August 13, 2019

Roger Severino
Director
Office for Civil Rights
Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

Attention: Section 1557 NPRM, RIN 0945-AA11

Dear Director Severino:

On behalf of the 163,000 members of the American Dental Association (ADA), we are writing to you in regards to the Section 1557 Notice of Proposed Rulemaking (NPRM). The ADA strongly supports nondiscrimination in health care and equal access to care for all patients without regard to race, color, national origin, sex, age, religion, or disability. However, our member dentists have reported great difficulty with complying with the Section 1557 Final Rule issued in 2016 and we appreciate the Office for Civil Rights’ (OCR) commitment to reducing regulatory burdens.

Taglines and Notice of Nondiscrimination

ADA agrees with OCR that the 2016 Final Rule introduced confusing and costly notice and tagline requirements that were not required by law. ADA strongly supports OCR’s proposal to repeal in toto the Section 1557 provisions on taglines, the use of language access plans, and notices of non-discrimination, and to replace the requirements for remote English-language video interpretation services with requirements for audio-based services. The 2016 Final Rule’s provisions were overly burdensome and confusing, particularly for smaller entities. The time and cost associated with interpreting these regulations, printing these documents or altering existing publications and modifying websites to comply with these requirements has been significant for dental offices. We conservatively estimate the dental profession has spent $240,450,000 on compliance to date. Additionally, as the NPRM notes, there are questions about whether these burdens are justified by need. The requirements are difficult to implement due to other overlapping requirements from the federal government and states. The multiple overlapping nature of the notices and taglines has diluted their impact to the extent that patients may disregard them.

Furthermore, the requirement that the taglines be distributed in the top 15 non-English languages spoken in the dentist’s state is of concern. The majority of dental offices are
private, small businesses. Given their small staff size, it would be more effective for them to concentrate on providing information in the language(s) other than English that are spoken among their patients or potential patient pool. This is widely variable across the country, with some dental offices never encountering patients who do not speak English while others may encounter patients who speak languages not listed in the state’s top fifteen spoken languages. The ADA therefore supports the NPRM’s proposal to repeal the notice of nondiscrimination and tagline requirements. We believe that the repeal of these requirements will lead to cost savings and will allow staff to spend time on appropriate patient care and communication instead of on interpreting and complying with the regulations.

**Enforcement**

ADA agrees with OCR that the Final Rule improperly blended substantive requirements and enforcement mechanisms of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. ADA supports OCR’s proposal to return to the enforcement structure for each underlying civil right statute as provided by Congress and to apply the enforcement mechanisms already provided for, and available under, existing statutes and their implementing regulations, including the rights and remedies under such laws.

ADA agrees with OCR that to the extent that the Final Rule differed from other federal agencies’ regulations on Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, such inconsistency would result in confusion for entities regulated by more than one agency and for the public as a whole.

**Language Assistance**

ADA supports OCR’s proposal to adopt the four factors from the existing Department of Health and Human Services (HHS) Limited English Proficiency (LEP) guidance to assist entities in determining the extent of a covered entity’s obligations to provide language assistance services. ADA believes that audio-only interpretation is likely to provide effective communication for many situations involving foreign language speakers, and agrees with OCR that additional video standards may not justify the costs, particularly with respect to small providers.

**Americans with Disabilities Act**

The ADA supports OCR’s proposal to specify that the proposed regulation not be applied in a manner that conflicts with or supersedes exemptions, rights, or protections contained in several civil rights statutes, such as the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990 (as amended by the Americans with Disabilities Act Amendments Act of 2008), and Section 508 of the Rehabilitation Act of 1973. However,
ADA urges OCR to add the word “obligations” to “exemptions, rights or protections” in order to help clarify that this consideration is intended to help reduce redundancy and compliance burden confusion for health care providers. ADA further urges OCR to require that each Section 1557 covered entity simply comply with the standards that apply to each entity under the Americans with Disabilities Act, in order to reduce burden, confusion and complexity. For example, a health care provider that must comply with Title III of the Americans with Disabilities Act should not be required to comply with any provision of Title II or any Section 1557 regulation that does not fully align with Title III. ADA urges OCR to exempt exemption from Section 1557 compliance requirements any covered entities with fewer than 15 employees in order to better align with Title III of the Americans with Disabilities Act and to help relieve the compliance burden on smaller healthcare providers.

To help reduce the burden, confusion, and complexity of compliance with requirements for accessibility of information and communication technology for individuals with disabilities, ADA urges OCR to require recipients of federal financial assistance to ensure that health programs or activities provided through their websites comply with the requirements of Title III, rather than Title II, of the Americans with Disabilities Act if the recipient is otherwise covered by Title III. Requiring small practices to comply with both Title II, for Section 1557 purposes, and Title III, for Americans with Disabilities Act purposes, is burdensome, confusing, and unnecessarily complex. The burden on small practices of complying with both Title II and Title III would likely outweigh any benefit to individuals who require accessible technology.

Thank you again for your commitment to reducing regulatory burdens. The ADA looks forward to continuing to work with the OCR. Should you have any questions, please do not hesitate to contact Ms. Roxanne Yaghoubi at the ADA’s Washington office at (202) 789-5179 and yaghoubir@ada.org.

Sincerely,

President

Kathleen T. O'Loughlin, D.M.D., M.P.H.  
Executive Director

KTO:ry