



September 29, 2022

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

Submitted electronically via regulations.gov

Re: RIN Number 0945-AA17, Nondiscrimination in Health Programs and Activities

Dear Secretary Becerra:

The Academy of Managed Care Pharmacy (AMCP) thanks the Department of Health and Human Services (HHS) for the opportunity to provide comments in response to the proposed rule titled "Nondiscrimination in Health Programs and Activities."

AMCP is the nation's leading professional association dedicated to increasing patient access to affordable medicines, improving health outcomes, and ensuring the wise use of healthcare dollars. Through evidence and value-based strategies and practices, AMCP's nearly 8,000 pharmacists, physicians, nurses, and other practitioners manage medication therapies for the 270 million Americans served by health plans, pharmacy benefit management firms, emerging care models, and government health programs.

AMCP applauds the Administration's goal of ensuring that everyone, regardless of their race, color, national origin, sex, age, or disability, has access to quality health care coverage without being subject to discrimination. Discrimination in health care contributes directly to adverse health outcomes for a variety of populations, including women,¹ LGBTQ+ individuals,² and individuals with limited English proficiency.³ It is important to note that "health disparities do not exist in isolation, but are part of a reciprocal and complex web of problems associated with inequality and inequity."⁴ Addressing health disparities is by necessity also complex⁵ and requires thoughtful yet decisive action.

¹ See, e.g., <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-019-0729-2>

² <https://aspe.hhs.gov/sites/default/files/2021-07/lgbt-health-ib.pdf>;
<https://www.medicalnewstoday.com/articles/gender-bias-in-healthcare#examples>

³ <https://journalofethics.ama-assn.org/article/language-based-inequity-health-care-who-poor-historian/2017-03>

⁴ <https://nam.edu/health-inequities-social-determinants-and-intersectionality/>

⁵ Because of the complexity of health disparities, use of a common terminology promotes understanding when engaging in meaningful dialogue and identifying concrete actions our profession can take. To that end, AMCP has

AMCP's strategic priorities include a commitment to optimizing patients' health outcomes, addressing barriers to access to care, and addressing health disparities.⁶ For this reason, AMCP strongly supports the proposed rule's specificity regarding the definition of discrimination on the basis of sex, which would explicitly prohibit discrimination on the basis of sex stereotypes, sex characteristics including intersex traits, pregnancy or related conditions, sexual orientation, and gender identity, consistent with *Bostock*⁷ and related case law. The LGBTQ+ population has a higher prevalence of physical and mental health problems, such as HIV and depression as well as lower self-reported health-related quality of life.⁸ Despite this, the 2020 Final Rule removed protections for LGBTQ+ individuals. Reinstating these protections is vital to ensure access to needed health care for all and is an important first step in reducing health disparities. AMCP encourages HHS to finalize these provisions as proposed.

Meaningful access to care also requires addressing and removing language barriers. AMCP supports the proposal to require covered entities to provide language assistance for limited English proficient individuals, without charge, and to offer a qualified interpreter when oral interpretation is necessary as these requirements further remove barriers to access. Similarly, AMCP agrees with the proposal to require covered entities to send notices of nondiscrimination and notices of availability of language assistance services and auxiliary aids and services annually or on request, as well as posting them on the covered entity's website and in physical locations. AMCP encourages HHS to be mindful of the potential administrative burden of these requirements and offer covered entities additional flexibility to find innovative ways of addressing language barriers.

Again, AMCP commends HHS for its continued commitment to ensuring access to quality health care for all, and we appreciate the opportunity to provide comments on the proposed rule. AMCP appreciates your consideration of the concerns outlined above and looks forward to continuing work on these issues with HHS. If you have any questions regarding AMCP's comments or would like further information, please contact Geni Tunstall at etunstall@amcp.org or (703) 705-9358.

Sincerely,



Susan A. Cantrell, RPh, CAE
Chief Executive Officer

compiled a glossary of terms meant to serve as a resource for improving communications among providers, patients, and caregivers. https://www.amcp.org/sites/default/files/2022-05/DEIGlossary_May2022.pdf

⁶ <https://www.amcp.org/about/about-amcp/amcp-strategic-priorities>

⁷ *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

⁸ National Academies of Sciences, Engineering, and Medicine 2022. *Measuring Sex, Gender Identity, and Sexual Orientation*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26424>.