AMERICAN PSYCHOLOGICAL ASSOCIATION | SERVICES, INC.

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TO: U.S. Department of Health and Human Services
Office for Civil Rights
Attention: Section 1557 NPRM, RIN 0495-AA11
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

FROM: Katherine B. McGuire
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American Psychological Association
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RE: Nondiscrimination in Health and Health Education Programs or Activities
Agency: Department of Health and Human Services
Docket No.: HHS–OCR–2019–0007

The American Psychological Association (APA) appreciates the opportunity to submit comments on Nondiscrimination in Health and Health Education Programs or Activities, a Notice of Proposed Rule Making published in the Federal Register on May 7, 2019, which proposes significant revisions to the Health and Human Services' (HHS) 2016 final rule implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA).We explain our strong opposition to the Department's proposed rule in this comment and describe the serious consequences of limiting the scope and reach of the current Section 1557 regulations. **We urge the Department to maintain current regulatory standards.**

APA is the largest scientific and professional organization representing psychology in the United States. Our membership includes more than 118,400 researchers, educators, clinicians, consultants, and students. APA works to promote the advancement, communication, and application of psychological science and knowledge to benefit society and improve lives.

PROPOSED RULE PROVISIONS APA OPPOSES

Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability in certain health programs or activities. APA advocated for non-discrimination protections to be included in the ACA and has encouraged strong regulatory enforcement of these protections since the law's enactment in 2010. HHS adopted the final rule implementing Section 1557 in May 2016 after a lengthy process of deliberation and public input. The rule was developed over the course of six years of study and following two comment periods. HHS engaged external stakeholders through listening sessions, conferences and other outreach before taking regulatory action. Conversely, HHS drafted the current proposed rule with very limited public consultation. APA submitted comments supporting the proposed final rule in 2015.[1] We again wrote to the Department in support of the Section 1557 regulations in 2017,[2] where we addressed the importance of retaining the final rule's interpretation of prohibited discrimination on the basis of sex, which includes gender identity and termination of pregnancy.

Discrimination can occur throughout the healthcare system, from obtaining insurance coverage to receiving a proper diagnosis and treatment and can be experienced by individuals seeking behavioral or physical healthcare. Summarized here are provisions of the proposed rule that concern us because, if adopted, they would weaken enforcement of Section 1557 non-discrimination requirements.

Topic	Current	Proposed	Impact of proposed rule
Application	92.2	92.3	Reduces the number and type of entities the rule covers
Equal program access on the basis of sex	92.206	Deleted	Eliminates the current rule's interpretation of discrimination on the basis of sex, which encompasses gender identity, sex stereotypes and pregnancy termination
Health -related coverage and other	92.207	Deleted	Eliminates health insurance coverage protections for vulnerable individuals and

health related coverage protections for vulnerable individuals			specific coverage requirements for transgender and gender nonconforming persons
Meaningful access for individuals with limited English proficiency	92.201	92.101	Weakens protections afforded to limited English proficient (LEP) individuals
Effective communication for individuals with disabilities	92.202	92.102	Implements exemptions for certain entities from auxiliary aids and services requirement related to health care access.
Accessibility standards for buildings and facilities	92.203	92.103	Could limit applicability of 2010 ADA Standards for Accessible Design for certain entities.
Requirement to make reasonable modifications	92.205	92.105	Could include an exemption for "undue hardship" and could substitute the current section with language from the Department of Justice's Section 504 coordinating regulations.
Requirement to make reasonable modifications	92.205	92.105	Expands entities exemptions from making reasonable modifications requirements
Religious and conscience exemptions	N/A	92.6	Expands religious and conscience exemptions beyond current law and regulations

DISCRIMINATION IS PERSISTENT AND HARMS HEALTH

Discrimination can affect health in various populations, including racial/ethnic minorities, women, sexual and gender minorities and older adults, according to Healthy People 2020, the federal government's prevention agenda for building a healthier nation.[3] Nearly half of U.S. adults report they have experienced a major form of unfair treatment or discrimination, including being unfairly questioned or threatened by police, being fired or passed over for promotion or treated unfairly when receiving health care. These acts of discrimination are associated with higher reported stress levels and poorer reported health, according to the survey research. [4] In addition, research shows that provider discrimination is closely tied to physical and mental health disparities among vulnerable populations, and perceived discrimination in healthcare settings has been shown to contribute to higher unmet needs for health care utilization, poor health and health disparities among racial and ethnic minorities.[5]

