



**AMERICAN
PSYCHOLOGICAL
ASSOCIATION**
SERVICES, INC.

September 30, 2022

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

U.S. Department of Health and Human Services
Office for Civil Rights
Attention: 1557 NPRM (RIN 0945-AA17)
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201.

On behalf of the American Psychological Association (APA)¹, I am pleased to submit the following response to the Notice of Proposed Rule Making (NPRM) -- [Nondiscrimination in Health Programs and Activities](#) -- concerning Section 1557 of the Affordable Care Act (ACA). The proposed rule implements Section 1557 which broadly prohibits discrimination on the basis of race, color, national origin, sex, age, and disability in certain health programs and activities. race, color, national origin, sex, age, and disability in certain health programs and activities. APA supports the Administration's efforts to strengthen enforcement of this ACA provision.

APA supported nondiscrimination protections in the ACA during the drafting process and consistently advocated for strong enforcement of Section 1557 since the law was enacted in 2010. We opposed the prior Administration's 2020 Section 1557 rule² which undermined enforcement by rescinding substantial portions of the 2016 final rule.³ APA is pleased to see that the current NPRM addresses concerns APA identified and documented in comments submitted to the Department of Health and Human Services (HHS) in 2019.⁴ The new proposed rule strengthens civil rights protections for patients and consumers in federally funded health programs and HHS programs. It affirms protections against discrimination on the

¹APA is the nation's largest scientific and professional nonprofit organization representing the discipline and profession of psychology, as well as over 133,000 members and affiliates who are clinicians, researchers, educators, consultants, and students in psychological science.

² 84 FR 27846

³ 81 FR 31375

⁴ APA. (2019, August 19). Comment submitted to the U.S. Department of Health and Human Services Office for Civil Rights on Attention: Section 1557 NPRM, RIN 0495-AA11. Concerns documented included: limiting scope of coverage/applicability; eliminating regulatory provisions defining the prohibition on discrimination based on sex to include gender identity, sex stereotypes and pregnancy status; eliminating the provision preventing health insurers from varying benefits in ways that discriminate against certain groups; eliminating specific health insurance coverage protections for transgender individuals; weakening protections that provide access to interpretation and translation services for individuals with limited English proficiency; deleting or weakening sections of the current regulations prohibiting discrimination against people with disabilities; and adopting extremely broad religious freedom and conscience exemptions for health care providers.



basis of sex, including sexual orientation and gender identity consistent with the U.S. Supreme Court's holding in *Bostock v. Clayton County*, and reiterates protections from discrimination for seeking reproductive health care services. It requires covered entities to train staff in providing language assistance services for individuals with limited English proficiency (LEP), and effective communication and reasonable modifications to policies and procedures for people with disabilities.

Summary of Key Points

The ACA's nondiscrimination requirements, Section 1557, are critical to ensuring the health and well-being of all communities. We make the recommendations below to further guarantee the robust implementation of this law, with a focus on discrimination and health equity, reproductive healthcare, and data collection.

- 1) Discrimination and Health Equity.** APA strongly supports more robust enforcement of Section 1557 as outlined in this NPRM because doing so would advance population health⁵ approach to treatment and improve health equity. Discrimination in health care settings is closely tied to behavioral health disparities observed in diverse populations. Individuals seeking either behavioral or physical healthcare experience discrimination throughout the system -- from obtaining insurance coverage to receiving a proper diagnosis and treatment. Even the perception of discrimination in healthcare settings has been shown to contribute to higher unmet needs for health care utilization, poor health, and health disparities among racial and ethnic minorities.⁶ An increase in discrimination will exacerbate existing disparities and harm the mental health and well-being of historically marginalized individuals and communities.
- 2) Reproductive Healthcare.** The NPRM clarifies the scope of Section 1557's protections against sex discrimination related to pregnancy or related conditions. This approach is critically important in the wake of the *Dobbs v. Jackson Women's Health Organizations* decision.⁷ The 2020 rule removed prior regulations that prohibited covered entities from discrimination based on pregnancy, false pregnancy, termination of pregnancy, and recovery from childbirth or related medical conditions, thereby opening women of childbearing age to high-risk medical and emotional situations. Thus, we encourage HHS to strengthen its approach to defining sex discrimination related to pregnancy or related conditions at § 92.101(a)(2) and throughout the regulatory text.

Reproductive justice, including abortion rights, can be understood as a human rights issue connected to social, structural, and cultural inequalities. Relying on psychological science, APA in 2022 again firmly denounced abortion restrictions and recommitted to advancing reproductive justice for childbearing individuals, especially for those from socially and economically marginalized

⁵ APA. (2022). [*Psychology's Role in Advancing Population Health*](#)

⁶ Lee, C., Ayers, S. L., & Kronenfeld, J. J. (2009). The association between perceived provider discrimination, healthcare utilization and health status in racial and ethnic minorities. *Ethnicity & disease*, 19(3), 330–337.

