



*The Commonwealth of Massachusetts
Commonwealth Health Insurance Connector Authority
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September 27, 2022

U.S. Department of Health and Human Services
Office for Civil Rights
Attention: 1557 NPRM (RIN 0945-AA17)
Hubert H. Humphrey Building
Room 509F
200 Independence Avenue SW
Washington, DC 20201

**Re: Notice of Proposed Rulemaking, “Nondiscrimination in Health Programs and Activities”
(Published in Federal Register Volume 87, Number 149, page 47824 on August 4, 2022)**

Dear Secretary Becerra:

The Massachusetts Health Connector (“Health Connector”), a state-based Marketplace (SBM) authorized under the Patient Protection and Affordable Care Act of 2010 (“ACA”), appreciates the opportunity provided by the Department of Health and Human Services (HHS) Office of Civil Rights (“OCR”) to comment on the proposed rule, “Nondiscrimination in Health Programs and Activities.”

Founded in 2006 as part of bipartisan state health reform, the Massachusetts Health Connector is the longest-running State-Based Marketplace (SBM) in the country. The Health Connector is designed to connect Massachusetts residents and small businesses with high quality, affordable health coverage and to promote universal health coverage in the Commonwealth. Today, the Health Connector serves nearly a quarter-million Massachusetts residents, including approximately 225,000 individuals as well as nearly 11,500 small business employees from over 2,000 businesses.¹ The Health Connector’s efforts have contributed to the Commonwealth’s status as the healthiest state in the nation,² with a nation-leading health insurance rate over 97%,³ and among the lowest-cost average Marketplace premiums in the country in 2022.⁴

¹ Health Connector Enrollment Data as of 8/31/2022

² See [Sharecare-Community-Well-Being-Index-2021-state-rankings-report.pdf](#)

³ Kaiser Family Foundation analysis of U.S. Census Bureau data, at <https://www.kff.org/other/state-indicator/health-insurance-coverage-of-the-total-population-cps/?currentTimeframe=0&sortModel=%7B%22collid%22:%22Location%22,%22sort%22:%22asc%22%7D>

⁴ : [Kaiser Family Foundation analysis](#) of data from Healthcare.gov, state rate review websites, and state plan finder tools. [Analysis of CMS Public Use Files.](#)

The Health Connector strongly supports the Department's proposals to broadly restore and strengthen nondiscrimination protections for health care consumers, including for individuals who face discrimination on the basis of sexual orientation, gender identity, limited English proficiency (LEP), disability status, and pregnancy or pregnancy related conditions. The Health Connector has always held itself, its carriers, and its market partners to high nondiscrimination standards, including on the basis of gender identity, usage of reproductive health care services, and limited English proficiency status. Massachusetts consumers and residents will be well served if the federal government restores and strengthens its shared commitment to these expectations, standards, and requirements. We urge the Department to finalize the proposed rule and greatly appreciate the administration's efforts to reduce health inequities.

We respectfully offer the following comments relating to the proposed rule and its impact on the policy-related and operational aspects of the Health Connector's ongoing work.

The Health Connector fully supports OCR's proposal to more broadly apply Section 1557 protections. Ensuring Section 1557 nondiscrimination protections apply broadly to an array of entities and programs will ensure the greatest level of protection for individuals against discriminatory actions that may interfere with access to health care and coverage. Specifically, the Health Connector strongly supports the proposed rule's prohibition on the use of discriminatory clinical algorithms in health care decision making and extension of nondiscrimination protections to telehealth services and benefit design. The Health Connector has sought to enhance its focus on nondiscriminatory benefit and formulary design in recent years as part of its deepening health equity agenda, and welcomes additional clarity and support in these endeavors from the federal regulatory framework governing nondiscriminatory policy. Broadening the applicability of Section 1557 nondiscrimination protections will improve equitable access to health care and coverage for individuals and families across the Commonwealth.

The Health Connector fully supports the proposal to restore and strengthen the prohibition on sex discrimination and standards for gender identity nondiscrimination. Letting individuals know they will not be discriminated against when obtaining coverage or health care is a critical part of expanding coverage and reducing health disparities, consistent with the Health Connector's mission. This proposal is especially important to ensure that transgender, nonbinary, and gender diverse individuals are able to access and use coverage and access health care services in a nondiscriminatory way, allowing individuals to reach the fullest potential of their health and well-being.

The Health Connector fully supports restoring requirements to ensure meaningful access for limited English proficiency (LEP) individuals. In Massachusetts, 24% of residents speak a language other than English at home.⁵ Tagline and language supports are critical to the health care access and overall well-being of those with limited English proficiency, which is why the Health Connector continues to incorporate these member supports despite their removal from Section 1557 requirements several years ago. While not all of the 24 percent of Massachusetts residents who speak a language other than English at home may need support to engage meaningfully in English, having tools commensurate with the size and diversity of non-English speakers is paramount. The Health Connector supports OCR's proposal to restore the requirement to provide clear and consistent notification of assistance in other languages by covered entities.

A primary goal of the Affordable Care Act and Massachusetts's own health reform law, Chapter 58 of the Acts of 2006, was to expand coverage to individuals that had previously struggled to obtain and maintain health insurance coverage, including many immigrants and people for whom English is not a

⁵ Source: U.S. Census 2016-2020 American Community Survey. Retrieved from: [U.S. Census Bureau QuickFacts: Massachusetts](https://www.census.gov/quickfacts/massachusetts)

first language. OCR's proposal to restore meaningful access for LEP individuals will promote access to information about how to enroll in health coverage and how to navigate the health care system.

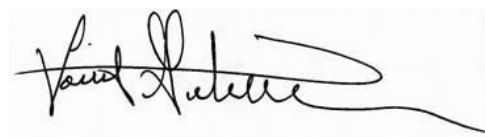
The Health Connector supports the proposal to reinstate and expand nondiscrimination notice requirements. OCR's proposal to reinstate and expand nondiscrimination notice requirements will help individuals know that the Health Connector and any covered entity does not discriminate on bases prohibited by Section 1557. The Health Connector supports making sure individuals are aware that national origin discrimination includes discrimination based on limited English proficiency and primary language while sex discrimination includes discrimination based on pregnancy, sexual orientation, gender identity, or sex characteristics. In addition, Health Connector staff appreciate the additional clarity the proposed rule provides regarding how entities should notice individuals about nondiscrimination.

The Health Connector also supports notifying individuals of the availability of language assistance services and auxiliary aids and services in English and at least the 15 most common languages spoken by LEP individuals in Massachusetts. Providing this information to individuals promotes equitable access to coverage and health care services across the Commonwealth.

The Health Connector supports the proposed requirement for covered entities to establish certain nondiscrimination policies and procedures and to train certain employees. Health Connector staff and residents of the Commonwealth will benefit from OCR's proposal to require covered entities to write and implement certain nondiscrimination policies and procedures. Ensuring clear guidance and training on nondiscrimination policies and procedures will strengthen staff understanding of such policies and procedures and further support access to health coverage and care for members and applicants.

The Health Connector appreciates the administration's commitment to the pursuit of policies that will promote health equity and ensure individuals are not discriminated against on the basis of race, color, national origin, sex, age or disability in health programs and activities, and looks forward to continued partnership around these important public interest goals. We thank you for consideration of our comments and look forward to working with the Department of Health and Human Services and Office for Civil Rights on continued implementation of the ACA and affirming all individuals' right to health care without discrimination.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis Gutierrez", with a long horizontal flourish extending to the right.

Louis Gutierrez
Executive Director