



ASSOCIATION OF UNIVERSITY CENTERS ON DISABILITIES
THE LEADERSHIP, EDUCATION, ADVOCACY & RESEARCH NETWORK

Department of Health and Human Services (HHS)
Office for Civil Rights (OCR)
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Re: RIN 0945-AA11: Nondiscrimination in Health and Health Education Programs or Activities

Dear HHS Office of Civil Rights:

The Association of University Centers on Disabilities (AUCD) writes to express our concern to the above-captioned proposed change. A primary concern is that changes to Section 1557 would undermine or eliminate key protections of the Affordable Care Act's (ACA) nondiscrimination provision from individuals – particularly people with disabilities - who have experienced discrimination in health care programs and settings.

Currently, Section 1557 applies to health care programs and activities receiving federal financial assistance or funding; programs administered by the federal government, including Medicaid and Medicare; and entities created under Title I of the ACA. Covered entities include hospitals, clinics, and health care providers' offices, and issuers selling health insurance plans within and outside of the ACA Marketplaces. If an entity is principally engaged in providing or administering health services or health insurance coverage, the current regulations state that all of its activities are covered by § 1557 if any part receives federal financial assistance. However, the proposed regulation would limit the applicability of § 1557, eliminating the comprehensive definitions of "covered entities" and "health programs or activity." Narrowing the scope would limit the extent to which the rule applies to health insurance companies, leaving Americans with disabilities vulnerable to discrimination.

Additionally, the proposed regulation would affect requirements to inform individuals of their rights. By eliminating notice requirements, which are critical to informing individuals about their rights and how to file complaints if they face discrimination, people with disabilities will not be aware of their right to request auxiliary aids and services, language assistance services, or to file complaints with HHS and OCR. This leaves people with disabilities at risk of suffering from remediable grievances.

Recently, HHS finalized a regulation that expanded the scope of who can deny services and which services can be denied under existing federal laws that permit refusals of care. In combination, this proposed regulation to rollback § 1557 protections and HHS's expansion of rules that allow providers and entities to deny care could harm individuals with disabilities seeking health care, particularly medically necessary care, by creating additional barriers to access.

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The Proposed Rule would retain, but redesignate, the provisions related to accessibility for individuals with disabilities. However, OCR seeks comments on whether it should consider certain exceptions to certain provisions, which may limit the types of facilities that these requirements apply to or the steps that facilities must take to comply with Section 1557's requirements. In regard to "Effective Communication for Individuals with Disabilities" (Current § 92.202; Proposed § 92.102), an exemption from the auxiliary aids and services requirement for covered entities with fewer than 15 employees leaves a person with a disability at risk of not receiving services that are their right. No matter how small an entity, every covered entity should comply with Section 1557 to protect people from being discriminated against on the basis of disability. Regarding "Accessibility Standards for Buildings and Facilities" (Current § 92.203; Proposed § 92.103), this provision benefits individuals with disabilities in accessing all covered facilities under the protections of the Americans with Disabilities Act (ADA). Removing this provision due to the financial hardships and burdens on entities is restricting Americans with disabilities the access and rights they fought for and won almost 30 years ago. Lastly, for "Requirement to Make Reasonable Modifications" (Current § 92.205; Proposed § 92.105), AUCD supports requiring covered entities to make reasonable modifications to policies, practices, or procedures to avoid discrimination on the basis of disability. Including an exemption for "undue hardship" would undermine the policies, practices, and procedures that have been established to protect people with disabilities.

AUCD urges HHS OCR to maintain the protections of Section 1557. The Final Rule was released and implemented after public comment process. Changes now would limit its scope, enforcement mechanisms, and removal of certain requirements to notify individuals of their rights. We are concerned that these changes limit the effectiveness and safeguards of the prohibition of discrimination on the basis of disability.

Sincerely,

Rylin Rodgers,
Director of Public Policy
Association of University Centers on Disabilities