According to a 2017 nationally representative survey, women, people of color, and sexual and gender minorities reported experiencing discrimination when seeking medical care. For example,

32 percent of African Americans, 25 percent of Latinas and 16 percent of LGBTQ persons reported experiencing discrimination when going to a doctor or health clinic. The same survey revealed that a significant proportion of people have avoided seeking medical care altogether out of concern that they would suffer discrimination, including 22 percent of African Americans, 15 percent of American Indians and 18 percent of LGBTQ persons.[6] In one study of older populations with serious chronic conditions, 20% of Black patients with a major chronic condition reported experiencing discrimination[7] when seeking care.

In 2011, the Institute of Medicine (now the National Academy of Medicine) reported that some "… LGBT individuals face discrimination in the health care system that can lead to an outright denial of care or to the delivery of inadequate care. There are many examples of manifestations of enacted stigma against LGBT individuals by health care providers. LGBT individuals have reported experiencing refusal of treatment by health care staff, verbal abuse, and disrespectful behavior, as well as many other forms of failure to provide adequate care"[8]. Data from a nationally representative survey show that lesbian, gay and bisexual and transgender who reported experiencing discrimination in the year prior were nearly 7 times more likely than lesbian, gay, bisexual and transgender and queer people who had not faced discrimination to avoid visiting the doctor.[9]

We are especially concerned about the discrimination many transgender people experience in the healthcare system because the proposed rule eliminates the general prohibition of discrimination based on gender identity, as well as specific health insurance coverage protections for transgender people. Transgender people may be turned away at the front desk, ignored in the examination room, or even harassed by providers just for being transgender. The 2015 U.S. Transgender Survey found that in the year prior to taking the survey, 33% of respondents who visited a healthcare provider faced one or more forms of mistreatment or discrimination due to being transgender.[10] Another survey found that 19% of respondents had been refused care as a result of their gender identification, 28% had been verbally harassed in a medical setting and 2% had been the victims of violence when visiting the doctor.[11] This discrimination likely contributes to health disparities. Respondents were approximately five times more likely than the general population to have been diagnosed with HIV, eight times more likely to have experienced serious psychological distress in the month prior to taking the survey, and nearly twelve times more likely to have attempted suicide[12]. Moreover, transgender people who represent multiple marginalized identities, experience even more disparities in health care systems. For instance, in the aforementioned survey, 42% of transgender people with disabilities reported major barriers to health care. Discrimination in health care settings makes transgender individuals less likely to seek treatment, allowing the outsized prevalence of conditions listed above to persist.[13]

COMMENTS ON SPECIFIC PROVISIONS

1. SCOPE OF APPLICABILITY

The proposed rule would reduce the number and type of entities the rule covers and carve out HHS administered programs and activities except for those established under Title I of the ACA. Under the current rule, Section 1557 requirements apply to every health program or activity, any part of which receives Federal financial assistance provided or made available by the Department; every health program or activity administered by the Department; and every health program or activity administered by a Title I entity.[14]

Comment

- **The proposed rule would cause people to lose insurance coverage by, among other factors, allowing insurers to charge individuals more for services, deny coverage, and design plans that discriminate on the basis of race, color, national origin, sex, age, or disability.** Section 1557 of the ACA and the 2016 final rule expanded access to comprehensive health insurance coverage by prohibiting health plans from denying, canceling, limiting, or refusing to issue or renew a policy; denying or limiting coverage of a health insurance claim; imposing additional cost sharing or other limitations or restrictions on coverage; and using discriminatory marketing practices or insurance benefit designs.[15] Conversely, under the proposed rule, entities that are not principally engaged in the business of providing "health care" (such as health insurers) would no longer be covered by Section 1557.[16] Insurance companies could, therefore, discriminate in all plans other than those offered on ACA Exchanges. Without these protections, many private health plans and Medicaid managed care organizations could, for example, cover inpatient treatment for eating disorders for men but not women or ask about an applicant's sexual orientation to determine whether or not to offer the applicant insurance. Such practices would likely cause many sexual, gender, and racial/ethnic minorities – who have unique health care needs and already face significant disparities and barriers to care – to be priced out of insurance coverage or to forego critical treatments because they cannot afford the costs.

