



National Alliance for Hispanic Health

1501 Sixteenth Street, N.W. • Washington, D.C. 20036-1401 • (202) 387-5000 • www.healthyamericas.org

August 13, 2019

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Re: Docket No. HHS-OCR-2019-0007
Nondiscrimination in Health and Health Education Programs or Activities

Dear Secretary Azar:

The National Alliance for Hispanic Health is strongly opposed to the U.S. Department of Health and Human Services (DHHS) above referenced docket of proposed changes on non-discrimination regulations under ACA Section 1557. The proposed action by DHHS, if taken, will undermine the well-being of millions of Americans in their most vulnerable moments, when they are ill and in need of care.

DHHS is acting to broadly implement regulatory changes and expand the scope of issues before the court in *Franciscan Alliance v. Azar* to also include regulatory actions that would reduce access for individuals with limited English proficiency (LEP). The Alliance calls on DHHS to review and reissue the above referenced docket for public comment only after the case has been fully litigated, including appeals, and after the Supreme Court has heard cases in its next term on the definition of sex discrimination in order to reflect final determinations made by the courts.

Any review of regulatory changes, even if the preliminary injunction in *Franciscan Alliance v. Azar* should be upheld, should make the following changes to the currently proposed set of regulations under Docket HHS-OCR-2019-0007.

Maintain current sex discrimination definition, including discrimination based on gender identity and sex stereotyping. As DHHS itself recognized in the above referenced docket, case law is mixed but prohibited sex-based discrimination includes, at a minimum, discrimination related to an individual's sexual orientation where evidence establishes that the discrimination is based on gender stereotypes. The current 1557 definition should stay in place; including for Medicaid, managed care Medicaid, and the Program of All-Inclusive Care for the Elderly (PACE) to prevent disruption in the health care system and ensure protections. Regulatory changes should not be promulgated until conclusion of cases before the Supreme Court on the definition of sex-based discrimination to properly guide regulatory language.

Nondiscrimination provisions must be maintained in health insurance issuance, coverage, cost-sharing, marketing, and benefit design. Removing such provisions will allow discriminatory practices in marketing to discourage certain groups of enrollees and allow aggressive pricing strategies to make insurance out-of-reach for most Americans with common chronic conditions such as diabetes or HIV or who are managing complex treatments such as for cancer. This change will cause disruption in the health care system, dramatically decrease access, and put the lives of millions of Americans at risk.

- Page 1 of 2 -



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DHHS must follow decades of case law and regulatory actions and assure access for limited English proficient (LEP) individuals are protected, including access to video remote interpretation and notices of rights. DHHS' proposal to change protections of meaningful access for LEP persons by taking away reference to the individual and weakening compliance standards, including the requirement that covered entities have a LEP access plan, will create barriers for millions at the time that they are most vulnerable. Removing the standard requiring meaningful language access for each individual is counter to the movement of health to personalized medicine. Furthermore, eliminating language access rights notices and eliminating video remote interpreting standards will decrease access to and the quality of interpretation services. In addition, the proposed weakening of LEP access standards with a balancing test of resources and costs does not recognize the strides taken and cost savings in our modern health system of video interpretation and technology-based systems for services to LEP individuals; nor the costs inherent in medical errors resulting from language-based miscommunications.

Disability discrimination standards should be maintained, including the 2010 Americans with Disabilities Act (ADA) standards. DHHS should continue to make progress in health care access by ensuring standards for provision of effective communication auxiliary aids and services are required of all covered entities. Technology-based progress has made this standard one that is accessible by all covered entities. Furthermore, the strides in physical access from the 2010 ADA Standards for Accessible Design should continue to be the standard for new construction or alteration of facilities of covered entities.

The Alliance calls on DHHS to not disrupt the health care system and create new barriers to health care access for millions of Americans. This is the prudent course of action.

If the Alliance can provide additional information on this critical issue, please feel free to contact me or Adolph P. Falcón, Executive Vice President, at afalcon@healthyamericas.org or 202-797-4341. We look forward to DHHS fulfilling its mission to "enhance the health and well-being of all Americans."

Sincerely,

Jane L. Delgado, Ph.D., M.S.
President and CEO
National Alliance for Hispanic Health