



October 3, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

**Re: Docket ID: HHS-OS-2022-0012, Nondiscrimination in Health Programs and Activities
[RIN 0945-AA17]**

Dear Secretary Becerra:

The American Academy of PAs (AAPA), on behalf of the more than 159,000 PAs (physician associates/assistants) throughout the United States, appreciates the opportunity to comment on the Department of Health and Human Services' (HHS) proposed rule to reinstate certain regulatory protections against discrimination in Section 1557 of the Affordable Care Act (ACA). Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability under any health program or activity that receives federal financial assistance, or under any program or activity that is administered by an executive agency or by an entity established under title I of the ACA.

The PA profession is committed to respecting the values of all individuals irrespective of race, ethnicity, culture, faith, sex, gender identity or expression and sexual orientation. PAs continue to support the concepts of diversity, inclusion and health equity, and advocate for the elimination of care disparities for all patients. It is within that context that we provide comments on certain provisions of the proposed rule.

Application to Medicare Part B Providers

HHS proposes to alter its current position and begin to treat Medicare Part B payments/reimbursement as Federal financial assistance to the health professionals and suppliers to whom those funds are directed. This policy change would authorize the agency to apply Section 1557 protections against discrimination to Medicare-enrolled Part B health professionals such as PAs, physicians and other professionals.

AAPA supports the HHS intent to apply Section 1557's intended statutory scope to federally-conducted or federally-funded health care programs, such as Medicare and Medicaid, Marketplace issuers and plans, and private health plans and insurers, if health professionals participating in those programs receive any federal financial payments.

Discrimination in the delivery of medical care directly interferes with patient access to quality and equitable care. The ACA's broad purpose was to expand access to affordable quality health care for as many people as

possible. To do so effectively, the provisions of Section 1557 must extend to the entire network of private and public health care entities and the health professionals who work for and in those entities.

It should be noted that the proposed rule, if finalized, would not require covered entities to provide services that are outside of their area of specialty or if they have a legitimate, nondiscriminatory reason for denying or limiting care, including when the covered entity reasonably determines that the service is not clinically appropriate for that patient. However, a belief that gender-affirming care can never be beneficial is not an appropriate basis for asserting that a health service is not clinically appropriate.

Application to Telehealth and Clinical Algorithms

AAPA also supports provisions in the proposed rule to prohibit covered entities from discrimination in the delivery of telehealth services and through the use of clinical algorithms in health care decision making. As the delivery of telehealth services have experienced dramatic growth over the past 24-30 months, it is important to extend appropriate anti-discrimination protections to patients to ensure equity and fairness in the provision of medical services delivered virtually.

Regarding clinical algorithms, we know that the data and clinical assumptions used to develop some algorithms are often biased and have led to medical decision making and treatment that produced inequalities for people of color within our health care system. Studies have demonstrated that risk-prediction algorithms led to Black patients receiving less quality care than their non-Black counterparts due to the use of flawed algorithms.¹ While we support the application of anti-discrimination protections regarding the use of clinically algorithms, we would caution that our comments not be construed to assume that the use of all clinical algorithms are inherently discriminatory. Clinical algorithms used to identify and respond to legitimate, unbiased differences in the health status of patient populations may be useful in determining the need for: 1) expanded patient education and awareness, 2) increased health screenings, and 3) additional health services and resources. When algorithms are utilized, it is essential that they be developed with a high degree of transparency that incorporates objective data, unbiased analysis and the input of both patients and health professionals who are representative of, and knowledgeable about, underserved patients and patient populations of color.

Application to Insurers

In the rule, HHS proposes specific restrictions for covered entities that provide or administer health insurance coverage or other health-related coverage that receives federal financial assistance. Examples of covered entities subject to this requirement include health insurance issuers, sponsors of group health plans, Medicare Advantage organizations, Medicare Part D plan sponsors, Medicaid managed care organizations, pharmacy benefit managers and certain third-party administrators. AAPA supports the inclusion of these entities into the category of “covered entities” to ensure consistent implementation of Section 1557 protections against discrimination.

¹ <https://www.scientificamerican.com/article/racial-bias-found-in-a-major-health-care-risk-algorithm/>

Thank you for the opportunity to provide comments on Section 1557 protections against discrimination. AAPA welcomes further discussion with HHS regarding these issues. For any questions you may have please do not hesitate to contact me at michael@aapa.org.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Powe". The signature is written in a cursive style with a large initial 'M' and 'P'.

Michael L. Powe, Vice President
Reimbursement and Professional Advocacy