- **The proposed rule would also continue the trend of shifting consumers onto skimpier plans while increasing costs for those who stay in ACA plans**. The proposed rule narrows the scope of the regulations to cover only the specific programs and activities that receive federal funding, and not all operations, of health insurers that are not principally engaged in the business of providing health care. For example, HHS specifies that short-term limited duration (STLD) plans – which are not required to offer mental health or substance use disorder benefits – are also exempt from Section 1557's non-discrimination provisions.[17] As consumers enroll in less comprehensive plans, fewer will be covered when they seek important behavioral health services, such as psychotherapy or medication-assisted opioid addiction therapies. Studies repeatedly show that individuals without insurance are less likely to receive treatment for major health conditions and chronic diseases.[18] Continuing to eliminate rules that protect vulnerable individuals serves to accelerate the reversion of the insurance market back to a time when 38% of non-group health plans did not cover mental health services and 45% did not cover substance use disorder services.[19] With our nation facing an ongoing opioid crisis and alarming increases in serious mental illness and suicides, we cannot afford to keep reducing access to substance use disorder and mental health services.

- **The proposed rule exempts all HHS programs.** The proposed rule takes the unprecedented step of exempting all HHS programs from Section 1557 requirements. Examples of HHS programs not subject to the rule include infectious disease screening and treatment programs operated by the Centers for Disease Control and Prevention; federal health services provided to American Indians and Alaska Natives by the Indian Health Service; healthcare programs reaching geographically isolated, economically or medically vulnerable persons, including people living with HIV/AIDS, pregnant women, and mothers and their families, administered by the Health Resources and Services Administration; and mental health and substance use treatment programs administered by the Substance Abuse and Mental Health Services

Administration. HHS provided no public health justification for the proposed rule's exemption of these HHS programs from Section 1557 requirements. The mental and physical health services these agencies provide reach millions of patients each year who belong to populations most likely to experience discrimination in healthcare settings.

Recommendation: Withdraw the proposed rule and implement policies that expand, not diminish, the quality of health coverage available to all Americans; and retain language in the current section 1557 rule to ensure all HHS health programs are covered by Section 1557.

2. SEX DISCRIMINATION

The proposed rule eliminates the final rules' regulatory definition of discrimination on the basis of sex, which includes discrimination based on gender identity, sex stereotyping and pregnancy. It would also eliminate the definition of gender identity, which includes gender expression and transgender status.[20] The proposed rule also eliminates the final rule's "equal program access" section which expressly prohibits discrimination on the basis of sex (which includes gender identity and sex stereotypes) and requires covered entities to treat individuals consistent with their gender identity.[21] These sections assist covered entities with identifying the types of actions they must take or avoid in order to comply with the regulations. Removing them will weaken the Office of Civil Rights enforcement of the statute's non-discrimination requirements.

Comment

- **Discrimination based on sex includes sexual orientation and gender identity.** Regulations promulgated under Section 1557 clarified that discrimination based on gender identity and sex stereotyping is prohibited in healthcare coverage and access. HHS relied on one federal court decision to justify eliminating the general prohibition of discrimination on the basis of gender identity, *Franciscan Alliance v. Burwell,*[22] where the judge decided that the rule's protections for gender identity and pregnancy termination. This decision, however, is an outlier, because at least four other federal district court decisions considering Section 1557 found that discrimination against transgender persons is a form of sex-stereotyping that constitutes discrimination on the basis of sex under *Price Waterhouse v. Hopkins*, a United States Supreme Court decision that provides precedent.[23]

