



AMERICAN PUBLIC HEALTH ASSOCIATION

For science. For action. For health.

October 27, 2015

Ms. Jocelyn Samuels
Director, Office for Civil Rights
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
2000 Independence Avenue, SW
Washington, DC, 20201

Attention: 1557 NPRM (RIN 0945-AA02)

Subject: Comments on Notice of Proposed Rulemaking Regarding Nondiscrimination in Implementation of § 1557 of the Patient Protection and Affordable Care Act

Dear Director Samuels:

The American Public Health Association is a diverse community of public health professionals who champion the health of all people and communities. Two of the overarching priorities that guide APHA's work are ensuring the right to health and health care and creating health equity. We appreciate the opportunity to comment on the implementation of the Patient Protection and Affordable Care Act's nondiscrimination provision, § 1557. We applaud the Office for Civil Rights for incorporating many of the suggestions APHA offered in our September 2013 in response to OCR's request for information. Incorporating the civil rights protections of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and § 504 of the Rehabilitation Act of 1973 can help make health care more accessible and the nation's health system more equitable.

APHA is encouraged by the explicit protections for individuals on the basis of sexual orientation and gender identity. Discrimination can negatively affect the health of lesbian, gay, bisexual and transgender people.¹ For example, discrimination contributes to higher rates of depression and substance abuse.² In one study, one-in-three transgender adults reported postponing or not seeking health care out of fear of discrimination or disrespect from providers.³ Clarifying that § 1557's protections prohibit discrimination based on sexual orientation and gender identity will help reduce the negative health consequences experienced by LGBT individuals.

APHA supports § 92.201 of the notice of proposed rulemaking, which describes protections for meaningful access to health care for individuals with limited English proficiency. When health care providers are not able to provide care in languages other than English, patients may have

¹ Institute of Medicine. *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*.

² Ibid.

³ Ilan Meyer, et al. *Minority Stress and Physical Health Among Sexual Minorities* (2011).

worse health outcomes compared to a patient receiving care in a language in which he or she is fluent.⁴ Providing trained oral interpreters, and discouraging the use of “ad-hoc” interpreters, can help health care providers and patients determine an accurate diagnosis and treatment.⁵

Although OCR’s proposed rule provides valuable anti-discrimination protections, there are portions that should be strengthened:

- The list of covered entities described in § 92.4’s definition of “Health program or activity” is helpful, though it should explicitly state that it is not comprehensive and that § 1557 applies to all programs and activities described in § 92.2(a). If possible, OCR should develop a mechanism or offer technical assistance that potentially covered entities can use to help determine whether they are covered by § 1557.
- § 92.4 should also be revised to explicitly state that “on the basis of race, color, and national origin” includes discrimination based on language. As the Notice of Proposed Rulemaking correctly notes, in *Lau v. Nichols*, the United States Supreme Court recognized that national origin discrimination includes discrimination due to language.⁶
- Additionally, § 92.4 should be revised to explicitly state that “on the basis of race, color, and national origin” includes discrimination on the basis of immigration status. § 1557 incorporates the anti-discrimination protections of Title VI into the ACA’s implementation. The United States Department of Justice’s Title VI Legal Manual, citing Supreme Court precedent states, “. . .one may assume that Title VI protections are not limited to citizens.”⁷ This anti-discrimination protection on the basis of immigration status should be explicitly stated.
- The provisions on notice, described in § 92.8 should be made more inclusive. Rather than posting taglines in the top 15 languages spoken by individuals with limited English proficiency nationally, covered entities should be required to post taglines for each language group that makes up 5 percent or 500 persons, whichever is less, of the population eligible to be served by each covered entity. Furthermore, covered entities should have documents for their programs and activities available and translated into the same languages for which they have taglines.
- Rather than being subject to the reasonableness test of § 92.201, oral interpreter services should be available on demand and free of charge. A 2007 study found that use of professional interpreters was associated with an improvement in care for individuals with limited English proficiency.⁸ Where in-person oral interpretation is not available,

⁴ Sentell T and Braun K. Low health literacy, limited English proficiency, and health status in Asians, Latinos, and other racial/ethnic groups in California. *J Health Commun.* 2012; 17 (Suppl 3): 82-89. And see Wilson E et al. Effects of limited English Proficiency and physician language on health care comprehension. *J Gen Intern Med.* 2005 Sep; 20 (9): 800-806.

⁵ Karliner L et al. Do professional interpreters improve clinical care for patients with limited English proficiency? A systematic review of the literature. *Health Serv Res.* 2007 Apr; 42(2): 727-754.

⁶ *Lau v. Nichols*, 414 U.S. 563 (1974).

⁷ U.S. Department of Justice, Civil Rights Division, *Title VI Legal Manual*. January 11, 2001.

⁸ Karliner L. *Health Serv Res.* 2007; 13(2):727-754.

providers should use video or telephonic interpreter services to provide oral interpretation.

APHA thanks you for your consideration of our comments, and we look forward to working with the Office for Civil Rights on implementation of § 1557. If you have any questions, please contact Jason Coates at (202) 777-2502.

Sincerely,

A handwritten signature in black ink, reading "Georges C. Benjamin". The signature is written in a cursive style with a large, prominent initial "G".

Georges C. Benjamin, MD
Executive Director