

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Subtitle A

RIN: 0945-ZA01

Request for Information regarding Nondiscrimination in Certain Health Programs or Activities

AGENCY: Office for Civil Rights (OCR), HHS.

ACTION: Request for Information.

SUMMARY: Section 1557 of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) (42 U.S.C. 18116) prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. Section 1557(c) of the Affordable Care Act authorizes the Secretary of the Department of Health and Human Services (Department) to promulgate regulations to implement the nondiscrimination requirements in Section 1557. This notice is a request for information (RFI) to inform the Department's rulemaking for Section 1557. This RFI seeks information on a variety of issues to better understand individuals' experiences with discrimination in health programs or activities and covered entities' experiences in complying with Federal civil rights laws.

DATES: Comments must be received at one of the addresses provided below, no later than 5p.m. on [OFR--insert date [60](#) days after date of publication in the **Federal Register**].

ADDRESSES: Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- Federal eRulemaking Portal: You may submit electronic comments at

<http://www.regulations.gov>. Follow the instructions for submitting electronic comments.

Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.

- Regular, Express, or Overnight Mail: You may mail written comments (one original and two copies) to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: 1557 RFI (RIN 0945-AA02), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. Mailed comments may be subject to delivery delays due to security procedures. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

- Hand Delivery or Courier: If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to the following address only: Office for Civil Rights, Attention: 1557 RFI (RIN 0945-AA02), Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the main lobby of the building.)

- Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Carole Brown, 202-619-0805.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1557 is consistent with and promotes several of the Administration's and Department's key initiatives that promote health and equal access to health care. In 2011, the Department adopted the Health and Human Services Action Plan to Reduce Racial and Ethnic Health Disparities (HHS Disparities Action Plan). With the HHS Disparities Action Plan, the Department commits to continuously assessing the impact of all policies and programs on health disparities and promoting integrated approaches, evidence-based programs and best practices to reduce these disparities. The HHS Action Plan builds on the strong foundation of the Affordable Care Act and is aligned with programs and initiatives such as Healthy People 2020, the First Lady's Let's Move initiative and the President's National HIV/AIDS Strategy. In addition, Exchanges or Health Insurance Marketplaces established under the Affordable Care Act must also comply with all applicable Federal laws prohibiting discrimination.

Section 1557 provides that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d et seq. (race, color, national origin), Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq. (sex), the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. 6101 et seq. (age), or Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794 (disability), under any health program or activity, any part of which is receiving Federal financial assistance, or under any program or

activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Care Act or its amendments. Section 1557 states that the “enforcement mechanisms provided for and available under” Title VI, Title IX, Section 504, or the Age Act shall apply for purposes of violations of Section 1557. The Department is responsible for developing regulations to implement Section 1557.

In developing a regulation to implement Section 1557, the Department recognizes that Section 1557 builds on a landscape of existing civil rights laws. For example, the prohibitions against discrimination on the grounds of race, color, national origin, age, and disability in Title VI, the Age Act, and Section 504, respectively, apply to all programs and activities covered by those statutes, including those related to health; however, the prohibition of sex discrimination in Title IX applies only to education programs and activities of covered entities. Section 1557 is the first Federal civil rights statute that prohibits sex discrimination in health programs and activities of covered entities. Section 1557 also applies to entities created under Title I of the Affordable Care Act, such as the Health Insurance Marketplaces.

Additionally, Section 1557 is the first broad based Federal civil rights statute incorporating the grounds prohibited by four distinct civil rights statutes. Although Title VI, Title IX, the Age Act, and Section 504 have similarities in their purpose, structure, requirements, and enforcement mechanisms, they also have notable differences.

Moreover, almost 50 years have passed since Title VI was enacted and roughly 40 years have passed since Title IX, Section 504, and the Age Act were enacted. Since the enactment of these civil rights laws, the demographics of the United States have increasingly diversified, major advances in electronic and information technology have occurred, and the health care landscape has changed, particularly with the enactment of the Affordable Care Act.

Recognizing the significant issues implicated by the development of a regulation to implement Section 1557, the Department is requesting information through this notice from stakeholders on a range of issues to better inform our rulemaking. The Department welcomes comments from all interested stakeholders, including individuals potentially protected from discrimination under Section 1557, organizations serving or representing the interests of such individuals, the legal community, State, Tribal, and local health agencies, health care providers, health insurers, and other health programs.

II. Solicitation of comments

The Department is requesting information regarding the following issues. In responding, please indicate in your response the corresponding question number and provide the basis or reasoning for your answers with as much specificity and detail as possible, as well as any supporting documentation, including research or analyses, to ensure we have the most helpful information for our rulemaking.