  In February 2019, months before HHS posted the draft proposed rule on its web-site, the United States Supreme Court decided to hear three employment cases considering whether the Title VII of the Civil Rights Act of 1964 prohibition of employment discrimination on the basis of sex includes sexual orientation and gender identity in its next 2019 -2020 term. Because such discrimination is based on the employee's nonconformity to the employer's sex-based norms and expectations for how an employee perceived to be of a given sex should appear and behave, these cases reflect precisely the same type of sex-role stereotyping that was at issue in *Price Waterhouse.* The Court's decision in this case will have implications for the legal analysis around the Section 1557 statute and the implementing regulations.

  APA has a longstanding commitment to applying psychological science and knowledge to ending discriminatory practices based on sex, including sexual orientation and gender identity. APA leadership has adopted multiple research-based policy statements supporting the rights of

sexual and gender minorities, most notably a 2007 policy statement *"Opposing Discriminatory Legislation and Initiatives Aimed at Lesbian, Gay, and Bisexual Persons"*[24] and a 2008 policy statement on *"Transgender, Gender Identity, and Gender Expression Non-Discrimination."*[25] Scientific literature regarding gender and sexuality supports the understanding that discrimination on the basis of sexual orientation and gender identity is discrimination because of sex. Accordingly, laws like Title VII that prohibit sex discrimination reach—and must continue to reach—discrimination against sexual and gender minorities. A contrary conclusion would not comport with mainstream scientific research regarding gender and sexuality.[26]

- **The proposed rule would restrict access and drive women of childbearing age into high-risk situations.** The proposed rule removes provisions of the final rule that prohibit covered entities from discrimination based on pregnancy, false pregnancy, termination of pregnancy or recovery from, childbirth or related medical conditions. Due to the interconnectedness between women's ability to control childbearing and to take advantage of educational and employment opportunities, the proposed rule's potential impact on women's rights is broad and destructive, as well as damaging to their mental health. Reproductive justice is central to attaining social equality for women.[27] Restricting women's access to reproductive health care undermines their ability to attain the related rights of health, equality, and nondiscrimination.

- **The proposed rule adds an abortion exemption not in the current rule.** Instead of putting patients first, this rule would further the stigma or shame some patients experience when they need reproductive health care, including abortion. Under the proposed rule any religiously affiliated hospital, clinic, or health insurance company could be exempt from complying with Section 1557's sex discrimination provisions. This means a health clinic could turn someone away because they are pregnant and unmarried, or because they have had an abortion or miscarriage. Women seeking reproductive healthcare that runs counter to a provider's religious beliefs could be denied or discouraged from seeking necessary care, placing them at risk of life-threatening results in emergencies and other circumstances where the individual's choice of health care provider is limited. This would be particularly harmful to women who have limited access to health care, including low-income women, women of color, and those who live in rural or medically underserved areas.

Recommendation: Withdraw the proposed rule and retain the current regulations pertaining to Section 1557's sex discrimination prohibition. This includes retaining the current rule's definitions of "discrimination on the basis of sex," "gender identity," and "sex-stereotypes".

3. HEALTH INSURANCE COVERAGE AND RELATED PROTECTIONS

The proposed rule eliminates the final rule's "nondiscrimination in health-related insurance and other health-related coverage" provisions. The 2016 final rule expanded access to comprehensive health insurance coverage by prohibiting health plans from denying, canceling, limiting, or refusing to issue or renew a policy; denying or limiting coverage of a health insurance claim; imposing additional cost sharing or other limitations or restrictions on coverage; and using discriminatory marketing practices or insurance benefit designs.[28] Removing these provisions would likely cause many sexual, gender, and racial minorities, people living with HIV/AIDS and persons with disabilities – who have unique health care needs and already face significant disparities and barriers to care – to be priced out of insurance coverage or to forego critical treatments because they cannot afford the costs. HHS does not account for the economic, medical and societal costs that will occur

because of these proposed regulatory changes. The proposed regulation also would eliminate the provision that prohibits a health plan from categorically or automatically excluding or limiting coverage for health services related to gender transition.

