

Antidiscrimination Within Your Medical Practice, Part I

By **Margie Satinsky, M.B.A.**

(This is the first of a three-part series.)

Antidiscrimination laws and regulations protecting the workforce have been in existence since the 1960s. New regulations that protect patients, as well, went into effect in July 2016. Now is a perfect time to review the situation in your practice!

Guided by several attorneys with whom we frequently work, we have developed a three-part series on the most frequently asked questions and answers (FAQs). This month we'll focus on protection for patients. Next month we'll focus on protection for employees. Finally, we'll focus on suggestions for future direction in your practice. Keep in mind that all three articles



are just the tip of a very large iceberg.

Let's work backwards starting with the newest regulations. Earlier this year the Department of Health and Human Services (HHS) finalized regulations under Section 1557 of the Patient Protection and Affordable Care Act (ACA). The section prohibits certain covered entities from discriminating on the basis of race, color, national origin, sex (including gender identity), age or disability with respect to any health program or activity. The regulations went into effect on July 18, 2016.

To what entities do the new protections apply? The new nondiscrimination regulations apply to entities that both operate a health program or activity and that receive federal financial assistance administered by HHS. The definition of federal financial assistance means HHS grants, loans, subsidies, contracts or other arrangements by which the federal government provides assistance through funds, services of federal personnel or property. Medicare (other than Medicare Part B payments), Medicaid and the Children's Health Insurance Program fall under the definition of federal financial assistance.

What steps can we take regarding the new protections for patients? Take a hard look at the programs you have in place regarding language assistance and respect for gender identity. If you have 15 or more employees, you must designate one individual as responsible for compliance, and you must put a grievance procedure in place. Notices about the grievance procedure must be posted along with taglines in the top 15 languages spoken by individuals with limited English proficiency in the state.

With respect to gender identity, you are required to respect the gender with which the patient identifies. Gender is no longer a binary concept. Rather, it is defined as an individual's internal sense of gender – i.e. male, female, neither or a combination of male and female. That identity may be different from an individual's sex assigned at birth. A

Margie Satinsky is president of Satinsky Consulting L.L.C., a Durham consulting firm that specializes in medical practice management. She has helped many physicians start new practices, assess the wisdom of affiliating with a larger health care system and improve their current practices. Ms. Satinsky is the author of numerous books and articles, including Medical Practice Management in the 21st Century. For more information, visit www.satinskyconsulting.com.



partial list of steps that can be taken to comply with the law includes:

- (1) revision of forms that request gender identity;
- (2) development and dissemination of information about processes for designating or changing gender identity;
- (3) training coding staff to use modifiers to avoid erroneous claims denials;
- (4) revision of procedures to ensure that all staff and communications use the names preferred by patients;
- (5) revision of staff training materials;
- (6) ensuring that electronic health records allow data correction and linking of accounts (e.g., electronic linking of Jane Doe's medical record with those of John Doe);
- (7) reviewing/revising check-in procedures
- (8) reviewing/revising disciplinary policies; and
- (9) applying grievance policies to gender identity issues.