



AMERICA'S ESSENTIAL HOSPITALS

October 3, 2022

Lisa Pino
Director
Office for Civil Rights
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Ave. SW
Washington, DC 20201

RE: Nondiscrimination in Health Programs and Activities

Dear Director Pino:

America's Essential Hospitals appreciates the opportunity to comment on the Department of Health and Human Services' (HHS) proposed rule on Nondiscrimination in Health Programs and Activities. We support the reinstated and enhanced nondiscrimination protections for lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) patients and individuals with limited English proficiency (LEP), as well as patients who need auxiliary aids and services.

America's Essential Hospitals is the leading champion for hospitals and health systems dedicated to high-quality care for all. Our more than 300 member hospitals fill a vital role in their communities. They provide a disproportionate share of the nation's uncompensated care, and three-quarters of their patients are uninsured or covered by Medicare or Medicaid. Essential hospitals provide state-of-the-art, patient-centered care while operating on margins one-third that of other hospitals—2.9 percent on average compared with 8.8 percent for all hospitals nationwide.¹ Essential hospitals' commitment to serving all people, regardless of income or insurance status, and their diverse patient mix pose unique challenges. A disproportionate number of their patients face socioeconomic and sociodemographic challenges to accessing health care, including poverty, homelessness, language barriers, and low health literacy. Ten million people in communities served by essential hospitals have limited access to healthy food, and nearly 23 million live below the poverty line.²

Essential hospitals are uniquely situated to address these social determinants of health and are committed to serving all patients. Given essential hospitals' commitment to providing high-quality, patient-centered care to all patients, we support establishing a federal nondiscrimination standard and nondiscrimination training for all health care workers.

¹ Clark D, Roberson B, Ramiah K. *Essential Data: Our Hospitals, Our Patients—Results of America's Essential Hospitals 2019 Annual Member Characteristics Survey*. America's Essential Hospitals. May 2021. <https://essentialdata.info>. Accessed August 1, 2022.

² Ibid.

1. HHS should finalize nondiscrimination protections to establish a federal nondiscrimination standard.

The proposed rule aims to reinstate and expand nondiscrimination protections in Section 1557 of the Affordable Care Act (ACA), which 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 is administered by an executive agency under Title I of the Act. The rule will clarify the definition of “on the basis of sex” to include discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. It also will reinstate protections for LEP individuals and adds protections for those who need auxiliary aids and services. America’s Essential Hospitals fully supports these nondiscrimination protections.

HHS should finalize these rules to ensure LGBTQ patients, individuals with LEP, and those who need auxiliary aids receive the same nondiscrimination protections in health care as other patients. This federal policy would reinforce equity of access to care for all patients, regardless of the patients’ sociodemographic characteristics. Further, these protections will drive health equity, eliminate gaps in care, and improve health outcomes. **HHS must restore and strengthen nondiscrimination protections for patients and codify a federal nondiscrimination standard in health programs.**

2. HHS should remain flexible in its nondiscrimination training requirements.

The proposed rule requires covered entities to train relevant employees in their health programs and activities on Section 1557 policies and procedures. Essential hospitals understand the importance of preventing discrimination in health care. Research has shown that discrimination against individuals seeking health care can lead to lower quality care and worse health outcomes. Equitable access to health services is essential to better care, healthier individuals and populations, and lower costs. Given their patient populations, essential hospitals require nondiscrimination training for their staff.

America’s Essential Hospitals appreciates the flexibility in the proposed training requirements, allowing essential hospitals to provide nondiscrimination training to relevant staff and training that best fits their organizational needs. We urge HHS to approve the continuation of existing trainings, as appropriate, if the trainings meet HHS’ criteria. Essential hospitals update their nondiscrimination policies and procedures regularly to best serve their community, so material changes to these policies are regularly addressed. This will allow essential hospitals to maintain their current training schedules and avoid disruptions in patient care. Hospital staff must be trained and updated regularly on numerous issues, such as patient privacy protections, new technologies, emerging health threats, and nondiscrimination protections, plus, many staff require continuing education to maintain licensure. Allowing health care providers to incorporate new Section 1557 training material gradually into regular nondiscrimination training will reduce administrative burden and avoid further disruptions in care.

We support the development of nondiscrimination policies and training to promote the provision of equitable care, elimination of disparities, and improvement in health outcomes for all patients.

America's Essential Hospitals appreciates the opportunity to submit these comments. If you have questions, please contact Senior Director of Policy Erin O'Malley at 202-585-0127 or eomalley@essentialhospitals.org.

Sincerely,

Bruce Siegel, MD, MPH
President and CEO