Comment

- **Transgender people deserve access to fair medical treatment and behavioral health care in non-discriminatory settings.** APA practice guidelines recognize that care for transgender persons can include assessment, psychotherapy or surgery",[29]. Even though these treatments may be clinically necessary, providers or insurance plans under the proposed rule may refuse to provide or pay for them. Studies have shown that eliminating transgender exclusions has no significant effect on medical expenditures or premiums[30] and that covering medically necessary services for the U.S. transgender population is affordable and cost effective.[31]

- **ACA and nondiscrimination protections improved transgender health outcomes.** While the uninsured rate among transgender people remains higher than that in the general population,[32] research indicates that the uninsured rate among transgender people has dropped dramatically since enactment of the ACA.[33] Additionally, after publication of the rule implementing Section 1557, one study showed that over 95% of insurers removed exclusions for gender dysphoria treatments from their 2017 plans, ensuring that a greater number of transgender consumers can have access to treatment.[34] **.** If the proposed rule were implemented, positive gains made in improving transgender health outcomes in recent years would be lost.

Recommendation: Withdraw the proposed rule, and retain the current rule's nondiscrimination in health-related insurance and other health-related coverage

4. LIMITED ENGLISH PROFICIENT (LEP)

The proposed rule eliminates the requirement that significant medical or insurance appendices include information about access to translation services for those with limited English proficiency.

Comment

The proposed rule would weaken protections that provide access to interpretation and translation services for individuals who are limited English proficient (LEP). Section 1557 of the ACA prohibits discrimination based on national origin, including discrimination because of one's lack of proficiency in the English language. This provision built on existing civil rights protections including Title VI of the Civil Rights Act of 1964, which applies to entities receiving federal funds guaranteeing "meaningful" access for LEP persons. Section 1557 continues Title VI's protections and further expands the coverage to federally administered programs and many private insurance plans. In the United States it is estimated that there are 25 million LEP individuals who speak little to no English.[35] Language barriers are known to interfere with access to quality health care.[36]

HHS argues that ending the requirement for notification of translation services is cost effective and will reduce patient and provider confusion. However, the agency's analysis is vague, flawed, and harmful to already vulnerable populations. In the absence of an alternative to current notice requirements, HHS fails to account for additional costs that will be generated by a patient's inability to properly understand diagnoses, prescriptions, and medical advice. LEP individuals are less likely to receive preventative care and other services like cancer screenings that reduce overall healthcare costs in the long run and maintain healthy populations and communities.[37]

Recommendation: Revise the proposed rule to address cost concerns and maintain robust protections for individuals with limited English proficiency.

5. DISABILITY

The proposed rule would cause harm to people with disabilities and their families and communities because it would weaken current regulatory enforcement of Section 1557's prohibition of discrimination based on disability. APA commends HHS for maintaining the prohibition of discrimination on the basis of disability. However, the objectives and intent of the statute could be significantly compromised by proposed provisions related to accessibility, the limitations on the scope of the Section 1557 regulations, and the enforcement mechanisms. These provisions could restrict the categories of entities that are subject to the ACA's nondiscrimination rules, as well as the ability of individuals to be informed and enforce their rights under the law.

Comment

- **The proposed rule weakens current regulation protecting persons living with disabilities from discrimination in insurance coverage and healthcare access.** The proposed rule reduces the number and type of entities the proposed rule would cover. These changes to the scope of applicability of the Section1557 will have disproportional impacts on persons living with disabilities seeking health insurance coverage as plans exempted from the current requirements will have financial incentives to deny or limit coverage options to these individuals. Measures that would increase costs or limit access to health insurance will have a detrimental impact on the health of individuals with disabilities.[38] Furthermore, limiting the scope of application harms individuals with disabilities whose insurance is individual or employer based. Protections that are focused solely on federal programming weakens health access for individuals with disabilities who receive their insurance coverage from nongovernmental providers**.** Individuals with disabilities experience health disparities across socioeconomic strata and their life course (e.g., cardiovascular disease, obesity). Adults with disabilities are more likely to report skipping or prolonging health care due to cost.

