

# EXHIBIT 13

*Comments by the American Psychological Association*



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION

July 12, 2017

Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Room 445-G  
Hubert H. Humphrey Building  
CMS-9928-NC  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Administrator Verma:

The American Psychological Association (APA) appreciates this opportunity to respond to a request for information published in the *Federal Register* on June 12, 2017 (Docket No. CMS-9928-NC), "Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients."

The American Psychological Association, in Washington, D.C., is the largest scientific and professional organization representing psychology in the United States. APA's membership includes nearly 115,700 researchers, educators, clinicians, consultants and students. Through its divisions in 54 subfields of psychology and affiliations with 60 state, territorial and Canadian provincial associations, APA works to advance the creation, communication and application of psychological knowledge to benefit society and improve people's lives. The final rule implementing Section 1557 of the Affordable Care Act (ACA) empowers patients, promotes consumer choice, and in some cases, enhances affordability - this response focuses on those areas of the request for information. We have previously [submitted comments](#) supporting the proposed regulation implementing Section 1557, and we strongly support the final rule, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. At this point, we would like to comment specifically on the importance of provisions protecting non-discrimination based on sex - specifically gender identity and termination of pregnancy - as they relate to empowering patients, promoting consumer choice, and enhancing affordability.

In our 2008 *Policy on Transgender, Gender Identity & Gender Expression Non-Discrimination*, APA recognized the efficacy, benefit, and medical necessity of transition related treatments – which may include psychotherapy, hormone therapy, and a variety of surgical treatments - for appropriately evaluated individuals.<sup>i</sup> The Affordable Care Act and its implementing regulations - including those implementing Section 1557 - have been essential in empowering transgender patients and promoting consumer choice. While the uninsured rate among transgender people remains higher than that in the general population,<sup>ii</sup> research indicates that the uninsured rate among transgender people has dropped dramatically.<sup>iii</sup> Additionally, after publication of the rule implementing Section 1557, one study showed

that over 95% of insurers removed exclusions for gender dysphoria treatments from their 2017 plans, ensuring that a greater number of transgender consumers can have access to treatment.<sup>iv</sup>

Despite these improvements, many transgender people experience other forms of discrimination in the health system. For example, the 2015 U.S. Transgender Survey found that in the year prior to taking the survey, 33% of respondents who saw a health care provider faced one or more form of mistreatment or discrimination due to being transgender. This discrimination likely contributes to health disparities. Respondents were approximately five times more likely than the general population to have been diagnosed with HIV, eight times more likely to have experienced serious psychological distress in the month prior to taking the survey, and nearly twelve times more likely to have attempted suicide.<sup>v</sup>

Moreover, repealing the nondiscrimination protections for transgender people would not make health plans more affordable. Contrarily, studies have shown that eliminating transgender exclusions has no significant effect on medical expenditures or premiums<sup>vi</sup> and that covering medically necessary services for the U.S. transgender population is affordable and cost effective.<sup>vii</sup>

The rule implementing Section 1557 also prohibits covered entities from discrimination based on pregnancy, false pregnancy, termination of pregnancy or recovery therefrom, childbirth or related medical conditions. However, the regulation does not compel organizations that would otherwise be exempt from performing abortion or abortion-related services to provide or pay for those services, in accordance with provider conscience laws<sup>viii</sup>, the Religious Freedom Restoration Act<sup>ix</sup>, or provisions in the ACA related to abortion services and preventive health services.<sup>x</sup>

Current HHS regulations pertaining to Section 1557 of the ACA protect women who have had an abortion at any point in their lives from being denied medical treatment by a covered entity based on that procedure. APA supports pregnancy termination as the civil right of the pregnant woman, and concludes that the preponderance of scientific data also supports the conclusion that freedom of choice and a woman's control over her critical life decisions promotes psychological health.<sup>xi</sup> These choices should not affect any woman's future access to vital health services. Otherwise women who have terminated a pregnancy would experience reduced options in insurers and providers – potentially leading to tremendous financial burdens.

Repealing consumer protections, such as the rule implementing 1557 of the ACA, would undermine affordability for consumers when their needs are excluded under discriminatory benefit designs, or if they face other discriminatory treatment. Thus, APA supports maintaining the implementation of Section 1557 in its current form. The protections afforded under this rule respond directly to this request for information: They empower patients, promote consumer choice, and enhance affordability. Please contact Gabriel Twose, Ph.D. (202-336-5931; [gtwose@apa.org](mailto:gtwose@apa.org)) in our Public Interest Government Relations Office if we can provide any further information.

Sincerely,



Clinton W. Anderson, Ph.D.  
Interim Executive Director  
Public Interest Directorate

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- <sup>i</sup> American Psychological Association. (2008) *Policy on Transgender, Gender Identity & Gender Expression Non-Discrimination*. Retrieved from <http://www.apa.org/about/policy/transgender.aspx>
- <sup>ii</sup> Mayer, I. H., Brown, T. N. T., Herman, J. L., Reisner, S. L., & Bockting, W. O. (2017). Demographic characteristics and health status of transgender adults in select U.S. regions: Behavioral risk factor surveillance system, 2014. *American Journal of Public Health* 107(4), 582-589.
- <sup>iii</sup> Baker, K., Durso, L. E., & Cray, A. (2014) *Moving the Needle: The Impact of the Affordable Care Act on LGBT Communities*. Retrieved from., <https://cdn.americanprogress.org/wp-content/uploads/2014/11/LGBTandACA-report.pdf>
- <sup>iv</sup> Out2Enroll. (2017). *Summary of Findings: 2017 Marketplace Plan Compliance with Section 1557*. Retrieved from <https://out2enroll.org/out2enroll/wp-content/uploads/2015/10/Report-on-Trans-Exclusions-in-2017-Marketplace-Plans.pdf>.
- <sup>v</sup> James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the U.S. Transgender Survey*. Retrieved from [www.ustranssurvey.org/report](http://www.ustranssurvey.org/report).
- <sup>vi</sup> California Department of Insurance. (2012). *Economic Impact Assessment: Gender Nondiscrimination in Health Insurance*. Retrieved from <http://transgenderlawcenter.org/wp-content/uploads/2013/04/Economic-Impact-Assessment-Gender-Nondiscrimination-In-Health-Insurance.pdf>.
- <sup>vii</sup> Padula, W. V., Heru, S., & Campbell, J. D. (2016). *Journal of General Internal Medicine* 31(4), 394-401.
- <sup>viii</sup> See, e.g. , 42 U.S.C. 300a-7; 42 U.S.C. 238n; Consolidated and Further Continuing Appropriations Act 2015, Public Law 114-53, Div. G, § 507(d) (Dec. 16, 2015).
- <sup>ix</sup> 42 U.S.C. 2000bb-1.
- <sup>x</sup> See, e.g. , 42 U.S.C. 18023, 45 CFR 147.131.
- <sup>xi</sup> American Psychological Association (1969, 1980, 1989, 1992). *Resolutions on Abortion*. Retrieved from <http://www.apa.org/about/policy/abortion.aspx>.