



OFFICE OF THE EXECUTIVE VICE PRESIDENT  
UC HEALTH

OFFICE OF THE PRESIDENT  
1111 Broadway, Suite 1400  
Oakland, California 94607-5200  
(510) 987-9071 Fax (510) 835-2346

August 12, 2019

Attn: Mr. Luben Montoya  
Supervisory Civil Rights Analyst  
Office for Civil Rights  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW, Room 509F  
Washington, DC 20201

**Re: HHS-OCR-2019-0007-0001, Nondiscrimination in Health and Health Education Programs or Activities**

Dear Mr. Montoya,

The University of California Health system (UC Health) appreciates this opportunity to comment on the Department of Health and Human Services' (HHS) proposed rule concerning the Affordable Care Act's (ACA) Section 1557 implementing regulations, including its anti-discrimination provisions. If finalized, this proposed rule, among other things, would narrow the scope of Section 1557 anti-discrimination regulatory protections by eliminating gender identity as a prohibited basis for discrimination. We fear that this rule could have the adverse consequence of diminishing and/or chilling lesbian, gay, bisexual, transgender, and questioning (LGBTQ) individuals' access to medical care.

UC Health operates the nation's largest health sciences instructional program, as it includes 18 health professional schools and five academic medical centers comprised of twelve public hospitals located at the Davis, Irvine, Los Angeles, San Diego, and San Francisco campuses. It trains nearly half of the medical students and medical residents in California. UC Health is a trusted, high-quality safety net, tertiary, and quaternary care provider committed to diversity. It embraces its public mission, which includes delivering high level care to anyone who walks through its facilities' doors. UC Health's academic medical centers have earned the distinction of being named "Leaders in LGBTQ Healthcare Equity."<sup>1</sup> This distinction recognizes UC Health medical centers meeting key criteria for equitable care, including LGBTQ patient-centered care, patient services and support, employee benefits and policies, and patient and community engagement. UC Health medical centers play a leading role in researching and addressing health care disparities domestically and internationally.

<sup>1</sup> UC Davis, UCLA, UC San Diego and UC San Francisco medical centers all earned top marks for healthcare delivery to LGBTQ persons, being named "Leaders in LGBTQ Healthcare Equity" by the Human Rights Campaign Foundation in 2018.

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HHS's proposed rule would eliminate the regulatory definition for "on the basis of sex" and, within this, a definition for "gender identity," as well as various enforcement-related provisions, including protections against intimidation and retaliation. If finalized, health care providers would no longer be required to post information about the ACA's Section 1557 anti-discrimination protections within significant publications and communications and physical locations where they interact with the public and on their websites. Current requirements to post this information are important signals to LGBTQ individuals that they are welcome.

Additionally, HHS acknowledges that "an unknown number of persons are likely not aware of their right to file complaints with [HHS's] Office for Civil Rights and some unknown subset of this population may suffer remediable grievances, but will not complain to OCR absent notices informing them of the process."

UC Health is concerned that HHS's proposed rule could have a chilling effect on LGBTQ individuals' pursuit of, and access to, health care. The proposed rule's elimination of nondiscrimination protections based on gender identity and association could leave many individuals without protections against bias or outright hostility in seeking care and drive transgender patients away from seeking the care they need due to fear of discrimination. The consequence, in many cases, will be the provision of much more costly treatment at a later date. In addition, the proposed rule fails to account for benefits that accrue to patients and their insurers under the existing Section 1557 regulations.

UC Health appreciates that this proposed rule does not attempt to impose a ceiling on how protections against gender and sex discrimination may be observed by States. While California has state laws that prohibit discrimination on the basis of sexual orientation and sex (including gender identity and gender expression), UC Health is concerned about the impact of the proposed rule on the health and welfare of individuals in other states that do not yet have similar protections.

As HHS considers additional regulatory action on Section 1557, UC Health encourages careful attention to the potential implications of eliminating components of the original 2016 regulation defining Section 1557 anti-discrimination protections. LGBTQ individuals merit receiving the same respect and dignity from their health care providers as non-LGBTQ individuals.

Thank you for your attention to our concerns with this proposed rule. Please refer any questions you may have about our comments to UC Office of Federal Governmental Relations Director of Health and Clinical Affairs, Julie Clements, J.D., M.P.P. ([\(Julie.Clements@ucdc.edu\)](mailto:Julie.Clements@ucdc.edu)/(202)-974-6309).

Sincerely,



John Stobo, MD  
Executive Vice President