

September 30, 2022

Submitted electronically via: www.regulations.gov

The Honorable Melanie Fontes Rainer
Director
Office of Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201

Re: Nondiscrimination in Health Programs and Activities (HHS-OS-2022-0012)

Dear Director Fontes Rainer,

Vizient, Inc. appreciates the opportunity to comment on the Office of Civil Rights' (OCR) Nondiscrimination in Health Programs and Activities Proposed Rule (hereinafter, "Proposed Rule"), as many of the proposed policies have a significant impact on our members and the patients they serve.

Background

Vizient, Inc. provides solutions and services that improve the delivery of high-value care by aligning cost, quality, and market performance for more than 50% of the nation's acute care providers, which includes 97% of the nation's academic medical centers, and more than 20% of ambulatory providers. Vizient provides expertise, analytics, and advisory services, as well as a contract portfolio that represents more than \$100 billion in annual purchasing volume, to improve patient outcomes and lower costs. Headquartered in Irving, Texas, Vizient has offices throughout the United States.

Recommendations

In our comments, we respond to the various proposals raised in the Proposed Rule and offer recommendations to constructively improve the final rule. We thank you for the opportunity to share our views on OCR's proposals.

Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in a health program or activity which receives any Federal financial assistance. Section 1557 incorporates its grounds for discrimination from other civil rights laws and provides important protections for patients in the healthcare setting.

Vizient applauds OCR for advancing policies to strengthen nondiscrimination protections for all patients through the policies enumerated in the Proposed Rule. We also appreciate the proposed modernization of the regulations to address new avenues of care such as telehealth, which has been a vital resource for patients and providers throughout the COVID-19 Public Health Emergency (PHE). Vizient believes that improving nondiscrimination policies are vital to ensuring better access to quality healthcare for patients, including care provided via telehealth, as well as reducing disparities. However, we encourage OCR to be mindful of the potential burdens to providers – both financial and operational – that may result from

finalizing many of the proposed policies. Given the ongoing challenges providers face, including inflationary and labor pressures, we encourage OCR to provide additional resources to support health care provider implementation efforts, such as additional training resources, to help ease potential burdens and to support awareness of policy changes.

Written Policies, Procedures, and Training

OCR proposes to require covered entities to have specific, written nondiscrimination policies, grievance procedures, language access procedures, procedures for auxiliary aids and services, and procedures for reasonable modifications for individuals with disabilities. OCR also proposes to require covered entities to train patient-facing employees on Section 1557 policies and procedures, and to document this training.

Vizient believes additional training will help providers connect patient to the services they need for effective, quality healthcare when they are in a healthcare setting, but believes it is important that training not be excessively prescriptive. While Vizient believes that it is important for covered entities to have flexibility in how this training requirement is fulfilled, we also encourage CMS to provide additional resources to supplement training by covered entities.

Regarding training documentation, Vizient encourages OCR to provide additional clarity. With the current workforce challenges, hospitals are experiencing high rates of turnover and relying on temporary, contract, or travel staff. Because OCR proposes to require documentation of this training, Vizient encourages OCR to clarify that a new or temporary member of the workforce could effectively transfer prior training from one facility to another to limit burden and redundancy.

Data Collection

Vizient is encouraged to see OCR requesting information on opportunities to collect additional data (e.g., race, ethnicity, language, sex, gender, gender identity, sexual orientation, disability and age) and data collection methods that can be used to further OCR's work. Collecting accurate data is imperative to informing future work both at the Federal and the facility level. However, as OCR acknowledges, data collection also comes with complications, as collecting some demographic data can be deeply personal for patients, among other challenges.

Further, covered entities, such as hospitals, are often already collecting the type of data OCR indicates it is interested in collecting. However, due to a lack of standardization, the actionability of this data can be limited. As such, Vizient urges OCR to refrain from finalizing data collection mandates, and to instead focus on opportunities to improve current Federal data collection standards and information sharing between programs. To the extent practicable, data could also be shared with providers to minimize their data collection efforts, enhance their data or to help validate collected information. Vizient also encourages OCR to work with the various entities that collect data, including providers, to better understand best practices that aim to ensure a culturally and linguistically appropriate conversation occurs between patients and provider.

Vizient also believes it is imperative that OCR work with other government stakeholders, such as the Centers for Medicare and Medicaid Services, Office of Management and Budget and Office of the National Coordinator for Health Information Technology, in any data collection policy efforts.

