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August 12, 2019

Secretary Alex M. Azar, III
Director, U.S. Department of Health Human Services
Office for Civil Rights
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Re: HHS Docket No. HHS-OCR-2019-0007, RIN 0945-AA11,
Comments in Opposition to Proposed Rulemaking

Dear Secretary Azar:

The Homeless Advocacy Project submits these comments opposing the proposed rule that would amend regulations that implement Section 1557 of the Affordable Care Act (RIN 0945-AA11). As a legal services program dedicated to the elimination of homelessness, we are compelled to oppose the proposed action which is without justification and will undoubtedly lead to decreased essential medical care for individuals experiencing housing instability and homelessness. We urge HHS to withdraw the proposed rule.

The Homeless Advocacy Project (HAP) is a free legal services program for individuals and families experiencing homelessness in Philadelphia or at imminent risk of becoming homeless. HAP’s clients experience extreme poverty and reside in homeless shelters and abandoned buildings, sleep on couches and floors, and spend their nights on the street. They frequently suffer from debilitating mental health impairments, physical conditions, and disrupted education that, along with their living circumstances, hamper their ability to navigate the myriad systems under which they are eligible for supports and services. Since homeless individuals have historically been unable to access traditional legal services programs, HAP conducts intake in places where people experiencing homelessness eat, sleep, receive mail or access social services.

With a 30 year history serving adults and young adults experiencing homelessness, HAP is aware of the numerous barriers faced by LGBTQ people in trying to access services due to discrimination and exclusion, overt actions that result in significant trauma and homelessness in the first place.
Moreover, as a nonprofit agency focused on serving vulnerable populations, we reject any efforts to eliminate or weaken providing notification of patient rights and grievance procedures.

**HHS should abandon its proposed and most recent effort to cause LGBTQ individuals harm by undermining protections against discrimination when seeking access to health care.**

Access to affordable and comprehensive health care is a critical determinant of health and well-being for individuals and entire communities. Yet instead of putting patients first and protecting their ability to secure safe medical care, the proposed rule would compromise people’s existing protections from discrimination in health care and the right to be healthy and safe.

The proposed regulation eliminates explicit nondiscrimination protections based on sex, including gender identity and sex stereotyping. The proposal carves out LGBTQ individuals from the Affordable Care Act’s (ACA) nondiscrimination protections, allowing insurance companies to deny coverage and medical providers to refuse treatment in contravention of medical standards of care. The proposed regulation elevates provider beliefs over medical care; it will disrupt and delay patient care, endangering lives and robbing individuals of their dignity.

This is particularly troubling given the barriers LGBTQ individuals already face in accessing culturally competent treatment that meets medical standards of care. Transgender and non-binary individuals, in particular, already experience staggering rates of discrimination from health care providers. The proposed rule will negatively impact medical care for 1.4 million transgender adults and more than 150,000 transgender teens ages 13 to 17 in the United States. Many of these same individuals are rendered homeless as a result of the very kind of discrimination they face when seeking help from medical institutions and health care providers.

In addition, as set forth in the August 5, 2019, letter from various state insurance commissioners to Secretary Azar, the proposed rule will generate consumer confusion and create undue regulatory burden across the country where regulated entities have already come into compliance with Section 1557 as it now stands. These state insurance commissioners, moreover, describe the fiscal and regulatory impact of ensuring nondiscriminatory treatment of insurance claims as “negligible,” while at the same time “nothing short of life changing” for people historically denied care.

https://transequality.org/sites/default/files/docs/releases/Section%201557%20Insurance%20Commissioner%20letter%20Aug2019_FINAL.pdf

Despite this, the Administration leaves no stone unturned in its multi-faceted scheme to attack LGBTQ people by removing their protections from discrimination regardless of the devastating consequences that will ensue. The HHS Office of Civil Rights (OCR) has already created its Office of Conscience and Religious Freedom to shift OCR focus from enforcing rights against health care discrimination to protecting rights those who wish to deny care. The Administration’s attack on LGBTQ people’s access to treatment continued with its recently finalized “denial of care” rule, which elevates the right to refuse to provide
medical treatment over the right to receive it. HHS, which should be ensuring that people get the health care they need, continues to undermine its mission and credibility by its expansive efforts to deny medical care and treatment to vulnerable individuals.

Furthermore, during the comment period on the proposed amendments to Section 1557, news was released of the U.S. Department of Housing and Urban Development's intention to propose a new rule that will allow federally-funded homeless shelters to turn away transgender people. The Administration's intent is clear – prioritize politics over ensuring protecting access to basic human rights like health care and a safe place to sleep. The Administration's targeting of the LGBTQ community is unmistakable and unconscionable. Discrimination or stereotypes should never be allowed to determine the health care we should receive.

The proposed rule eliminates notification of patient rights and weakens language access protections, harming patient ability to secure appropriate care and coverage.

The proposed rule would put health at risk for millions of individuals who already face economic and health justice barriers, among a myriad of other challenges.

Language barriers can impede access to care and its quality for an estimated 25 million people with limited English proficiency. The ability to speak English should not prioritize some patients above others in accessing and understanding medical care. The health care system is already experiencing a dangerous chilling effect for non-English speakers due to the Administration's proposed rule regarding "public charge." The proposed changes to Section 1557 adds yet another layer of fear and confusion already in place that impedes those with limited English proficiency from seeking critical health care, putting themselves, their families and their communities at risk.

Likewise, the proposal to eliminate requirements to notify patients of their rights and existing grievance procedures renders patient rights hollow. HHS provides a detailed savings analysis, noting costs in paper and postage to be saved by eliminating the notification requirements. At the same time, however, the agency fails to adequately account for the human costs to individuals left without knowledge of their right medical care and how to enforce that right. HHS did acknowledge that "an unknown number of persons are likely not aware of their right to file complaints with the Department's Office for Civil Rights and some unknown subset of this population may suffer remediable grievances, but will not complain to OCR absent notices informing them of the process." The agency, thus, acknowledges the harm and readily disregards it.

Conclusion

We should be expanding health care for all patients, regardless of English proficiency, gender identity, race or class. By discriminating against some and, thereby, endangering the lives and health of all, the proposed rule would undermine federal law and lead to irreparable health, social and economic harms. We urge HHS to rescind this proposal and prioritize dignified care for all in accordance with medical – not political – standards.
HAP cannot support the U.S. Department of Health and Human Services’ harmful and unjustified proposed rule. We strongly oppose RIN 0945-AA11.

Submitted by,

Michele Levy
Managing Attorney