- **The proposed rule weakens enforcement provisions.** The proposed rule changes how disparate impact claims are handled and limits the enforcement mechanisms to those already provided for under other statutes. Individuals living with disabilities should not have to face disparate impact discrimination when a policy or practice has disproportionate negative consequences.

- **No exemptions should be added for covered entities with fewer than 15 employees.** The proposed rule would exempt entities with fewer than 15 employees from the auxiliary aids and services requirement. This would have discriminatory and negative impacts on persons living with disabilities who need these devices, services, and supports. APA recognizes that full access and participation for people with disabilities is a civil rights issue.[39]

- **The proposed rule retains the final rule's accessibility standards for buildings and facilities.** APA supports this decision. HHS requests comment on the appropriateness of applying the 2010 ADA Standards' definition of "public building or facility" to all entities

covered under Section 1557. APA is an ardent supporter of the Americans with Disabilities Act.[40] [41] Accordingly, we urge the Office of Civil Rights to apply the 2010 ADA Standards' definition of "public building or facility" to all entities covered under Section 1557. Compliance with 2010 ADA Standards for Accessible Design in the new construction or alterations of buildings and facilities is paramount in promoting accessibility to individuals with disabilities.

- **Requirement to Make Reasonable Modifications.** APA opposes the proposed rule's efforts to include an exemption for "undue hardship" or substitute the current section with language from the Department of Justice's Section 504 coordinating regulations. APA supports current requirements that protect persons living with disabilities from discrimination by ensuring that covered entities make sensible adjustments to policies, practices, or procedures when needed except if the modification would profoundly modify the objectives of the health program or activity.

Recommendation: the proposed rule and retain current regulations in order to protect individuals with disabilities from being denied services or supports, or face discrimination in accessing health care services or health insurance.

6. RELIGIOUS AND CONSCIENCE EXEMPTIONS

The proposed rule expands the scope and reach of religious and conscience exemptions in HHS health and health education programs. It does this by adopting Title IX's religious exemption from prohibited sex discrimination and exempting covered entities from having to comply with the Section 1557 regulations if doing so would violate the Religious Freedom Restoration Act or any related, successor, or similar federal laws or regulations.

Comments

- **APA strongly believes that people's religious beliefs or moral convictions should not enable them to discriminate against others.** We recognize that religious beliefs can in some instances result in discrimination against other individuals or organizations; however, the right of persons to practice their religion or faith does not and cannot entail a right to harm others or to undermine the public good.[42] We are concerned that the proposed rule's religious freedom and conscience protections may infringe upon the rights of other individuals or groups of people or condone discrimination against them.

- **The proposed rule does not align with APA values.** According to the APA ethics code, patient welfare should be at the forefront in all health care settings.[43] The rights of patients must be paramount. Our guidelines for serving a diverse public affirm that "psychologists need to interact beneficially and non-injuriously with all clients/patients who seek care. When such conflicts occur, the overriding consideration must always be the welfare of the client/patient."[44] We firmly believe that these principles – placing patient welfare front and center – should hold true across health care settings.

- **The proposed rule would negatively impact psychology and psychologists.** APA opposes efforts to limit our disciplinary and institutional freedom to train our students to best serve diverse populations, as demanded by our profession's requirements for licensure. Psychology

licensure requires that students are trained to serve broad populations within their competence. Therefore, training programs and trainees cannot be selective about the core competencies needed for the practice of psychology because these competencies are determined by the profession for the benefit of the public. The proposed rule would limit the freedom of professional education and training programs in psychology to determine the training our students should acquire to meet the responsibilities of a psychologist practicing in a culturally diverse community. Our Standards of Accreditation require psychology training programs to ensure that all students attain an understanding of cultural and individual diversity as related to both the science and practice of psychology, along with the relevant skills and competencies to provide services to all segments of the public. Programs may not restrict or otherwise "constrain" academic freedom in accord with these procedures, and programs must prepare their graduates "to navigate cultural and individual differences in research and practice," including those that "may produce value conflicts or other tensions arising from the intersection of different areas of diversity."[45]

