



September 30, 2022

Melanie Fontes Rainer  
Director, Office for Civil Rights  
Department of Health and Human Services  
Washington, DC

*Submitted electronically via [regulations.gov](https://www.regulations.gov)*

Re: RIN 0945-AA17 Nondiscrimination in Health Programs and Activities

Dear Director Fontes Rainer:

Project Guardianship is writing to comment on the notice of proposed rulemaking on Section 1557 of the Patient Protection and Affordable Care Act (ACA) issued by the Office for Civil Rights at the U.S. Department of Health and Human Services (HHS).

Project Guardianship is a non-profit organization that provides person-centered care for older adults and individuals living with disabilities and mental illness who need help making decisions. We also transform the systems that support them to ensure safety, promote independence, preserve dignity, and advance racial and social justice. As a nonprofit provider of court-appointed guardianship services we work to ensure that all our clients receive culturally appropriate and responsive health care.

The Health Care Rights Law (Section 1557 of the ACA) prohibits discrimination in health care on the basis of race, color, national origin, sex, age, and disability. We appreciate HHS's proposals to affirm civil rights in healthcare and prioritize anti-discrimination protections for older adults. Our comments focus on the strengthening of the rule's application to advancing health equity by ensuring **intersectional claims that include age are allowed to proceed without administrative exhaustion.**

We appreciate HHS's recognition of the unique and compounding harms intersectional discrimination causes older adults. We support clear, accessible procedures for filing, investigating, and remediating discrimination complaints, including intersectional claims. An older adult who is discriminated against based on age *and* race, national origin, sex, and/or disability should not be at a disadvantage for seeking recourse due to the Age Act's administrative exhaustion requirements. Therefore, we recommend that HHS amend the final rule to ensure administrative exhaustion is *not* required to bring an intersectional claim including age under the Health Care Rights Law. We urge HHS to identify other ways to address intersectional discrimination, including making an explicit reference to intersectional discrimination in the text.

Negative healthcare experiences with providers lead to [low medication adherence](#) and greater mistrust between patients and providers. Black and Latinx patients, though underrepresented in surveys, tend to [report discrimination](#), especially based on multiple identities such as being older and Black. A recent report on [bioethics and disabilities](#) has shown that physicians' negative biases about disabilities may impact their ability to provide adequate, person-centered care to individuals with disabilities. It is imperative that when individuals of multiple marginalized identities experience discrimination in the healthcare system they can seek recourse. Healthcare providers must take an intersectional, person-centered approach when providing care for diverse



patients in order to improve health outcomes and reduce discrimination. Experiences of racism in the healthcare system have left many untrustworthy of institutional healthcare environments. Still today, many medical trainees hold [false beliefs](#) about how Black patients experience pain, leading to negligent treatment disparities.

The proposed nondiscrimination rule will ensure older Black and Latinx patients feel empowered to file intersectional discrimination complaints without administrative exhaustion, thereby working to improve their experiences in the health care system. We support this proposed rule in the hopes that it brings about greater trust and communication between providers and patients, better experiences when it comes to receiving necessary healthcare, and less intersectional discrimination against older adults.

Thank you for the opportunity to comment on this important issue. If you have further questions, please contact Amy Iafrate at [aiafrate@nycourts.gov](mailto:aiafrate@nycourts.gov).

Sincerely,

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