



DEPARTMENT OF HEALTH & HUMAN SERVICES

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Office of the Secretary

Director  
Office for Civil Rights  
Washington, D.C. 20201

October 8, 2019

John Wiesman, DrPH, MPH  
Co-Chair  
Carl Schmid, MBA  
Co-Chair  
Presidential Advisory Council on HIV/AIDS  
330 C Street SW, Room L106B  
Washington, DC 20024

OCR Transaction Number 20-000005

Dear Dr. Wiesman and Mr. Schmid,

I sincerely appreciated the opportunity to meet with you and the members of the Presidential Advisory Council on HIV/AIDS on Tuesday, September 24, 2019. Thank you for expressing your concerns about civil rights protections for members of the LGBT community and people living with HIV.

The U.S. Department of Health and Human Services is committed to the principle that discrimination has no place in our Nation's health care system. It has long been the position of the HHS Office for Civil Rights (HHS OCR) that when nursing homes, hospitals, and other health care providers are in compliance with Section 504 of the Rehabilitation Act of 1973, they are characterized by an absence of exclusion, separation or discrimination on the basis of HIV status.

Over the years, we have secured voluntary compliance or corrective action from hospitals who refused to assign patients to rooms without regard to HIV status, assisted living facilities and nursing homes who refused to admit HIV+ patients, state and local agencies who refused to provide personal care services to HIV+ patients, dentists who refused to treat HIV+ patients, and surgeons who refused to operate on HIV+ patients. In 2013, when we could not secure voluntary compliance from a surgeon who refused to operate on an HIV+ patient without cause, we filed an action with the HHS Departmental Appeals Board, who terminated the surgeon's participation in the Medicaid program.

HHS OCR is committed to supporting the full implementation of the National HIV/AIDS Strategy and the President’s initiative, “Ending the HIV Epidemic: A Plan for America.” We serve on the National HIV/AIDS and Viral Hepatitis Steering Committee, the National HIV/AIDS Strategy Federal Implementation Group and the Ending the HIV Epidemic Agency Priority Goal Developmental Workgroup. We support the Department’s HIV/AIDS work by:

- providing training to HHS agencies’ staff members and grant recipients about Federal civil rights, conscience, and health information privacy protections for individuals, including people with HIV;
- working with HHS agencies and programs to provide technical assistance, with the goal of producing educational materials that appropriately inform providers and consumers of Federal civil rights, conscience, and health information privacy laws; and
- investigating complaints of discrimination against individuals with HIV in health care and human services, as well as complaints that a covered entity or a business associate violated the health information privacy rights of individuals, such as people with HIV, or committed another violation of the Privacy, Security, or Breach Notification Rules, under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
  - For example, in May 2017, St. Luke’s-Roosevelt Hospital Center paid HHS \$387,200 to settle potential violations of the HIPAA Privacy Rule and agreed to implement a comprehensive corrective action plan. The settlement resolved a complaint alleging that a staff member impermissibly faxed the complainant’s protected health information, including his HIV status, to the complainant’s employer, rather than sending it to the requested personal post office box.
  - In FY 2019, HHS OCR developed and implemented a new HIPAA Right of Access Initiative. The right of an individual to obtain their medical records is a cornerstone of the HIPAA Privacy Rule, and fundamental to informed health care decisions and better health care outcomes. For individuals with HIV, timely access to one’s health information is especially important. Access to health information empowers patients to track their progress, monitor their lab results, communicate with their treatment teams, and adhere to their important treatment plans.
  - In September 2017, HHS OCR entered into a resolution agreement with Heritage Hills Living & Rehabilitation Center, LLC (Heritage Hills). The agreement resolved a complaint alleging that Heritage Hills discharged a seriously ill patient from its facility upon learning that she was HIV positive, in violation of Section 504 of the Rehabilitation Act of 1973 and Section 1557 of the Affordable Care Act. Under the Agreement, Heritage Hills reported admissions and discharge data

to OCR for twelve months; appointed a Civil Rights Coordinator; published and posted a new non-discrimination policy; implemented a revised patient grievance procedure and informed patients of their right to file complaints with HHS OCR; required its staff to receive training on HIV and Federal non-discrimination laws; revised its admissions policy to ensure that all individuals with disabilities are provided equal access to its programs; and informed neighboring hospitals that it does not discriminate in admissions on the basis of disability (including HIV).

- o Earlier this month, HHS OCR secured corrective action from the Florida Orthopaedic Institute (FOI), a Tampa Bay comprehensive orthopedic practice employing 40 physicians working in 10 offices and 20 hospitals. The corrective action resolved a complaint alleging that an FOI surgeon, after learning that the complainant is HIV+, canceled his previously scheduled surgery and subsequently retaliated against him for filing a complaint with HHS OCR by dismissing him from the practice. FOI revised its nondiscrimination policies and procedures, as well as its procedures for dismissing a patient from the practice; conducted training for its staff on HIV, Federal non-discrimination laws, grievance procedures, and the requirement to refrain from retaliatory actions; and provided the complainant with referrals to three orthopedic surgeons in the area to prevent further delays in his healthcare.

Although the public comment period on the Section 1557 Notice of Proposed Rule Making has closed, we will carefully review the comments that PACHA members submitted prior to the deadline in their individual and organizational capacities. We appreciate your commitment to eliminating HIV discrimination and promoting equal access to our health care system.

Sincerely,



Roger Severino

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