- **Expanding exemptions under the proposed rule undermines the purpose of taxpayer funded programs.** Allowing providers who receive federal funds to refuse services to people who need them is contrary to HHS's mission -- to enhance and protect the health and well-being of all Americans. For example, the religious exemption would allow any religiously affiliated hospital, clinic, or health insurance company or other covered controlled by a religious organization to exempt themselves from complying with the sex discrimination provisions of Section 1557 without seeking review or approval from HHS. Under the proposed rule, a sole available provider or provider of last resort could claim interpretations of religious tenets to avoid providing federally funded services to certain persons or groups, e.g. transgender and gender non-forming youth and their families.

- **The legal framework protecting religious and conscience-based refusal is already enshrined in law and need not be further expanded or enforced.** Under the current rule, covered entities can claim religious exemptions under existing federal laws, such as the Religious Freedom Restoration Act and the 2019 *"Protecting Statutory Conscience Rights in Health Care; Delegations of Authority"* rule. We are concerned that further codifying covered entities' ability to limit service provision to certain clients or patients based on religious or personal beliefs will harm the mental and physical health of those in need of support. For example, not only would a religious exemption for sex discrimination improperly provide a lower level of protection on the basis of sex, but it would also contravene the goal of ending sex discrimination in health care. A religious exemption would also cause direct harm to individuals by permitting the outright denial of services critical to the health of women and sexual and gender minorities. For example, these exemptions would allow health care providers to discourage transgender and gender nonconforming individuals from seeking care or to deny clinically indicated mental healthcare or surgical procedures related to gender transition. Further, the exemptions have no exceptions for emergencies, natural disasters or other unforeseen events where delaying or denying patient care may have devastating consequences.

APA supports efforts to ensure that covered entities whose religious tenets support a set of conscience-based convictions are able to provide health services and supports to all persons who have a right to access their services.

Recommendation: Withdraw the expanded religious and conscience exemptions from the proposed rule.

In closing, APA opposes the proposed regulation due to its likely harms to populations Section 1557 was enacted by Congress to protect. The rule would promote discrimination and cause many Americans to lose insurance coverage and healthcare access, thereby increasing health disparities. If we may provide any further information, please contact Leo Rennie, MPA, in our Advocacy Office at 202-682-5110 or LRennie@apa.org.

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[1] https://www.apa.org/advocacy/civil-rights/nondiscrimination-letter.pdf

[2] https://www.apa.org/advocacy/civil-rights/sexual-diversity/aca-discrimination-comments.pdf

[3] U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion. Healthy People 2020. Retrieved from https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/discrimination

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[7]Nguyen, Thu T., et.al. (2017). Trends for reported discrimination in health care in a national sample of older adults with chronic conditions. Journal of General Internal Medicine, 33(3),291–7. DOI: 10.1007/s11606-017-4209-5.

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[14] 45 C.F.R. § 92.2(a)

[15] 45 C.F.R. § 92.207(b)

[16] Proposed Rule, 84 FR 27846, 27850 (June 14, 2019)

[17] Proposed Rule, 84 FR 27846, 27863 (June 14, 2019)

[18] Key Facts about the Uninsured Population, Kaiser Family Foundation, Dec. 7, 2018.

[19] See Would States Eliminate Key Benefits if AHCA Waivers are Enacted?, Kaiser Family Foundation, Jun. 14, 2017.

[20] 45 C.F.R §92.4

[21] 45 C.F.R § 92.206

[22] *Franciscan Alliance, Inc. v. Burwell*, 227 F. Supp. 3d 660 (N.D. Tex. 2016)

[23] Keith, Katie (2019). *HHS proposes to strip gender identity, language access protections from ACA antidiscrimination rule*. Health Affairs, May 25, 2019. DOI: 10.1377/hblog20190525.831858

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[28] 45 C.F.R. § 92.207(b)

[29] American Psychological Association. (2015). Guidelines for Psychological Practice with Transgender and Gender Nonconforming People. American Psychologist, 70 (9), 832-864. doi: 10.1037/a0039906

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