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Director John O'Brien
National Healthcare Operations, Healthcare and Insurance
U.S. Office of Personnel Management
1900 E Street NW, Room 2347
Washington, DC 20415

**RE: RIN 3206-AM47; Patient Protection and Affordable Care Act;
Establishment of the Multi-State Plan Program for the Affordable Insurance
Exchanges**

Dear Director O'Brien:

The Asian & Pacific Islander American Health Forum (APIAHF) appreciates this opportunity to provide comments in response to the Office of Personnel Management (OPM) Notice of Proposed Rulemaking on the Establishment of the Multi-State Plan Program.

APIAHF is a national health justice organization that influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of Asian Americans, Native Hawaiians, and Pacific Islanders (AAs and NHPs). For 26 years, APIAHF has dedicated itself to improving the health and well-being of Asian American, Native Hawaiian and Pacific Islander communities living in the United States and its jurisdictions. We work on the federal, state and local levels to advance sensible policies that decrease health disparities and promote health equity.

AA and NHPI communities are extraordinarily diverse with dozens of different cultures and languages. Discrimination related to culture, language, affordability, and restrictions on legal immigrants continue to impose major barriers to accessing quality health care for AAs and NHPs. The proposed regulations make clear that neither the Multi-State Plan Program (MSPP), nor issuers of Multi-State Plans (MSPs), nor MSPs can discriminate based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation.¹ Since robust enforcement of non-discrimination procedures including appropriate translation of health materials is crucial for our communities, APIAHF joins with The Leadership Conference on Civil and Human Rights in commending OPM for including the full range of classes protected against discrimination under the Affordable Care Act (ACA). Because the MSPP and MSPs are federally administered, they are subject to the requirements of ACA § 1557.² Further, because MSPs are Qualified Health Plans (QHPs) and thus will be offered on the Exchanges, they are subject to §1557 for that reason as well.

¹ Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges, 77 Fed. Reg. 72,582, 72,583 (proposed Dec. 5, 2012) (to be codified at 45 C.F.R. § 800.101(i)(2)).

² See, e.g., Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges, 77 Fed. Reg. 72,582, 72,583 (proposed Dec. 5, 2012) (“[L]ike the health plans offered in the Federal Employees Health Benefits Program (FEHBP), consumers will benefit from OPM oversight and contract negotiation experience to ensure consumers get the greatest value for their premium dollars. Section 1334 of the Affordable Care Act directs OPM to enter into contracts with participating issuers, including negotiating premiums and benefits, as is done in the FEHBP. In addition, OPM will monitor MSP performance in the market, and oversee plan compliance with legal requirements and contractual terms.”); *Id.* at 72,601 (to

We do note that in the proposed rule, OPM uses language in stating the nondiscrimination standard that is different than that used in other ACA regulations. We recommend changing the language in the proposed rule so that it is consistent with those other regulations.³ This is important because any differences in language may confuse some into incorrectly believing there are different standards under the two rules. The rules are administering the same statutes (and thus the same standards), so it must be clear that there is no difference in the legal obligations the rules set out. In addition, as noted above, MSPs are QHPs and are thus obligated to abide by the standards set forth for QHPs. To ensure clarity and consistency, and because there is no substantive difference between the standards, the rules should use the same text.

We also urge OPM to expressly state that, under § 1557, it has the authority and obligation to ensure that MSPP issuers and MSPs do not discriminate. In the preamble to § 800.105(d), OPM states it plans to review an MSPP issuer's benefit package for discriminatory design pursuant to § 1302(b)(4) of the ACA, along with the proposed Essential Health Benefits regulations 45 C.F.R. §§ 156.110(d), 156.110(e), and 156.125.⁴ However, the proposed rule fails to state that it will also conduct its review pursuant to § 1557. As we noted in our comments on the Essential Health Benefits proposed rule, § 1557 requires that covered plans be reviewed for discriminatory design.⁵ Only referring to § 1302 in the preamble fails to recognize the full scope of the OPM's role in guaranteeing that MSPP issuers and MSPs do not discriminate. We therefore recommend that OPM clarify that it will evaluate MSPP issuers and MSPs for compliance with the full range of nondiscrimination protections, including § 1557.

Without explicit notice and robust federal oversight and enforcement of § 1557, and the ACA's other nondiscrimination protections, AAs and NHPIs remain vulnerable to discrimination in health care settings. In addition, entities bound by the ACA's nondiscrimination mandate may well continue to engage in discriminatory practices. The full implementation of the ACA holds enormous promise for preventing discrimination and reducing the health care disparities that affect many of the most vulnerable people in our country including Asian Americans, Native Hawaiians, and Pacific Islanders. We appreciate the opportunity to offer input at this stage and look forward to working with OPM to ensure that the benefits and protections of the ACA are fully realized.

be codified 45 C.F.R. § 800.20) (“*Multi-State Plan Program or MSPP* means the programs administered by OPM pursuant to section 1334 of the Affordable Care Act”).

³ 45 C.F.R. § 156.200(e) (2012) (stating that QHPs “[n]ot . . . discriminate based on race, color, national origin, disability, age, sex, gender identity or sexual orientation”). See also, 45 C.F.R. § 155.120(c) (2012) (“In carrying out the requirements of this part, the State and the Exchange must: (1) Comply with applicable nondiscrimination statutes; and (2) Not discriminate based on race, color, national origin, disability, age, sex, gender identity or sexual orientation.”).

⁴ Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges, 77 Fed. Reg. 72,582, 72,590 (proposed Dec. 5, 2012).

⁵ Comments on the EHB proposed rule are available at <http://www.apiahf.org/sites/default/files/PA-comments12-12.pdf>.

Conclusion

Thank you for your attention to these comments. Please do not hesitate to contact Priscilla Huang, Policy Director, at phuang@apiahf.org if you have any questions.

Respectfully,

Asian & Pacific Islander American Health Forum
(San Francisco, CA and Washington, DC)