

July 29, 2016

Ms. Jocelyn Samuels
Director, Office for Civil Rights
U.S. Department of Health and Human Services
Attention: 1557 Final Rule (RIN 0945-AA02)
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

U.S. Department of Health and Human Services Office for Civil Rights, *Nondiscrimination in Health Programs and Activities*, 46 CFR Part 92

On behalf of the members of the Organized Dentistry Coalition listed below, we are writing to request an extension of the implementation deadline for the recently released final rule issued by the Office of Civil Rights (OCR) on Section 1557 of the Affordable Care Act. The OCR released the final rule on May 18, 2016 and expects compliance starting July 18, 2016. We also request relief for our members who have limited staffs and resources to comply with the final rule.

The coalition strongly supports nondiscrimination in health care and equal access to health care for all patients without regard to race, color, national origin, sex, age, religion or disability. However, it has proven exceedingly difficult to advise our members on compliance in the extremely short timeline afforded by the OCR, especially because OCR staff have not addressed several questions regarding the rule. For example, technical assistance requested in using OCR resources regarding posting of taglines has not yet been forthcoming.

A comment letter on the proposed rule submitted by the American Dental Association on November 2, 2015, noted concerns that the proposed rule is confusing, duplicative and burdensome, as well as unnecessary. OCR staff made few changes to the proposed rule, and these concerns have not changed.

The coalition is very concerned that the final rule risks further limiting patient access to care, particularly in impoverished communities, because health care providers may hesitate to accept the extra compliance burdens and liability risks that the final rule imposes on providers who participate in government health care programs, such as Medicaid.

Several specific questions with regard to implementation remain and attempts to address these issues with OCR over the past six weeks have not been successful. Specifically:

1. Some dentists are participating providers in Medicare Advantage (MA) plans (Medicare Part C plans). Others do not participate and, therefore, do not receive direct reimbursement from an MA plan but their patients may pay directly for the services and then submit claims to an MA plan based on the provider's fees. Does receiving reimbursement from a Medicare Advantage plan require a dentist to comply with Section 1557? What if the Medicare Advantage plan reimburses the patient instead of the dentist?

2. We are not sure what is intended to be addressed in the provisions prohibiting covered entities from “providing significant assistance to any entity or person that discriminates on the basis of race, color, or national origin in providing any aid, benefit, or service to beneficiaries of the covered entity’s health program or activity” [see, for example, 92.101(b) (1) (ii)].
3. The links on the OCR webpage providing translated notices and taglines for use by covered entities (<http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>) do not identify the languages in English, so covered entities will not know which language is which unless they look at the fine print in the .pdf file name.
4. Several of the tagline translations are not reproducible; language characters are corrupted when copied and pasted into state-specific language documents.

We believe further discussion with the OCR is necessary for the coalition to provide guidance to the dental profession, rendering an implementation date of July 18 unfeasible. In addition, the coalition believes the proposed rule would impose foreseeable burdens on small businesses. The coalition urges OCR to revise its burden estimate to take into account the financial and other burdens that the rule will impose on small businesses, and to delay implementation pending revision of the burden estimate.

For these reasons, the coalition respectfully requests a delay in the enforcement date until there is sufficient time to allow for our members to meet the requirements. We additionally ask relief for our members working in small practice settings and request the most burdensome regulations be limited to those who employ 25 or more staff.

For additional information, please contact Dr. Frank A. Kyle, Jr., Manager, Legislative and Regulatory Policy, in the ADA’s Government and Public Affairs Division, at 202-789-5175 or kylef@ada.org.

Sincerely,

American Dental Association (ADA)
Academy of General Dentistry (AGD)
American Academy of Oral and Maxillofacial Pathology (AAOMP)
American Academy of Pediatric Dentistry (AAPD)
American Academy of Periodontology (AAP)
American Association of Endodontists (AAE)
American Association of Oral and Maxillofacial Surgeons (AAOMS)
American Association of Orthodontists (AAO)
American Association of Women Dentists (AAWD)
American College of Prosthodontists (ACP)
American Society of Dentist Anesthesiologists (ASDA)
National Dental Association (NDA)