

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515

August 4, 2015

The Honorable Sylvia Mathews Burwell  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Re: Implementing Regulations for Section 1557 of the Affordable Care Act

Dear Secretary Burwell:

As Members of Congress passionate about reducing health disparities and addressing discrimination in health care, we urge the Administration to move forward promptly with proposed regulations regarding Section 1557 of the Affordable Care Act (ACA). As you know, Section 1557 prohibits discrimination on the basis of sex (including sex stereotypes and gender identity), race, color, national origin, disability and age by health programs receiving federal funds, federal health care programs, or other health programs including the state-based insurance marketplaces. Although this historic provision has been in effect since 2010, the Administration has not yet promulgated regulations or even issued a notice of proposed rulemaking, leaving health care entities without critical guidance and consumers even more vulnerable to discrimination.

Federal courts have already begun to interpret Section 1557 in absence of regulations. In the meantime, consumers are susceptible to discrimination, extracting a great toll in lives, health and resources of individuals needing health care in this country. Although the law explicitly bans gender discrimination in virtually all aspects of the health care system, some health programs have continued to engage in discriminatory behavior. The pervasive discrimination in long-term care insurance is a prime example. Some long-term care insurance plans participating in the Long-Term Care Partnerships, a joint federal-state Medicaid program, impermissibly charge women higher premiums than men. This unfair and discriminatory gender rating has resulted in women being charged 20% to 40% more than men for the same long-term care insurance policies<sup>1</sup> – a practice that flies in the face of one of the major purposes of the law.

The delay in the regulations has also fueled confusion. Many of the regulations already issued by the Department of Health and Human Services (HHS) pursuant to the ACA simply mention antidiscrimination protections but often do not even reference Section 1557, let alone set out its requirements. As a result, some may conclude incorrectly that the regulations already issued set out the complete universe of nondiscrimination obligations under the ACA.

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<sup>1</sup> Michelle Andrews, *Key Long-Term-Care Insurer To Raise Women's Premiums*, Kaiser Health News (Feb. 26, 2013), <http://www.kaiserhealthnews.org/Features/Insuring-Your-Health/2013/022613-Michelle-Andrews-on-long-term-care-insurance-premiums.aspx>

The regulations to implement Section 1557 are long overdue and sorely needed to protect vulnerable populations. We urge the Administration to move swiftly to implement this critical provision.


Sincerely,

  
ROSA L. DELAURO  
Member of Congress

  
JACKIE SPEIER  
Member of Congress

  
BARBARA LEE  
Member of Congress

  
JOSEPH P. KENNEDY, III  
Member of Congress

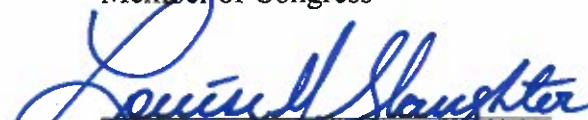
  
JERROLD NADLER  
Member of Congress


  
JANICE SCHAKOWSKY  
Member of Congress

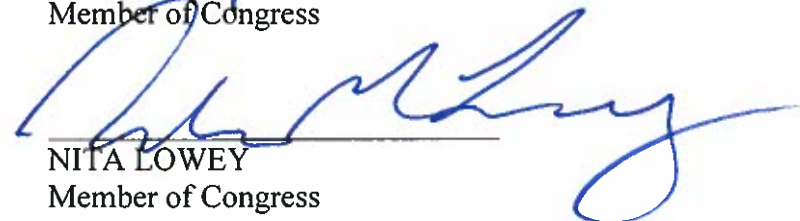
  
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Member of Congress

  
DORIS MATSUI  
Member of Congress

CC: The Honorable Sean Donovan  
Mr. Denis McDonough