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UPMC Health Plan

Legal Services Department

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The Honorable Roger Severino
Director
U.S. Department of Health and Human Services
Office for Civil Rights
Attention: Section 1557 NPRM, RIN 0945-AA11
Hubert H. Humphrey Building
Room 509F
200 Independence Avenue, S.W.
Washington, DC 20201

Submitted electronically via <https://www.regulations.gov>

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

UPMC Health Plan and the integrated companies of the UPMC Insurance Services Division (collectively, "UPMC") are pleased to submit the following comments in response to the Notice of Proposed Rule Making (NPRM) from the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) titled "*Nondiscrimination in Health and Health Education Programs or Activities*," as published in the Federal Register at 84 FR 27846.

UPMC offers a wide range of commercial group and individual, Medicare, Medicaid, CHIP, MLTSS, EAP, workers' compensation and ancillary coverage products to individuals, families, and employers throughout Pennsylvania. As the payer in one of the nation's largest integrated health care delivery and financing systems, UPMC offers consumers access to world class medical care through a variety of affordable, high quality coverage options designed to meet their needs in every stage of life. Since beginning operations in 1996, UPMC has been recognized for its dedication to quality and the provision of outstanding customer service across its product lines, which collectively provide commercial or government programs coverage to more than 3 million members.

Elimination of Non-Discrimination Protections

The NPRM proposes substantial revisions to existing Section 1557 regulations that would, if adopted, eliminate current protections from discrimination based on gender identity, sexual orientation and pregnancy status. UPMC believes that every individual deserves to have equitable access to patient-centered, high-quality coverage and care

that is provided with dignity and respect. Neither health care coverage nor the availability of health care should be contingent upon sexual orientation, gender identity, gender expression, or transgender status. In our view, these principles apply equally and without qualification to any individual who identifies as transgender or non-binary, who is intersex, or whose personal identity as male, female, or someone else otherwise does not conform to a binary gender definition determined by perceived birth anatomy.

The proposed elimination of regulatory language that expressly prohibits discrimination on the basis of gender identity, sex stereotyping, or pregnancy status is wholly inconsistent with the foregoing principles. Moreover, the current regulatory protections finalized in 2016 have been vital to furthering equality in health and access to health care throughout the communities that we serve. UPMC opposes any elimination or weakening of these critical existing protections and asks that OCR withdraw these changes from future rulemaking.

Required Notices and Taglines

The NPRM also proposes to eliminate requirements for distribution of non-discrimination notices and tagline translation notices in at least fifteen languages when “significant communications” are sent to patients and customers. UPMC is committed to providing our beneficiaries with access to care and coverage of the highest quality, including through the provision of language support for beneficiaries with limited-English-proficiency (LEP). However, the current regulations requiring the distribution of form non-discrimination and tagline translation notices are overly broad and have imposed significant cost and administrative burden on health plans without tangible benefits for LEP members. UPMC believes that health plans are in the best position to understand the composition of their membership and to provide that membership with appropriate support so that members are fully aware of their rights and benefits under the terms of their coverage. As each health plan’s membership composition is unique and that composition can vary between geographies for a given plan, a blanket requirement for all plans to repeatedly distribute form notices does not account for the fact that many members can be better served through an alternative, tailored communication. Eliminating the current form-based notice and tagline requirements, while maintaining fundamental standards to ensure appropriate communication and resources are made available for LEP members, will allow health plans to better serve their increasingly membership by providing individual LEP members with services that are more effectively tailored to their individual needs and preferences. UPMC supports OCR’s proposal to eliminate the requirement of distributing prescribed non-discrimination notices and tagline translation notices in at least fifteen languages with all “significant communications,” and to instead adopt more flexible, beneficiary-centric standards that will permit plans to tailor these types of communications to the individual needs of their LEP members.

In addition to OCR's existing requirements for notice and tagline distribution, many issuers must satisfy and monitor separate but similar compliance requirements for Qualified Health Plans (QHPs), Medicare Advantage, and Medicaid. As with any regulatory requirement applicable to member service or communication, administrative costs and burdens are most efficiently absorbed through the adoption of uniform policies and procedures when permitted. Such an approach also reduces the likelihood of errors and creates a valued consistent experience for the millions of members who move between commercial or government programs coverage in a given year. To this end, as OCR considers its approach to notice and tagline requirements for the final rule, we also encourage the Office to coordinate its ongoing policy evaluation with CCIIO and CMS in consideration of potentially similar future changes to LEP-related requirements in the coverage programs under their oversight.

We thank OCR for affording issuers and other stakeholders the opportunity to provide input on the Agency's proposed revisions to the current Section 1557 regulations. We appreciate your consideration of these comments and look forward to continued collaboration with OCR in the future.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "C.B. Wallace".

Caleb B. Wallace, Esq., MPH
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UPMC Health Plan