



August 13, 2019

Alex Azar  
Secretary  
Department of Health and Human Services  
Hubert H. Humphrey Building  
Room 509F  
200 Independence Avenue, SW.  
Washington, DC 20201

Re: RIN 0945-AA11

**Re: Nondiscrimination in Health and Health Education Programs or Activities**

Dear Secretary Azar:

On behalf of our 40,000 members, the American College of Emergency Physicians (ACEP) appreciates the opportunity to comment on a proposed rule relating to changes to Section 1557 of the Affordable Care Act (ACA), as it affects our practice of emergency medicine and the patients we serve.

**We strongly believe that discrimination in any form should be prohibited in health care, and therefore we object to this proposed rule and do not believe it should be finalized.** As written, it does not reflect nor allow for our moral and legal duty as emergency physicians to treat everyone who comes through our doors. Both by law<sup>1</sup> and by oath, emergency physicians must care for all patients seeking emergency medical treatment. Denial of emergency care or delay in providing emergency services on the basis of race, religion, sexual orientation, **gender identity**, ethnic background, social status, type of illness, or ability to pay, is unethical under our Code of Ethics as emergency physicians<sup>2</sup>.

**Background**

Section 1557 of the ACA 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. In 2016, the Department of Health and Human Services (HHS) finalized a regulation that defines “on the basis of sex” to include sex stereotyping, gender identity, and termination of pregnancy. Based on recent federal court action regarding the enforcement of this specific definition of discrimination, HHS has now

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<sup>1</sup> 42 U.S. Code § 1395dd - [Examination and treatment for emergency medical conditions and women in labor.](#)

<sup>2</sup> ACEP Code of Ethics for Emergency Physicians; Approved Jan 2017; <https://www.acep.org/clinical--practice-management/code-of-ethics-for-emergency-physicians>.

decided to remove gender identity and termination of pregnancy from the Section 1557 regulation. HHS also proposes to amend ten other regulations that had been issued by the Centers for Medicare & Medicaid Services (CMS) to implement the prohibition on discrimination on the basis of sex, to make them consistent with the approach taken in the newly proposed ACA Section 1557 rule.

### **Application of Proposals in Emergency Situations**

As emergency physicians, we are surprised and concerned that the proposed rule does not in any way address how changing the ACA Section 1557 regulations could interact with the federally-mandated provision of emergency services. The Emergency Medical Treatment and Labor Act (EMTALA) requires clinicians to screen and stabilize every patient who comes to the emergency department (ED). Such patients have every right to expect the best possible care and to receive the most appropriate treatment and information about their condition.

Patients with life-threatening injuries or illnesses may not have time to wait to be referred to another physician or other healthcare professional to treat them if the present provider has a moral or religious objection. Likewise, EDs operate on tight budgets and do not have the staffing capacity to be able to have additional personnel on hand 24 hours a day, seven days a week to respond to different types of emergencies that might arise involving patients with different backgrounds including sexual orientations and gender identities. The proposed rule seems to demand that, to meet EMTALA requirements, an ED must anticipate treating transgender patients, survey its employees to ascertain who might object treating such a patient, and staff accordingly. This is an impossible task that jeopardizes the ability to provide care, both for standard emergency department readiness and for emergency preparedness. EDs serve as the safety net in many communities, providing a place where those who are most vulnerable and those in need of the most immediate attention can receive care. By not addressing the rights and needs of all patients undergoing an emergency, the legal obligations of emergency physicians, and the budget and staffing constraints that EDs face, this rule will undermine the critical role that EDs play across the country.

In light of the above concerns, ACEP urges the Department to withdraw the proposed rule. We appreciate the opportunity to share our comments. If you have any questions, please contact Jeffrey Davis, ACEP's Director of Regulatory Affairs at [jdavis@acep.org](mailto:jdavis@acep.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Vidor E. Friedman". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Vidor E. Friedman, MD, FACEP  
ACEP President