



October 3, 2022

Melanie Fontes Rainer, Director
Office for Civil Rights
Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, D.C. 20201

RE: Nondiscrimination in Health Programs and Activities Proposed Rule [HHS-OS-2022-0012]

Dear Director Fontes Rainer,

The Medical Group Management Association (MGMA) is pleased to submit the following comments in response to the August 4, 2022, proposed rule amending regulations under Section 1557 of the Affordable Care Act (ACA).

With a membership of more than 60,000 medical practice administrators, executives, and leaders, MGMA represents more than 15,000 medical groups comprising more than 350,000 physicians. These groups range from small independent practices in remote and other underserved areas to large regional and national health systems that cover the full spectrum of physician specialties.

On May 18, 2016, the Office for Civil Rights (OCR) under the Department of Health and Human Services (HHS) finalized regulations implementing Section 1557 at 45 C.F.R. Part 92 (2016 regulations) and on June 12, 2020 (2020 regulations), issued a final rule amending certain provisions of those regulations. This proposed rule follows both previous finalized rulemakings to make further refinements and changes to nondiscrimination protections in healthcare.

MGMA recognizes that patients come from a broad spectrum of cultures and beliefs. We strongly support physicians and medical group practice leaders conducting themselves with appropriate respect for patients' social and cultural beliefs and furnishing care without regard to race, religion, gender, sexual orientation, gender identity, ethnic affiliation, health, age, disability, or economic status. MGMA has concerns, however, that the proposed regulations will have unintended consequences ultimately impacting the timely delivery of necessary care, especially in the current inflationary environment. We offer the following suggestions to OCR:

- **Establish federal reimbursement opportunities or funding for practices administering language assistance services to limited English proficient (LEP) individuals.** The cost to implement translation and interpretation services and programs can be significant, particularly for small group practices and entities that treat high volumes of LEP individuals. Providing reimbursement would help offset the extra costs incurred to provide these services free of charge and appropriately reimburse group practices for the increased upfront expenses and physician and clinical staff time required to provide these services.

- **Finalize the proposal to permit patients to “opt-out” of receiving the annual communications.** MGMA believes that this approach will ensure that patients have access to the appropriate information about the availability of LEP services and nondiscrimination protections, while alleviating the unnecessary burden of providing additional paperwork to patients that do not require ongoing notices.
- **Not finalize the requirement to require every practice to identify a Section 1557 Coordinator and instead encourage practices to approach Section 1557 protections from a collaborative perspective** in which every member of the practice, including those providing clinical care and those providing administrative support, take an active role in ensuring that nondiscrimination protections are upheld and carried out.

Reimbursement for Translation Services

Following the 2020 regulations, MGMA provided OCR with [recommendations](#) to establish a payment mechanism to reimburse for the cost of providing translation services to LEP individuals. MGMA reiterates the need to quickly establish payment for these services. The cost to implement translation and interpretation services and programs can be significant, particularly for small group practices and entities that treat high volumes of LEP individuals. When using a face-to-face interpretation service, costs may range from \$50-\$190 per hour and may include a minimum time requirement and/or transportation fee. These fees are unsustainable and are jeopardizing access to care for vulnerable patient populations.

MGMA again urges OCR and HHS to expeditiously establish a direct reimbursement mechanism under Medicare to provide payment for these critical support services. LEP individuals are unable to receive appropriate care without the appropriate language assistance services or auxiliary aids, and as such, these services should be considered as part of the medical care LEP beneficiaries receive. As the largest payer of healthcare services in the country, the Centers for Medicare & Medicaid Services (CMS) is able to influence policies adopted by commercial payers and Medicare Advantage plans and establishing reimbursement at the federal level may set in motion reimbursement opportunities across multiple payers. While MGMA and our members are committed to ensuring patients retain access to these services, it is equally as critical to provide proper reimbursement to prevent practices from absorbing the high cost of providing these supportive services.

Notice of Availability

MGMA supports and appreciates OCR and HHS’ pursuit to empower all patients by ensuring those who are LEP individuals are aware of available translation services. However, we are concerned that the proposal to require physician practices to provide translations in 15 different languages will result in unintended consequences. OCR proposes to provide the 15 most common non-English languages spoken by LEP individuals for each state and territory, without considering that geographic areas within the state differ drastically in which languages are most common. MGMA encourages OCR and HHS to provide a more flexible alternative, that focuses on the languages actually spoken within the community.

To that end, we urge the agency to finalize the proposal to permit patients to “opt-out” of receiving the annual communications. MGMA believes that this approach will ensure that patients have access to the appropriate information about the availability of LEP services and nondiscrimination protections, while alleviating the unnecessary burden of providing additional paperwork to patients that do not require ongoing notices. OCR seeks further comment on whether or not it would be appropriate to only require such notices if there is a significant LEP patient population within the geographic region. MGMA supports such a proposal

to provide additional flexibility for practices that are not providing care to LEP patients, permitting them to redistribute the time and resources that would otherwise be required to provide continued notices to patients that do not require the language assistance services.

Reintroduction of the Section 1557 Coordinator

In this proposed rule, OCR proposes to require employers with greater than 15 employees to designate one or more employees as the “Section 1557 Coordinator” to be responsible for ensuring compliance with nondiscrimination policies and procedures. OCR seeks comments on the appropriateness of designating a specific employee with the oversight of the implementation of Section 1557 protections and whether smaller practices with fewer than 15 employees have successfully implemented and benefited from having such a coordinator.

MGMA believes that the enumerated responsibilities of the Section 1557 Coordinator undermine practices’ ability to leverage staff across functional areas. Again, while all MGMA member practices are committed to providing necessary language assistance services, the over prescriptive requirements in this proposed rule do not achieve greater levels of access, but simply add another administrative layer for practices. Smaller group practices rely even more fully on the team-based approach within their practices. Forcing strict requirements around each person’s role will likely result in delays and wasting of key resources.

We urge OCR and HHS to not finalize the requirement to require every practice to identify a Section 1557 Coordinator and instead encourage practices to approach Section 1557 protections from a collaborative perspective in which every member of the practice, including those providing clinical care and those providing administrative support, take an active role in ensuring that nondiscrimination protections are upheld and carried out.

Conclusion

MGMA appreciates the continued focus to ensure LEP individuals have access to necessary and critical language support services, but urges OCR and HHS to consider our recommendations to ensure all patients have access to timely and high-quality care. We appreciate the opportunity to share our comments on this important issue. Should you have any questions, please contact Claire Ernst at cernst@mgma.org or (202) 293-2350.

Sincerely,

/s/

Anders Gilberg, MGA
Senior Vice President, Government Affairs
Medical Group Management Association