

August 13, 2019

Submitted via Regulations.gov

Secretary Alex Azar
Department of Health and Human Services, Office for Civil Rights
Attention: Section 1557 NPRM, RIN 0945-AA11
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

RE: Comments in Opposition to Section 1557 NPRM, RIN 0945-AA11, “Nondiscrimination in Health and Health Education Programs or Activities”

Dear Mr. Azar:

On behalf of Philanthropy California, we write to express our strong opposition to the proposed regulatory rule regarding Section 1557 of the Patient Protection and Affordable Care Act published in the Federal Register on June 14, 2019. This proposed rule threatens the health and wellbeing of lesbian, gay, bisexual, and transgender people, as well as immigrants, women, and ultimately all Americans. **We urge the rule to be withdrawn in its entirety and that the existing patient protections remain in effect.**

This proposed rule would substantially limit federal protections against gender identity and sexual orientation discrimination in healthcare. Additionally, this proposed rule would weaken protections that provide access to language services for patients with limited English proficiency (LEP). Under this rule, healthcare providers could legally discriminate against and deny care to patients who identify as lesbian, gay, bisexual, transgender, or queer (LGBTQ) and limit accessibility to care for immigrant patients without fear of repercussion.

Philanthropy California is an alliance of Northern California, Southern California, and San Diego Grantmakers with a collective membership of more than 600 foundations, corporate giving programs, and philanthropists. In 2017, foundations gave approximately \$10 billion to over 14,000 nonprofits in the state in support of a variety of issues and initiatives. As the voice of California’s philanthropic community, we collaborate statewide to provide a forum for exchanging ideas, sharing knowledge, and leveraging our efforts for greater impact in service of communities across the state. We oppose the proposed rulemaking for the reasons below.

The Proposed Rule Will Inflict Unnecessary Harm to Millions of Individuals Across California

In 2016, Section 1557 was wisely added to clarify existing law that discrimination against LGBTQ persons in healthcare settings and in insurance benefits coverage is unlawful. Judicial precedent has long classified discrimination on the basis of sexual orientation and gender identity as sex discrimination. Over 1.6 million LGBT adults in California – over 5 percent of the state’s population – now benefit from the anti-discrimination protections afforded by Section 1557.¹

¹ California’s Equality Profile, Movement Advancement Project, available at: https://www.lgbtmap.org/equality_maps/profile_state/CA (last visited Aug. 6, 2019).

Section 1557 also provides important protections for patients with limited English proficiency. In California alone, 6.8 million individuals, or 27 percent of the LEP population nationally, have received better access to healthcare because of Section 1557.² The proposed rule change would sow confusion among healthcare workers and insurance companies and give the impression that discrimination on the basis of sexual orientation, gender identity, or English proficiency is permissible.

The proposed changes to Section 1557 regulations threaten to take away critical rights and protections previously afforded to LGBTQ and LEP patients and, in doing so, will make it more challenging and more costly for those seeking medical care. Foundations across California have made significant investments to promote the health and well-being of LGBTQ and immigrant communities through supporting increased access to healthcare and critical supports and services. The proposed changes to Section 1557 regulations would undo years of work by the philanthropy to support healthy, thriving communities for all Californians.

Moreover, if access to health care is restricted for LGBTQ and LEP patients, more individuals and families will be forced to delay preventative care and rely increasingly on emergency medical services. Such a shift will cause health care costs to skyrocket across California and place significant burdens on government and the nonprofit sector.

The Proposed Rule Will Result in Unequal Access to Healthcare for LGBTQ People

The broad religious exemptions proposed in the change to Section 1557 regulations threaten to turn personal and religious beliefs into a smokescreen for discrimination. They could be used not only to deny care to LGBTQ individuals but also to prevent people from accessing needed reproductive healthcare, letting doctors decide who is “worthy” of treatment. Allowing medical providers to use their personal beliefs rather than their professional obligations to decide whom they will serve could result in a wide range of people being turned away from potentially life-saving care, including LGBTQ people. The result would be a “patchwork” of unequal access to healthcare across the country, where the nature and quality of care available would be based on the happenstance of geography rather than need.

The Proposed Rule Will Have a Negative Impact on the Health of Immigrant Communities

We also oppose the proposed rules change because of negative impact it will have on the health outcomes of immigrants. California is home to almost 11 million immigrants—more than a quarter of our state’s population. Foreign-born residents represented at least one-third of the population in five California counties: Santa Clara, San Francisco, San Mateo, Los Angeles, and Alameda.³

By eliminating not only vital anti-discrimination protections but also the requirement that health programs post notices about the availability of language access programs, the proposed change to Section 1557 regulations makes it harder for people with limited English proficiency to access medical care. Without meaningful access to information about their rights to care, patients and their family

² Jie Zhong and Jeanne Batalova, “The Limited English Proficient Population in the United States,” Migration Policy Institute (2015), available at: <https://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>.

³ Hans Johnson and Sergio Sanchez, “Immigrants in California,” Public Policy Institute of California (2019), available at: <https://www.ppic.org/publication/immigrants-in-california/>

members with limited English proficiency would be less able to be informed advocates and participate in critical health-related decisions. Moreover, eliminating Section 1557 regulations' existing prohibition against discrimination based on an individual's association or relationship with someone else based on that other person's race, color, national origin, sex, etc. may discourage immigrant parents from seeking healthcare for their children and loved ones – in a state where half of California children have at least one immigrant parent⁴ – for fear that doing so would also subject them to increased scrutiny about their immigration status.

Philanthropy California is committed to supporting and protecting all communities, regardless of sexual orientation, gender identity, or immigration status. For the above reasons, we strongly urge the Department of Health and Human Services to withdraw the proposed rule and allow existing patient protections to remain in effect. If you have any questions regarding this subject, please contact Cecilia Chen, Public Policy Director at Northern California Grantmakers, at cchen@ncg.org or (415) 872-1016. Thank you for your consideration.

Regards,



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Northern California Grantmakers



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⁴ Ibid.