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Litch's Law Log

Regulations Implementing Section 1557 of ACA Impose Significant Burdens on Dental Offices

The very first Litch's Law Log in *PDT* from almost a decade ago dealt with legal requirements for hearing impaired and limited English proficiency patients (<http://www.aapd.org/assets/1/7/2940.pdf>). In that article the following point was made:

“The Office of Civil Rights (**OCR**) for the U.S. Department of Health and Human Services has stated that if a health care provider treats Medicaid-eligible patients, foreign language assistance should be provided at no cost to the health care provider's entire limited English proficient population! *The guidance arguably exceeds federal regulatory authority.*”

AAPD *E-News* published on June 8, 2016, alerted members to new regulations under the Section 1557 non-discrimination provision of the Affordable Care Act (**ACA**) (<http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>). **This regulation requires that dentists who receive federal financial assistance, such as those participating in Medicaid or CHIP, will have to post notices in the top 15 languages spoken in the state that free language assistance services are available, and make sure interpreters (including bilingual staff) are qualified.**

Clearly the regulatory agency (HHS) has filled in quite a bit of details based on the actual ACA language, which is very general:

SEC. 1557. NONDISCRIMINATION.

(a) In General.--Except as otherwise provided for in this title (or an amendment made by this title), an individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any

program or activity that is administered by an Executive Agency or any entity established under this title (or amendments). The enforcement mechanisms provided for and available under such title VI, title IX, section 504, or such Age Discrimination Act shall apply for purposes of violations of this subsection.

(b) Continued Application of Laws.--Nothing in this title (or an amendment made by this title) shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or the Age Discrimination Act of 1975 (42 U.S.C. 611 et seq.), or to supersede State laws that provide additional protections against discrimination on any basis described in subsection (a).

(c) Regulations.--The Secretary may promulgate regulations to implement this section.

The American Dental Association (**ADA**) has provided an overview of these new regulations, which took effect July 18, 2016 (<http://www.ada.org/en/publications/ada-news/2016-archive/june/updated-aca-mandate-takes-effect-july-18>). The ADA has also prepared helpful resources for dental practices to implement this mandate, available at <https://success.ada.org/en/practice/operations/section-1557/section-1557-the-basics-on-what-you-must-do?Source=VanityURL>. ADA also presented a Section 1557 webinar on Aug. 30, 2016.

(You will need an ADA membership ID and password to access these resources).

The compliance date for the mandatory notices is 90 days after the effective date of the regulations, or Oct. 16, 2016.

The AAPD has worked closely with ADA's legal and legislative staff in analyzing these regulations. We have also expressed our concerns to CMS that the scope of this regulation might discourage pediatric dentists from participating in or continuing to participate as Medicaid and CHIP providers. We can also add this to a list of amendments that

are needed to the ACA, which unfortunately due to politics will not be addressed until the next Congress after the fall Presidential and Congressional elections. In the meantime, we will continue to urge HHS and CMS to take a more reasonable approach. The AAPD understands there are a variety of interpretative services available, and that many pediatric dental offices have a staff person fluent in a commonly

spoken language such as Spanish who can serve as an interpreter. In states with Medicaid managed care organizations, these entities may be required under contract to secure and pay for such services. However, 15 languages seems quite over the top. Unfortunately, HHS OCR denied a request from ADA, AAPD and other dental organizations to delay the enforcement date and make certain other changes to the regulation.

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169, ext. 29 or slitch@aapd.org. I also want to acknowledge AAPD's Government Affairs Summer Intern Kelly Janokowitz for her assistance in preparation of this article. Jano-