

Federal Roll-Back of Obama Era Non-Discrimination Rule: What Californians Should Know

June 29, 2020, 2-3pm

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House Keeping

- We encourage you to use the questions feature to share questions
- All attendees are in listen-only mode
- The webinar will be recorded. Slides and recording will be shared after the webinar



About CPEHN

The California Pan-Ethnic Health Network (CPEHN) is a multicultural health policy organization dedicated to improving health of communities of color in California.

CPEHN was founded in 1992 in the wake of the police beating of Rodney King and subsequent community outcry over the acquittal of the responsible officers.



CPEHN ensures health justice and equity are on the agendas of policymakers and that communities are part of the policymaking process

We build people power to educate and influence policymakers through lived experience, disaggregated data, and community expertise for better health equity centered policies and systems



We pass, change, and implement policies that reflect community needs for better health



We invest in communities of color to build leadership, sustainability, and advocacy strength

We connect data, stories, partners, and regions to build knowledge, relationships, and understanding across cultures



To create equitable conditions that promote health equity and allow communities of color and all residents to thrive and prosper



Background

- On June 12th, the Trump administration formalized a rollback of an Obama era regulation implementing § 1557 of the Affordable Care Act (ACA) which prohibits discrimination on the basis of race, color, national origin, age, disability, or sex.
- The revised federal rule weakens civil rights protections for women, transgender, Limited English Proficient and persons with disabilities.



Background

- This move is particularly egregious as California continues to struggle with the disproportionate impact of COVID-19 on people of color and against the backdrop of racist violence targeting Black communities.
- This is also part of repeated attempts to repeal the Affordable Care Act (ACA) (e.g. Supreme Court Case)
- ***Fortunately CA has strong state laws that include critical protections for women, LGBTQ+, Limited English Proficient and persons with disabilities!***



Goal of Today's Webinar

The goal of today's webinar is to:

- Dispel confusion about the Trump administration's roll-back of Section 1557
- Clarify the protections that are still in place for LEP, LGBTQ+, persons with disabilities and women in California and;
- Provide information on where to file a complaint if you think you're a victim of discrimination in our state



Today's Speakers



Insurance Commissioner
Ricardo Lara



Senator Scott Wiener,
representing the 11th Senate
District



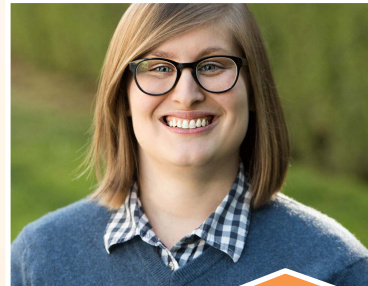
Assemblymember David
Chiu, representing the 17th
Assembly District



Kiran Savage-Sangwan,
Executive Director
California Pan-Ethnic Health
Network



Cary Sanders, Senior Policy
Director
California Pan-Ethnic Health
Network



Amanda Wallner, Director
CA LGBTQ Health & Human
Services Network



Silvia Yee, Senior Staff
Attorney
Disability Rights Education
and Defense Network



Assemblymember David Chiu, representing the 17th Assembly District



Cary Sanders, Senior Policy Director, The California Pan Ethnic Health Network



What is Section 1557?

Section 1557 of the ACA, also known as the Health Care Rights Law prohibits discrimination in health care settings for people on the basis of race, color, national origin, language proficiency, sex, sex stereotypes, gender identity, age, or disability.

The rule applies to:

- Any health program or activity that receives federal financial assistance
- Any activity or program administered by a federal executive agency, and;
- Any entity established under Title I of the ACA, such as health insurance marketplaces



§ 1557 implementing regulations included strong language access protections

The Obama-era rule required that covered entities:

- Post notifications of non-discrimination and availability of free language assistance (ie. interpreters and translated documents) in physical facilities, on websites and significant communications
- Provide taglines notifying individuals of language assistance services in top 15 languages of state
- Develop language access plans
- *The Trump rule change eliminates these requirements*



California law continues to include non-discrimination protections

- In California no person may – on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical conditions, genetic information, marital status, or sexual orientation – be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity conducted, operated, administered or funded by the State.
- This includes, but is not limited to, the Medi-Cal program and Covered California.



California law continues to provide strong language access protections

- SB 223 (Atkins), CA HSC § 1367.042, sponsored by CPEHN in 2017, requires plans to notify their members in the top 15 languages spoken in CA of:
 - California's non-discrimination protections
 - Availability of free language assistance services (e.g. translation and oral interpretation, auxiliary aids and services)
 - Where to file a grievance or complaint
- SB 853 (Escutia) HSC § 1367.04, sponsored by CPEHN in 2003, requires plans to assess the language needs of its members and develop/submit policies and procedures outlining how they plan to provide quality, accessible interpretation to enrollees



Amanda Wallner, Director, CA LGBTQ Health & Human Services Network





§ 2561.2.

“An admitted insurer shall not ... discriminate on the basis of an insured's or prospective insured's actual or perceived gender identity, or on the basis that the insured or prospective insured is a transgender person.”



What is Prohibited?



