



Leaders in Aging Well at Home

October 3, 2022

Melanie Fontes Rainer  
Acting Director, Office for Civil Rights  
Department of Health and Human Services  
Washington, DC  
*Submitted electronically via regulations.gov*

Re: RIN 0945-AA17 Nondiscrimination in Health Programs and Activities

Dear Acting Director Fontes Rainer:

USAgings appreciates the opportunity to comment on the on the notice of proposed rulemaking (NPRM) on Section 1557 of the Patient Protection and Affordable Care Act (ACA) issued by the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS). The Health Care Rights Law (Section 1557 of the ACA) prohibits discrimination in health care on the basis of race, color, national origin, sex, age and disability.

USAgings is the national association representing and supporting the network of Area Agencies on Aging (AAAs) and advocating for the Title VI Native American Aging Programs. Our members are the local leaders that develop, coordinate and deliver a wide range of home and community-based services, including information and referral/assistance, case management, home-delivered and congregate meals, in-home services, caregiver supports, transportation, evidence-based health and wellness programs and more. Many of these programs are supported by federal funding from HHS, most commonly through the Older Americans Act (OAA), which is administered by the Administration for Community Living (ACL), as well as Medicaid home and community-based services waivers.

USAgings believes that all people, including older adults at the greatest economic, social and medical risk, should have access to the services and supports that they need to age well and in the setting of their choice. For nearly 50 years, AAAs have been the local leaders designated by federal statute to plan and develop aging services to promote healthy aging and the ability to live at home and in the community as one ages. Their expertise on aging and long-term services and supports is unparalleled, and they have long worked to ensure that underserved and minority older adults get access to the services they offer. While all adults age 60 and older are eligible for

services, the OAA requires programs to target or prioritize service to older individuals with the greatest economic and social need, which, per Administration for Community Living guidance, may include those in need based on social, geographic or cultural isolation, such as LGBT older adults. USAging members remain committed to the overall targeting provisions in the OAA, even as they strive to make their programs and services available to as many older adults as possible.

It is through this lens of overall support for health equity and ensuring the most vulnerable or underserved among us gets full access to services and supports that USAging is responding to the Administration's proposed rulemaking updates to Section 1557 of the ACA.

**We broadly support the intent of the law, appreciate the restoration of protections for LGBT older adults that were removed during the Trump Administration. We also have questions about the impact of applying Section 1557 regulations to all federal "health programs," which we have highlighted below.**

As federal policies increasingly recognize the impact that the social determinants of health (SDOH) have on successful and more positive health outcomes, and we hopefully move toward recognizing and funding the social services networks that can improve the social determinants of health, we must address the imbalance of investment in these two sectors: health care and aging services/social services. Unfortunately, chronic underfunding and the lack of sustainable revenue streams for social services in general and aging services in particular, as well as siloed authorities and funding streams, have also hampered AAAs' and other community-based organizations' ability to provide holistic, person-centered care. As we seek to strengthen partnerships and continue to integrate health care and social services to address SDOH and develop comprehensive models that improve health equity, the federal government must make the investments necessary to ensure the capacity of community-based agencies which are often under-resourced, so that AAAs and others in the Aging Network are able to support these initiatives.

We are raising this issue here to explain why we have some concerns about the broad definition of "health programs and activities" without further clarification as to how smaller health care and health-related entities might be supported to meet the requirements of this regulation. All AAAs are committed to preventing discrimination in the delivery of any of their programs and services, but HHS must recognize inequities in capacity, staffing and funding may create difficulties in ensuring compliance with the Sec. 1557 requirements.

To this point, **USAging requests DHHS to clarify the following concerns as they relate to the NPRM on Section 1557 for (a) notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services; and (b) designation of a Section 1557 Coordinator and employee training.**

- Will there be language within the final rule to support small entities in their ability to fulfill the aforementioned requirements? In particular, the cost to comply with requirements for notices in various font sizes as well as notices in the top 15 languages could be cost prohibitive for smaller entities.
- What is the definition of “reasonable effort?” How does that apply to variation among health provider groups and the sizes of those entities? Will there be language detailing exceptions and guidelines for any associated processes?
- Will there be differentiation for demographic variability? For example, covering the top 15 languages in a rural area may be less fiscally responsible than applying limited funding to other aspects of services access. Additionally, applying a requirement for 15 languages in a high-density area may prove woefully insufficient for appropriate accessibility among numerous diverse LEP populations.
- We believe the proposed description of the coordinator’s duties are focused on ways to create the necessary variation (e.g., part-time job) to minimize burden on smaller entities. But we remain concerned about staffing amidst nationwide workforce challenges that have particularly dramatic effects on smaller AAAs and their provider partners. If applicable, how would historically underfunded AAAs—experiencing current workforce shortages—secure financial capital for the additional position of a designated Section 1557 Coordinator without harming service and programmatic capacity?

**USAging supports the provisions reinstating prohibitions on discrimination based on sexual orientation and gender identity in Programs for All-Inclusive Care for the Elderly (PACE) and Medicaid.**

PACE programs and Medicaid are vital sources of coverage and care for low-income older adults who are dually eligible for Medicare and Medicaid, including LGBTQ+ older adults. Therefore, it is critical to ensure these programs are subject to strong and consistent nondiscrimination rules.

**USAging cautiously supports the proposed provision on telehealth** and the recognition of it as a tool to improve access for individuals who, for various reasons, are unable or prefer to receive services in person. However, policymakers must understand that further investment and support will be needed to ensure older adults aren’t left behind because of technology

challenges or limitations. For example, while the HITECH Act, part of the American Recovery and Reinvestment Act of 2009, authorized funding to support the adoption and meaningful use of electronic health records by doctors, hospitals and other health providers, there has not been a similar investment in technology and systems to support AAAs and other social service providers, even as they seek to work with health care entities to provide integrated care for Medicare and Medicaid beneficiaries.

The Aging Network believes in a person-centered approach, which means we strive to meet all older adults where they are and help them age well with maximum independence, health and dignity. We appreciate HHS' role in advancing health equity, thank you for considering our comments, and look forward to continuing to work on these important issues with you.

Sincerely,

A handwritten signature in black ink that reads "Sandy Markwood". The signature is written in a cursive, flowing style.

Sandy Markwood  
Chief Executive Officer