⁷ https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf



communities.⁸ APA compiled and used decades of psychological research in policy statements, amicus briefs and practice guidelines to demonstrate that people denied abortions are more likely to experience higher levels of anxiety, lower life satisfaction, and lower self-esteem compared with those who can obtain abortions.⁹ Further, research suggests that the inability to obtain an abortion increases the risk for domestic abuse among those who are forced to stay in contact with violent partners, putting them and their children at risk.¹⁰

The ability to control childbearing and to take advantage of educational and employment opportunities are often inextricably linked. Therefore, discrimination in access to all forms of reproductive health care can have devastating consequences across the lifespan, including worsening and/or leading to disparities in behavioral health outcomes. Restricting access to reproductive health care undermines the ability of women to attain the related rights of health, equality, and nondiscrimination in other sectors.

Further, restricting access to comprehensive and quality reproductive healthcare services is tied to disparities in health outcomes and persistent inequities in several reproductive health measures, including maternal health.¹¹ Longitudinal research shows that people restricted from abortions face increased life-threatening delivery complications, greater chronic pain, and economic insecurity.¹² APA supports the Administration's plan to advance data collection, standardization, transparency and research with respect to maternal health,¹³ and urges the Department to examine the connection between nondiscrimination in health care, civil rights compliance and maternal behavioral health outcomes.

In the preamble, HHS notes that although it does not propose restoring the 2016 Final Rule language, the protections still apply because of the underlying Title IX regulations. We agree that the Title IX definition applies but given the pervasive nature of discrimination related to termination of pregnancy, particularly post-*Dobbs*, we urge HHS to specifically include termination of pregnancy in this definition. Additionally, HHS does not define sex discrimination consistently in the proposed rule: it notes that sex discrimination includes “pregnancy or related conditions” at § 92.101(a)(2), but only “pregnancy” under § 92.101 and § 92.10. We urge HHS to be consistent throughout the final rule.

⁸ APA. (2022, February). *APA Resolution Affirming and Building on APA's History of Support for Reproductive Rights*. Washington, D.C. <https://www.apa.org/about/policy/resolution-reproductive-rights.pdf>

⁹ <https://www.apa.org/topics/abortion/>

¹⁰ Roberts SCM, Biggs MA, Chibber KS, Gould H, Rocca CH, Foster DG. Risk of violence from the man involved in the pregnancy after receiving or being denied an abortion. September 2014. *BMC Medicine*, 12:144

¹¹ Sutton, M. Y., Anachebe, N. F., Lee, R., & Skanes, H. (2021). Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020. *Obstetrics and gynecology*, 137(2), 225–233. <https://doi.org/10.1097/AOG.0000000000004224>

¹² APA, 2022, February.

¹³ Executive Office of the President. (2022, June). White House Blueprint for Addressing the Maternal Health Crisis. <https://www.whitehouse.gov/wp-content/uploads/2022/06/Maternal-Health-Blueprint.pdf>



Accordingly, APA recommends that HHS add abortion to the definition of prohibited sex discrimination at § 92.101(a)(2) as follows:

- “discrimination on the basis of sex includes, but is not limited to, discrimination on the basis of sex stereotypes; sex characteristics, including intersex traits; ***pregnancy or related conditions, including termination of pregnancy and transgender status.***”

3) Data Collection. Data is foundational to achieving any population-based behavioral health or health equity goal imaginable, as well as ensuring civil rights compliance by covered entities. Better national standards and uniform data collection practices could have an outsized impact on efforts to narrow health disparities. Yet complete data collection remains largely unavailable for many populations at greater risk of discrimination in healthcare settings and insurance coverage. HHS has an opportunity to enhance cross-agency data-sharing, analysis and reporting that are essential to the agency’s core public health functions. Such information can aid efforts to better understand the nexus between social determinants of health, civil rights compliance, and health equity. APA commends HHS for recognizing the critically important role demographic data plays in addressing discrimination and health disparities.¹⁴ However, we are concerned the final rule does not require covered entities to report disaggregated demographic data. The Department considered including such a provision, but instead chose to create a dynamic and responsive civil rights data collection structure through the Office of Civil Rights using existing authorities.¹⁵ We urge the Department to reconsider this decision. At minimum, the final rule should require disaggregated race, ethnicity, and disability data collection and reporting by covered entities. The Department should consult with these groups on effective strategies for ensuring the availability and dissemination of data that all agree is crucially needed to protect civil rights and achieve health equity.

Accordingly, APA recommends that HHS develop an action plan to enhance data collection relevant to effective Section 1557 enforcement that includes the following elements:

- Prioritization of meaningful engagement of external stakeholders, professional associations and members of communities that have experienced historic social and economic marginalization.
- Integration of behavioral health indicators and analysis into the newly established data collection.
- Collaboration with health equity offices across HHS, as well as with federal agencies responsible for safety net programs, to ensure adequate collection of data to inform policies that address underlying social determinants of health.

APA again thanks you for the opportunity to weigh in on this proposed rule and your consideration of this response. Please contact Leo Rennie at lrennie@apa.org if APA can provide any further information or

¹⁴ Fed. Reg. at 47856-7.

¹⁵ Page 47857



**AMERICAN
PSYCHOLOGICAL
ASSOCIATION**
SERVICES, INC.

analysis that would aid in the advancement of health equity and population-based behavioral health strategies.

Respectfully submitted,

Katherine B. McGuire
Chief Advocacy Officer