



July 29, 2019

Mr. Roger Severino
Director, Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Ave. SW, Washington, DC 20201

Re: Nondiscrimination in Health and Health Education Programs and Activities
(Section 1557 NPRM), RIN 0945-AA11

Dear Mr. Severino:

The Southeast Asia Resource Action Center (SEARAC) thanks the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) for the opportunity to comment on the notice of proposed rulemaking (NPRM) on Section 1557 of the Patient Protection and Affordable Care Act (ACA) (“Health Care Rights Law” or “Section 1557”). As a national civil rights organization that empowers Cambodian, Laotian, and Vietnamese American communities to create a socially just and equitable society, **SEARAC strongly opposes this proposal to eliminate and otherwise limit civil rights protections, particularly for those who are limited English proficient.** Every day we hear stories of community members and elders who struggle with accessing the healthcare they are legally entitled to due a number of barriers. This proposed rule would further erode the already limited protections for these vulnerable community members.

The Southeast Asian Refugee Legacy

Southeast Asian Americans (SEAAs) make up the largest refugee community ever to resettle in the United States, relocating to this country due to the US-backed war in Southeast Asia. Today, SEAAs total nearly 2.7 million across the nation¹ and are active community members contributing to the fabric of our society. Many SEAA refugee elders are former soldiers who were recruited and fought alongside US forces during the Vietnam War era, fleeing their homelands in fear of persecution for their efforts in supporting the US government during this time. As a result of the immense trauma from their experience of surviving mass genocide, many of these individuals face significant health challenges upon resettlement into the US.

¹ American Community Survey (ACS) - U.S. Census Bureau, 2013 3-year estimates

For instance, SEAs suffer disproportionately from hepatitis B, which can lead to cirrhosis, liver cancer, and liver failure.² Hmong and Vietnamese women are at a higher risk of cervical cancer than other racial/ethnic groups.^{3,4} Additionally, many community members need support dealing with the physical, mental, and emotional scars from the war. A 2005 study in Long Beach found that 62% of older Cambodian adults experience symptoms of post-traumatic stress disorder, and 51% have major depression, compared to 3% of the general population in the United States.⁵

Because of this, many SEAA elders and community members rely on healthcare through the Affordable Care Act (ACA) to survive and thrive. Unfortunately, due to this refugee legacy, many of these individuals face additional barriers to linguistically accessible healthcare. According to the American Community Survey (ACS), 11% of Lao families, 13% of Vietnamese families, 14.9% of Cambodian families, and 16.3% of Hmong families live below the poverty line.⁶ Additionally, 35.4% of Cambodians, 32.1% of Hmong, 32.9% of Lao, and 45.1% of Vietnamese immigrants speak English less than “very well”⁷. These rates are much higher for SEAA elders whose LEP rates are as high as 90%.³

Why Section 1557 Matters

Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, and disability. As an organization that is committed to upholding the civil rights of all persons, we strongly oppose the NPRM provisions which seek to eliminate and limit protections for individuals who are limited English proficient, LGBTQ+ persons, persons with disabilities and chronic conditions, and persons needing reproductive health services. Section 1557 addresses not only protections for each protected class covered, but the intersection of those protections. As such, an attack on the civil rights of one group in the NPRM is an attack on the civil rights of all.

We are especially concerned about the NPRM’s language access provisions to ensure that persons with limited English proficiency (LEP) have the meaningful access required not only by Section 1557 but also by Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations. As such, we oppose eliminating the language access protections as proposed in the NPRM. In addition, we oppose any other efforts to

² “Asian American Health Assessment,” Asian American Resource Center Nonprofit, 2014, accessed September 22, 2017,

http://austintexas.gov/sites/default/files/files/Communications/Asian_American_Health_Assessment_document_2014-.pdf

³ “Status of Vietnamese Health: Santa Clara County, California 2011,” Santa Clara County Public Health Department, 2011, <https://stanfordhealthcare.org/content/dam/SHC/about-us/public-services-and-community-partnerships/docs/chna-implstrat.pdf>

⁴ Nancy K. Herther, Zha Blong Xiong, Karen Ritsema, Rebecca Vang, and Ri Zheng, “Health Disparities Research in the Hmong American Community: Implications for Practice and Policy,” *Hmong Studies Journal* no. 13.2 (2010): 1-31.

⁵ Grant N. Marshall, Terry Schell, Marc N. Elliot, Sarah Megan Berthold, and Chi-Ah Chun, “Mental Health of Cambodian Refugees 2 Decades After Resettlement in the United States,” *JAMA, The Journal of the American Medical Association* 294, no. 5, (2005): 571-579.

⁶ [American Community Survey \(ACS\) - U.S. Census Bureau, 2017 1-year estimates](#)

⁷ [American Community Survey \(ACS\) - U.S. Census Bureau, 2017 1-year estimates](#)

otherwise eliminate or roll back protections and provisions contained in the 2016 Nondiscrimination in Health Programs and Activities Final Rule (2016 Final Rule) as they apply to other protected classes, including LGBTQ+ persons, women and persons with disabilities.

Discrimination on the basis of national origin, which encompasses discrimination on the basis of language, creates unequal access to health care. Language access in health care is just as critical now as when the Civil Rights Act was originally passed in 1964. Over twenty-five million individuals in the United States are LEP.⁸ An estimated 19 million LEP adults are insured.⁹ Language assistance is necessary for LEP persons to access federally funded programs and activities in the healthcare system. Without meaningful access, the estimated 25 million individuals who are LEP would be excluded from programs and services they are legally entitled to.

Conclusion

We urge HHS to withdraw and not finalize this rule. This proposal harms SEAA immigrant and refugees, many of whom have fought alongside the US and continue to suffer from a variety of physical and mental health issues as a result of the US-backed war in Southeast Asia. By weakening the civil rights protections for these already marginalized community members, we are turning our back on this country's long humanitarian legacy.

SEARAC strongly opposes this proposed rule that would greatly harm the health outcomes for many. We encourage the HHS to instead dedicate its efforts to expanding civil rights protections for vulnerable immigrant and refugee communities so they can access the services they need to live and thrive.

Sincerely,



Quyen Dinh
Executive Director
SEARAC

⁸ Asian & Pacific Islander American Health Forum Analysis of 2017 American Community Survey Data.

⁹ Asian & Pacific Islander American Health Forum Analysis of 2017 American Community Survey Public Use Microdata Sample Files.