



# CHCANYS

Community Health Care Association of New York State

August 12, 2019

US Department of Health and Human Services  
Office for Civil Rights  
Hubert H. Humphrey Building, Room 509F  
200 Independence Ave. SW  
Washington, DC 20201  
Attn: Section 1557 NPRM RIN 0945-AA11

*Submitted electronically via [www.regulations.gov](http://www.regulations.gov)*

**RE: Comments on the “Nondiscrimination in Health and Health Education Programs or Activities” Proposed Rule**

Dear Director Severino:

The Community Health Care Association of New York State (CHCANYS) would like to take the opportunity to comment on proposed rule: Nondiscrimination in Health and Health Education Programs, which we oppose.

CHCANYS is the Primary Care Association for New York’s federally-qualified health centers (FQHCs), operating as an advocate and voice for FQHCs across the State. New York’s FQHCs are non-profit, community run health centers located in medically underserved areas, providing comprehensive primary care, including reproductive health services, to over 2.3 million patients annually. By mission and in statute, FQHCs serve everyone – regardless of insurance status or ability to pay. Many FQHCs have become bastions of hope, trust, and quality health care for everyone, including gender nonconforming individuals and members of the Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual (LGBTQIA+) community. Below, we have outlined our opposition to the proposed rule.

**The proposed rule will threaten LGBTQIA+ patients’ ability to access health care and insurance coverage.**

The proposed rule promotes discrimination against LGBTQIA+ patients. Health care providers would be enabled to deny care to individuals on the basis of their sexual preference or gender identity, and insurance companies would be permitted to deny coverage for necessary health care services. Although New York has implemented protections for LGBTQIA+ individuals written into state law, the proposed rule will likely cause confusion for both providers and patients and could dissuade individuals from seeking care despite those protections. Ultimately, the inability to access care will amplify the existing health disparities experienced by the LGBTQIA+ community, including higher rates of mental illness and chronic disease.

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## **The proposed rule will stagnate gains made in HIV/AIDS care and treatment.**

The rule will hinder individuals' ability to receive treatment for chronic conditions, like the human immunodeficiency virus (HIV), which can be life threatening without proper treatment. Section 1557 of the Affordable Care Act and the 2016 implementing regulations prohibiting health insurance companies from discriminating through marketing practices and benefit design have been especially important for individuals with HIV/AIDS, who experienced arbitrarily high drug formularies or even lack of necessary covered services within their health plans prior to the regulations. The implications of this proposed rule are in direct contrast to the Trump Administration's stated goal of ending the HIV epidemic by 2030.

## **The proposed rule will impede access to reproductive health care.**

By attempting to eliminate protections against discrimination on the basis of termination of pregnancy, the proposed rule seeks to allow health care providers to discriminate against individuals who have had an abortion and could result in patients being denied critical care - including miscarriage management. In emergency situations where the choice of a health care provider is limited, it is easy to imagine a scenario in which an individual is denied or delayed life-saving care due to a provider's religious beliefs or willingness to provide care.

By narrowing the scope of covered entities, the proposed rule would allow more insurance plans to refuse to cover reproductive health services, such as pregnancy care or fertility coverage. All individuals, regardless of gender identity or sexual orientation, should have the right to access reproductive health care and coverage, including abortion, contraception, pregnancy care, and fertility services, free from discrimination.

## **The proposed rule will create barriers to accessing care for individuals with limited English proficiency.**

Through weakening the requirements for serving individuals with limited English proficiency (LEP), it will become more difficult for individuals with LEP to access health care or understand their health care rights under federal law. Many individuals may not know about their rights, how to request language services, or how to file a complaint if they face discrimination. Communication between providers and LEP individuals is critical for the purposes of diagnosis, treatment, medication adherence, and the ability to obtain informed consent. In extreme instances, inability to communicate between providers and LEP patients could result in preventable deaths. By eliminating tagline requirements and notice standards, the proposed rule will undermine access to health care, health insurance, and legal redress for vulnerable communities.

## **CHCANYS urges the Department of Health and Human Services (HHS) to withdraw the proposed rule.**

Please don't hesitate to reach out to Marie Mongeon, Policy Analyst with any follow up questions:  
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