



NATIONAL ASSOCIATION OF
School Psychologists

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Sent via Electronic Submission at <https://www.regulations.gov>

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

RE: HHS Docket No. HHS-OCR-2019-0007, RIN 0945-AA11, Comments in Response to Proposed Rule: Nondiscrimination in Health and Health Education Programs or Activities

Dear Mr. Severino:

The National Association of School Psychologists (NASP) submits the following comments in response to the Department of Health and Human Services' proposed regulation titled "Nondiscrimination in Health and Health Education Programs or Activities." NASP represents 25,000 school psychologists who work with students, parents, teachers, administrators, and communities to ensure students have the necessary supports needed to thrive at school, at home, and in life. Our members also provide a variety of school-based mental and physical health services, including prevention, early identification, and intervention services that remove barriers to learning and assist students in becoming effective learners and productive citizens. We serve *all* students who are present in our nation's schools, including LGBTQ+ students and students with disabilities.

NASP has a long history of advocating for the safety and well-being of students. We believe that the civil rights of LGBTQ+ students are protected as part of the U.S. public schools' obligations under Title IX of the Education Amendments of 1972, and we respect a person's right to express gender identity, the right to modify gender expression when necessary, and the right to have their gender identity affirmed and acknowledged. Our position is consistent with all major medical, mental health, and education organizations. School psychologists additionally work to assess, intervene, and provide and coordinate services for students with disabilities so they can be successful at home and in the classroom. We are concerned that some of the provisions proposed in this rule will have a detrimental effect on people in both of these groups.

NASP supports policies that ensure all children and youth have access to the supports and services they need to be successful. Giving children access to healthcare programs leads to higher educational outcomes, makes them more employable, and allows them to be productive contributors to American society. As such, we strongly oppose the proposed rule, as we believe it will have a profoundly negative effect on youth who are LGBTQ+ and/or disabled, and their families. Specifically, we are concerned that the proposed rules will threaten patients who are LGBTQ+ and/or disabled and their families' access to health care and coverage through direct discrimination by limiting the number of covered entities. In addition, the rules may create confusion regarding individual rights due to eliminating notice requirements, and will further eliminate accountability for discriminatory practices. Due to these concerns, we urge the HHS to withdraw it.

Section 1557 of the Affordable Care Act (ACA) is critical, as people with disabilities and LGBTQ+ individuals, particularly those who are transgender, are routinely discriminated against in the provision of health care. Simply put, there is no reason to reopen a rule that is working as it was intended – including the definition of a covered entity.

The language that currently exists is clear and sufficient in enforcing what was intended in the enactment of Section 1557: to protect the civil rights of those who are a part of a protected class.

The rule has been particularly crucial in promoting equal access for LGBTQ+ patients so they can access the necessary care that they may require. By eliminating the specific protections on the basis of sex, which has been interpreted to include gender identity and sexual orientation, insurers may choose to not cover or impose a higher cost-sharing burden to LGBTQ+ patients, exacerbating the health disparities that LGBTQ+ people already experience. The changes would further allow insurers to choose to not cover gender transition services and other medically necessary procedures that do not align with a person's sex at birth. As an organization with members who provide care to gender diverse students and LGBTQ+ families on a regular basis, we find these provisions deeply troubling and completely unnecessary.

The current rule's notice requirements, which require covered entities to notify beneficiaries of their rights under Section 1557, the discrimination requirements, and the services available to them (including interpreters, auxiliary aids, and language assistance) have only helped disadvantaged Americans access care and understand their rights under law since its implementation. Additionally, the provision allowing individuals to sue directly in federal court when discriminated against under Section 1557 gives further credence and defense to individuals who already face barriers to care. There is no good reason to alter or remove these critical provisions. These proposed rules will hurt children and families by further concealing the rights that are granted to them under current federal law and regulation.

We further comment to discourage the proposed exemption from the requirement to provide auxiliary aids and services to individuals with impaired sensory, manual or speaking skills for covered entities with fewer than 15 employees. This constitutes discrimination against a disadvantaged community and would create a significant barrier to access for people with disabilities that could deter them from being able to access the care they need.

NASP supports public policy that increases, not hinders, child and family access to comprehensive healthcare. Many of our nation's LGBTQ+ youth access critical health and mental health care that is needed to be successful in school and in life. This proposed rule takes away some of the critical protections for vulnerable youth who are disabled and LGBTQ+ and diverse families, who already have a difficult time accessing care – ultimately producing a direct and harmful effect on their wellbeing and mental health. We urge you to withdraw this proposed rule in its entirety.

Sincerely,



Kathleen Minke, PhD
Executive Director