

CMS broadens anti-discrimination and antibiotic stewardship measures

In the wake of a Tennessee bill that allows therapists to refuse

to treat patients based on sexual orientation, the Centers for Medicare and Medicaid Services (CMS) has [issued a proposal](#) that aims to combat discrimination in hospitals across the nation. By outlining more specific protections against discrimination on the basis of sexual orientation, this proposal expands on the anti-discrimination rule recently imposed by the Department of Health and Human Services (HHS), called “Nondiscrimination in Health Programs and Activities.”

LGBTQ civil rights

[Until this most recent](#) anti-discrimination rule, the HHS Office for Civil Rights protected against discrimination based only on race, color, nationality, disability or age. Now, sex, sexual orientation, and gender identity have been added to that list. As LGBTQ civil rights rise to the forefront of the national dialogue about equality, these policy changes reflect a growing awareness of the prevalence of discrimination against members of the LGBTQ community, as well as a desire to prevent sexual orientation from acting as a barrier to healthcare.

Section 1557 of the Affordable Care Act (ACA), in effect since 2010, “is the first federal civil rights law to prohibit discrimination on the basis of sex in healthcare.” The HHS rule and the CMS proposal make clear that sex discrimination includes discrimination on the basis of gender identity or sexual orientation. The policies will thus help ensure that the civil rights guaranteed by the ACA extend to LGBTQ individuals.

The CMS proposal, entitled “Hospital and Critical Access Hospital (CAH) Changes to Promote Innovation, Flexibility, and Improvement in Patient Care,” applies to all hospitals participating in Medicare and Medicaid.

Dr. Cara James, director of CMS Office of Minority Health, commented on her department’s efforts to ease healthcare disparities and improve access to care. “We are dedicated to working on behalf of all CMS beneficiaries,” she wrote in a CMS blog post, “while strategically focusing on racial and ethnic minorities, individuals with disabilities, and lesbian, gay, bisexual and transgender (LGBT) minorities.”

Curbing antibiotic overuse in the age of superbugs

In an attempt to modernize and standardize hospital protocol and improve patient care, the proposal also requires hospitals to find ways to lower the rates of hospital-acquired conditions and to reduce the inappropriate use of antibiotics.

[According to the CDC](#), one in 25 hospital patients on any given day has a hospital-associated infection. In 2011,



there were 722,000 cases of HAIs in acute care hospitals, with 75,000 deaths. Overusing antibiotics promotes the emergence of “superbugs,” or strains of bacteria resistant to many or all antibiotics. Bacterial infections acquired in hospitals, if the bacteria are multidrug-resistant, can be very deadly.

An interagency task force developed the “National Action Plan for Combating Antibiotic-Resistant Bacteria,” which includes provisions to improve antibiotic prescribing practices and to establish antimicrobial stewardship programs in acute care hospitals by 2020.

The policymakers behind the proposal hope that mandating the development of better antibiotic stewardship and monitoring programs will reduce the frequency of inappropriate antibiotic use, and thus, help prevent the further spread of multidrug-resistant bacteria. In light of the recent emergence of a colistin-resistant strain of E. coli in the United States (found in a Pennsylvania woman in 2016), government and industry efforts to curb antibiotic overuse are not just timely, but alarmingly urgent.

The twofold goals of this proposal are vital to improve quality and equality in healthcare in America, but they will not be cheap – making the proposed changes could cost up to \$1.1 billion.

Final comments on the rule are due August 15.

For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.