Also, Vizient recommends that OCR also consider sharing resources to help providers identify inequities and develop more targeted approaches to support patients. Vizient encourages OCR to consider the [Vizient Vulnerability Index™ \(VVI\)](#) as a social needs index to help this effort. The VVI includes more granular data, domains of social determinants of health, and has a clear health care focus. The VVI also includes geospatial adjustments based on local relevance of each domain as it correlates to life expectancy. We welcome the opportunity to speak with OCR about how the office might best leverage this data and emphasize our willingness to work with the agency to help support the data collection standards.

Language Access

OCR proposes to reinstate policies that promote meaningful access to language services, including “notices of availability” stating that the entity provides language assistance services and auxiliary aids free of charge in its health programs and activities. OCR also proposes policies related to the use of machine translation in language services, including when such translations must be reviewed by a human.

Meaningful access to language services impacts several aspects of patient care, from outcomes to readmission metrics to mortality.¹

OCR proposes to require these notices to be provided in English and the 15 most common languages spoken by limited English proficiency (LEP) individuals in the facility’s state. OCR states that it will provide hospitals access to samples of these notices in 64 language options, easing the administrative burden for smaller facilities. Vizient supports efforts that help expand access to language services for patients in all areas of the country. In the Proposed Rule, OCR states that it explored other options for language thresholds, such as requiring that the notice is provided where there are at least 200 LEP individuals for a particular language in the relevant state or states. However, OCR stated that it believed that cut off was arbitrary. Vizient agrees with the need to identify a meaningful threshold before proposing such a policy. Vizient suggests that OCR explore a more local approach. Some payers already communicate with enrollees to collect data around language, which could be used to identify language access needs for the top languages spoken in a more specific region, such as their census tract. Further, we encourage OCR to work with providers to identify best practices related to providing language access services. This would help facilities direct resources toward the patients they are most likely to encounter and provide more holistic language access services for those individuals.

Vizient supports OCR’s proposals to allow more remote interpretation models in facilities, such as Video Remote Interpreting (VRI), audio-remote interpreting, and machine translation. Vizient further supports including remote interpreting options for telehealth platforms, such as the use of telehealth platforms that can connect with a third-party interpreting service. While telehealth platforms may need additional support to improve such functionality, expanding use of these mechanisms will help facilities provide language access services that would otherwise be difficult to provide. Further, such flexibility helps ensure patients receive the best quality of care available to them.

¹ *Paging Dr. Rosetta Stone: Bridging the Language Gap for Better Care*, American Journal of Medical Quality, The Art of Care, Volume 35 Supplement I, March/April 2020 (p. 104S). https://medschool.cuanschutz.edu/docs/librariesprovider31/default-document-library/ajmq_the-art-of-care_a-report-on-the-2019-vizient-connections-education-summit.pdf?sfvrsn=f89dd0b9_0

Enforcement

OCR proposes to incorporate the enforcement mechanisms enumerated in related civil rights laws to the enforcement of Section 1557 violations. Vizient supports OCR's efforts to minimize duplicative enforcement approaches and requests that OCR communicate with covered entities about these enforcement procedures, particularly as more information is learned should the rule be finalized, and cases emerge.

Communication

OCR states in the Proposed Rule that it anticipates that many covered entities are already complying with the proposed policies because of the history of the Section 1557 rules. Vizient agrees but notes that the Proposed Rule has sections that expand on policies presented in previous rules. In the current healthcare climate, with many Federal guidelines waived, suspended, or otherwise changed because of the PHE, Vizient encourages OCR and other agencies to ensure direct, clear and regular communication with stakeholders to ensure they are aware of the pending changes and the deadlines with which they must comply.

Conclusion

Vizient welcomes OCR's policies to ensure nondiscrimination in health programs and activities and its emphasis on stakeholder feedback. We believe this provides a significant opportunity to help inform the agency on the impact of specific proposals based on learned insights.

Vizient membership includes a wide variety of hospitals ranging from independent, community-based hospitals to large, integrated health care systems that serve acute and non-acute care needs. Additionally, many are specialized, including academic medical centers and pediatric facilities. Individually, our members are integral partners in their local communities, and many are ranked among the nation's top health care providers. In closing, on behalf of Vizient, I would like to thank OCR for providing us the opportunity to comment on this important Proposed Rule. Please feel free to contact me, or Emily Jones at Emily.Jones@vizientinc.com, if you have any questions or if Vizient may provide any assistance as you consider these issues.

Respectfully submitted,



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