1. Denying, cancelling, limiting or refusing to issue or renew an insurance policy



2. Charging a higher premium or any fee based on the insured person's actual or perceived gender identity



3. Designating a person's actual or perceived gender identity, or the fact that an insured person is a transgender person, as a preexisting condition for which coverage will be denied or limited



4. Denying or limiting coverage, or denying a claim, for services due to an insured's actual or perceived gender identity or for the reason that the insured is a trans gender person.

This includes health care services related to **gender transition** and any health care services that are ordinarily available to individuals of one gender when the denial or limitation is due only to the fact that the insured is enrolled as belonging to another gender.



Section 1557 Lawsuit

Lambda Legal – Filed June 22

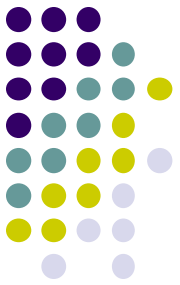
Section 1557 of the ACA specifically and explicitly protects against discrimination in the provision of health care services. Section 1557 prohibits discrimination based on sex, race, color, national origin, age, and disability.



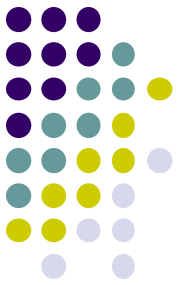
Silvia Yee, Senior Staff Attorney, Disability Rights Education and Defense Fund (DREDF)



Nondiscrimination in Healthcare - California



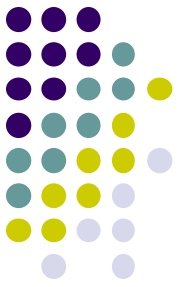
- Reaches private insurers
- Includes sex, gender, gender identity, gender expression, and sexual orientation
- Requires nondiscrimination, language assistance and effective communication notices and taglines
- Prohibits discrimination in “benefit design”: the coverage content of a policy



Disability & Benefit Design

- Prohibits marketing practices or benefit designs that “have the effect of discouraging the enrollment of individuals with significant health needs”
- Discriminatory benefit design can include high co-pays for all drugs needed for a particular condition, or not covering medically necessary treatments or equipment for specific types of disabilities

Nondiscrimination in Benefit Design



- California has the authority to clarify what discriminatory benefit design means
- A refusal to cover medically needed preventive care or arbitrarily placing special limitations or costs on pregnancy services, transgender services, durable medical equipment, or access to cancer specialists hurts an identifiable group of people on the basis of characteristics protected by law



Enforcing Nondiscrimination

- File a grievance with your health plan
- For Medi-Cal, file a complaint with the Department of Health Care Services, Office of Civil Rights
- Contact California's Department of Managed Health Care or California's Insurance Commissioner
- File a complaint with the Department of Fair Employment and Housing (CA Gov't Code 11135)

Insurance Commissioner Ricardo Lara



California Protections for Sex, Gender Identity, Gender Expression, and Sexual Orientation

- Cannot discriminate in applications for, issuance, or renewal of health insurance (Insurance Code § 10140)
- Prohibits discriminatory marketing practices, benefit designs (Insurance Code §§10753.05(h)(3), 10965.5(a)(3))
- Prohibits discriminatory premium rating, classification of gender or transgender identity as a pre-existing condition (Insurance Code §§ 10140, 10140.2, 10123.88)
- Cannot deny claims related to gender transition services if otherwise covered when not related to transition (Cal. Code Regs. title 10, § 2561.2)

A man and a woman are sitting at a desk in an office. The man is on the left, wearing a light blue patterned shirt and a headset, smiling at the camera. The woman is on the right, wearing a dark green top, also smiling. In the background, there are office supplies, a computer monitor, and a potted plant.

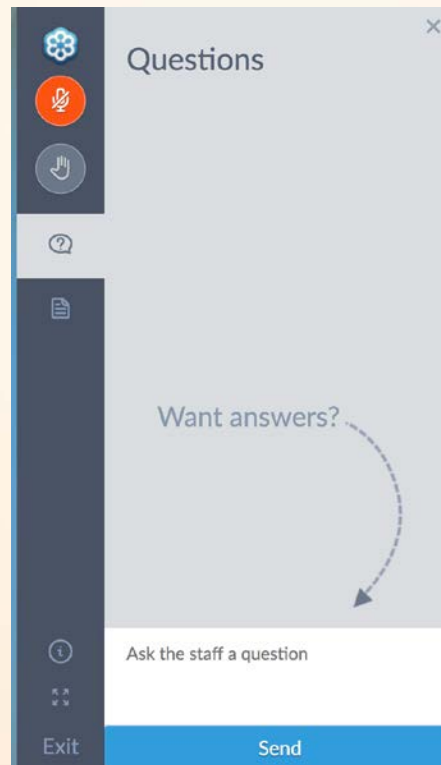
**Contact us with any
discrimination concerns**

1-800-927-4357
insurance.ca.gov



Q&A

Please use the questions function to type your question for our panelists!



Closing: Resources

Agencies that regulate or provide oversight of health insurance in California have recently issued letters to insurance companies about protections for LGBTQ+, Limited English Proficient and Californians with disabilities:

- [Department of Managed Health Care](#)
- [Department of Health Care Services](#)
- [California Insurance Commissioner](#)

Visit CPEHN's website for a fact sheet with more information: <https://cpehn.org/page/section-1557>



Thank you!

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