



August 13, 2019

The Honorable Alex Azar
Secretary, Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

RE: RIN 0945-AA11

Submitted Electronically via www.regulations.gov

Dear Secretary Azar:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. We appreciate the opportunity to provide comments in response to the proposed rule titled "Nondiscrimination in Health and Health Education Programs or Activities" published in the *Federal Register* on June 14, 2019.

The members of NAHU work daily to help millions of people and employers of all sizes purchase administer and utilize health insurance coverage. As such, we are pleased to have the opportunity to provide you with information about the proposed changes to the existing nondiscrimination regulations governing Section 1557 of the Affordable Care Act. It is our goal to share how we believe the proposed changes will affect covered individuals and businesses nationwide.

As part of the proposed rule, the Department of Health and Human Services' Office of Civil Rights would repeal the definition of "on the basis of sex" in the existing Section 1557 final rule. The impact would be a complete repeal of the final rule's protections against discrimination in plan design, coverage, cost-sharing and marketing relative to gender, including gender identity, sexual orientation and pregnancy status. Also, the proposed rule would eliminate existing nondiscrimination requirements for many federal health programs beyond the scope of Section 1557. NAHU strongly supports the rights of all Americans to obtain quality health insurance coverage regardless of race, color, national origin, sex, gender identity, sexual orientation, medical status, age and disability. Our members do not have any issue with the current nondiscrimination requirements and believe that their elimination could lead to some very undesirable behavior in the market. NAHU strongly encourages HHS to consider alternative ways to protect religious freedoms and control costs without completely removing existing nondiscrimination protections and definitions in a final rule.

Additionally, in the proposed rule, HHS asks for comment on the effective date of the repeal of the gender identity benefit design provisions. If finalized, we request that the effective date be no sooner than the first day of the plan year beginning on or after January 1, 2021. NAHU members report that the vast majority of covered entities have already finalized their plan designs for 2020. They typically do so six to 12 months in advance. Requiring plans to make changes for 2020 this fall or requiring off-plan-cycle changes would be confusing, burdensome and costly for employers, health insurers and employees alike.



NAHU supports the changes in the proposed rule that would limit its scope to programs that get HHS funding and healthcare services. However, we believe that any final rule should be accompanied by explicit applicability guidance. That way, all employers and other covered entities will be able to clearly determine if any part of the final rule impacts their health plan or business.

NAHU supports the proposed elimination of the current Section 1557 notice and tagline requirements. Our members observe that few consumers read and absorb the content of these notices, particularly in the case of consumers with limited English proficiency. Furthermore, the timing and distribution requirements related to the existing Section 1557 notice rules do not fully align with other group health plan notice requirements. However, the proposed rule merely eliminates the notice and tagline requirements. It does not replace them with more effective means of communication to ensure consumers do not miss out on necessary healthcare services. NAHU strongly encourages HHS and OCR to review all notice requirements related to group health insurance plans and health insurance consumers generally. We suggest that you focus on content, delivery frequency and methodologies, and overall consumer health literacy. NAHU members and their clients would welcome broad-scale improvements that take into account the cost and administrative burden on employers and insurers, but also focus on ensuring notices are truly meaningful to consumers.

Finally, NAHU has concerns about the complete elimination of consumer rights and grievance procedures relative to a private right of action related to Section 1557's nondiscrimination provisions. However, our association would support retaining existing grievance processes coupled with a requirement that people exhaust all of these administrative methods before initiating private rights of action.

The members of NAHU are grateful for the opportunity to provide information to you about the proposed changes to Section 1557 of the ACA. If you have any questions about our comments, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, which appears to read "Janet Trautwein". The signature is fluid and cursive, with a large initial "J".

Janet Stokes Trautwein
Chief Executive Officer
National Association of Health Underwriters