Understanding the Current Landscape

1. The Department is interested in experiences with, and examples of, discrimination in health programs and activities. Please describe experiences that you have had, or examples of which you are aware, with respect to the following types of discrimination in health programs and activities: (a) Race, color, or national origin discrimination; (b) Sex discrimination (including discrimination on the basis of gender identity, sex stereotyping, or pregnancy); (c) Disability discrimination; (d) Age discrimination; or (e) discrimination on one or more bases, where those bases intersect.

2. There are different types of health programs and activities. These include health insurance coverage, medical care in a physician's office or hospital, or home health care, for example.

What are examples of the types of programs and activities that should be considered health programs or activities under Section 1557 and why?

3. What are the impacts of discrimination? What studies or other evidence documents the costs of discrimination and/or the benefits of equal access to health programs and activities for various populations? For example, what information is available regarding possible consequences of unequal access to health programs and services, such as delays in diagnosis or treatment, or receipt of an incorrect diagnosis or treatment? We are particularly interested in information relevant to areas in which Section 1557 confers new jurisdiction.

Ensuring Access to Health Programs and Activities

4. In the interest of ensuring access to health programs and activities for individuals with limited English proficiency (LEP):

(a) What are examples of recommended or best practice standards for the following topics: (1) translation services, including thresholds for the translation of documents into non-English languages and the determination of the service area relevant for the application of the thresholds; (2) oral interpretation services, including in-person and telephonic communications, as well as interpretation services provided via telemedicine or telehealth communications; and (3) competence (including certification and skill levels) of oral interpretation and written translation

providers and bilingual staff?

(b) What are examples of effective and cost-efficient practices for providing language assistance services, including translation, oral interpretation, and taglines? What cost-benefit data are available on providing language assistance services?

(c) What are the experiences of individuals seeking access to, or participating in, health programs and activities who have LEP, especially persons who speak less common non-English languages, including languages spoken or understood by American Indians or Alaska Natives?

(d) What are the experiences of covered entities in providing language assistance services with respect to: (1) costs of services, (2) cost management, budgeting and planning, (3) current state of language assistance services technology, (4) providing services for individuals who speak less common non-English languages, and (5) barriers covered entities may face based on their types or sizes?

(e) What experiences have you had developing a language access plan? What are the benefits or burdens of developing such a plan?

(f) What documents used in health programs and activities are particularly important to provide in the primary language of an individual with LEP and why? What factors should we consider in determining whether a document should be translated? Are there common health care forms or health-related documents that lend themselves to shared translations?

5. Title IX, which is referenced in Section 1557, prohibits sex discrimination in federally assisted education programs and activities, with certain exceptions. Section 1557 prohibits sex discrimination in health programs and activities of covered entities. What unique issues, burdens, or barriers for individuals or covered entities should we consider and address in developing a regulation that applies a prohibition of sex discrimination in the context of health programs and activities? What exceptions, if any, should apply in the context of sex discrimination in health programs and activities? What are the implications and considerations for individuals and covered entities with respect to health programs and activities that serve individuals of only one sex? What other issues should be considered in this area?

6. The Department has been engaged in an unprecedented effort to expand access to information technology to improve health care and health coverage. As we consider Section 1557's requirement for nondiscrimination in health programs and activities, what are the benefits and barriers encountered by people with disabilities in accessing electronic and information technology in health programs and activities? What are examples of innovative or effective and efficient methods of making electronic and information technology accessible? What specific standards, if any, should the Department consider applying as it considers access to electronic and information technology in these programs? What, if any, burden or barriers would be encountered by covered entities in implementing accessible electronic and information technology in areas such as web-based health coverage applications, electronic health records, pharmacy kiosks, and others? If specific accessibility standards were to be applied, should there be a phased-in implementation schedule, and if so, please describe it.

Compliance and Enforcement Approaches

7. Section 1557 incorporates the enforcement mechanisms of Title VI, Title IX, Section 504 and the Age Act. These civil rights laws may be enforced in different ways. Title VI, Title IX, and Section 504 have one set of established administrative procedures for investigation of entities that receive Federal financial assistance from the Department. The Age Act has a separate administrative procedure that is similar, but requires mediation before an investigation. There is also a separate administrative procedure under Section 504 that applies to programs conducted by the Department. Under all these laws, parties also may file private litigation in Federal court, subject to some restrictions.

a) How effective have these different processes been in addressing discrimination? What are ways in which we could strengthen these enforcement processes?

b) The regulations that implement Section 504, Title IX, and the Age Act also require that covered entities conduct a self-evaluation of their compliance with the regulation.

What experience, if any, do you have with self-evaluations? What are the benefits and burdens of conducting them?

c) What lessons or experiences may be gleaned from complaint and grievance procedures already in place at many hospitals, clinics, and other covered entities?

8. Are there any other issues important to the implementation of Section 1557 that we should consider? Please be as specific as possible.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble.

Dated: June 5, 2013

Leon Rodriguez,

Director, Office for Civil Rights.

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