend that the definition of "benefit design" in the rule include, at a minimum, cost-sharing, formulary tiers, provider networks, limits on coverage of certain services by age or condition, prior authorization and other utilization management techniques. As an example, carriers should not be allowed to restrict access to medications used to treat specific conditions by placing them in high cost-sharing tiers or to employ arbitrary standards to determine medical necessity. In particular, we support enumerating and prohibiting a range of practices that discriminate against transgender individuals by arbitrarily singling them out for categorical denials of coverage for procedures and services that are the same or substantially similar to those provided to non-transgender people.

4. Exemption from Section 1557 Protections

The proposed rule appropriately does not incorporate any religious exemptions. However, in the preamble to the proposed rule, HHS requested comment as to whether any exemptions should be added. CCHI strongly believes that no such exemptions should be added. Religious exemptions authorize health care refusals that have very real and devastating consequences, especially for women. We strongly oppose any new exemption that would permit discrimination based on religious views against any person, especially women, people with disabilities, or LGBT people.

5. Enforcement

We support Section 1557's inclusion of both administrative and judicial remedies for discrimination. We recommend, however, that the rule better reflect the statutory language by clarifying and strengthening the judicial enforcement

opportunities and by directly recognizing that Section 1557 permits judicial claims for disparate impact discrimination. Further, as the statutory language of Section 1557 authorized the Secretary of HHS to promulgate regulations, we recommend the proposed rule apply to **all** federally funded, supported and conducted activities and not just those of HHS.

Data Collection: One tenet of ensuring compliance with nondiscrimination requirements is to ensure strong data collection. CCHI supports adding specific demographic data collection requirements to §92.5 of the proposed rule for all covered entities. Specifically, covered entities should be required to collect and report data relevant for understanding and addressing health disparities, including disparities related to gender identity, sexual orientation, sex assigned at birth, race, ethnicity, language, disability status, and age. Requiring stratified data collection has the double benefit of positioning covered entities to accurately assess the needs of the people in their geographic service areas and adjust how they are responding to those needs..

Finally, CCHI would also like to acknowledge and support the comments and recommendations submitted by the National Health Law Program, Community Catalyst, the Colorado Health Foundation, the Center for American Progress, and the National Women’s Law Center.

In summary, we appreciate the work of HHS to implement the crucial civil rights protections in Section 1557 and urge you to finalize the rulemaking as quickly as possible to ensure access to health care for *all* individuals – regardless of race, color, national origin, sex, age, or disability.

Sincerely,



Debra Judy
Policy Director



Emily Michels
Health Policy Fellow