

Eli's Hospice Insider

Compliance: New Rule Moves Some Nondiscrimination Duties Off Hospices' Plates

Say goodbye to notices and taglines.

The mainstream press may have taken note of how a recent federal nondiscrimination rule treats transgender status, but hospice providers shouldn't overlook the rule's language-related regulatory changes.

Reminder: A year ago, in June 2019, the **Centers for Medicare & Medicaid Services** issued a proposed rule rolling back **Obama** administration-era nondiscrimination regulations. The provision that may affect hospice providers most aimed to eliminate new nondiscrimination notices and "taglines" - brief statements of nondiscrimination - in the area's top 15 languages.

Now, CMS has issued a final rule that eliminates the notice and tagline requirements. "Instead of broadly requiring taglines for all significant communications, the Final Rule requires covered entities to provide taglines when 'necessary to ensure meaningful access' by [limited English proficiency] individuals," notes law firm **Crowell Moring** in online analysis.



A four-factor test should determine what constitutes meaningful access, according to the final rule scheduled published in the June 19 Federal Register:

1. The number or proportion of LEP individuals eligible to be served or likely to be encountered;
2. The frequency with which LEP individuals come in contact with the program, activity, or service;
3. The nature and importance of the program, activity, or service; and
4. The resources available to the entity and costs.

The rule will "relieve the American people of approximately \$2.9 billion in unnecessary regulatory burdens over five years from eliminating the mandate for regulated entities to send patients and customers excessive 'notice and taglines' inserts in 15 or more foreign languages in almost every health care mailing, costs that get passed down to patients and consumers," the **Department of Health and Human Services** says in a release. "These expensive notices have not generally proven effective at accomplishing their purpose of providing meaningful language access to healthcare."

Roger Severino, director of the **HHS Office for Civil Rights**, maintains that "Now more than ever, Americans do not want billions of dollars in ineffective regulatory burdens raising the costs of their healthcare. We are doing our part to reel in unnecessary costs that add economic burdens to patients, providers, and insurers alike," he says in the release.

The rule also eliminates the 2016 rule's "designation of responsible employees and adoption of grievance procedures," CMS notes in the new rule. The **National Association for Home Care & Hospice** had supported the elimination of those "burdensome requirements," it notes.

While CMS lifts many regulatory burdens, language-related nondiscrimination requirements aren't going away altogether under this rule, cautions attorney **Ada Kozicz** with law firm **Rivkin Radler**. "Healthcare entities covered under Section 1557 must continue to provide written assurances to HHS that they are complying with the provisions of the final rule and Section 1557, and HHS will continue to enforce any non-compliance," Kozicz notes in online analysis.

And "covered entities still are required to provide a notice of nondiscrimination based on the regulations implementing Title VI, Title IX, the Age Act, and Section 504," Crowell Moring highlights.

Note: The 89-page rule is at www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-11758.pdf.