

1 SEC. III. NONDISCRIMINATION BY HEALTH CARE PRO

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VIDERS.

3 (a) GUIDANCE FOR HEALTH CARE PROVIDERS.—

4 The Secretary of Health and Human Services, acting

5 through the Director of the Office for Civil Rights of that

6 Department, shall issue guidance or regulations, which may take the form of

interim final or final regulations not subject to 5 U.S.C. 553 or 5 U.S.C. 701-706,

7 for health care providers

8 assessing, treating, or otherwise providing health care

9 services for individuals who seek health care

for symptoms

related to coronavirus at hospitals and urgent care facili

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ties during the National Public Health Emergency (declared on DATE). The

content- of the guidance or regulations shall include- be limited to information

about what constitutes unlaw

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ful discrimination on the basis of disability and age,

~~pur~~12

~~suant tounder provisions consisting of health programs or activities, as covered by~~

the Americans with Dis

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abilities Act of 1990 (42 U.S.C. 12101 et seq.), section

14 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794),

15 the Age Discrimination Act of 1975 (42 U.S.C. 6101 et

16 seq.), ~~orand~~ section 1557 of the Patient Protection and Af

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fordable Care Act (42 U.S.C. 18116) while giving and give due consideration to

medical expertise and necessity.

~~, for purposes of pro~~18

viding, with respect to the provision of health care services, including

accommodations,

through programs and activities or accommo19

tions covered under those provisions, health care services

20 during the National Public Health Emergency

Commented [SR(1)]: HHS OCR: Issuing guidance will not be binding on covered entities, so it is necessary to authorize the issuance of regulations. But regulations cannot be issued promptly if they must be subject to the notice and comment process required by the APA, at 5 USC 553, or can be enjoined in court for not complying with the APA, under 5 USC 701-706. In 5 USC 559, the APA says that its procedural requirements cannot be abrogated by another statute unless Congress does so explicitly, so these sections of the APA must be explicitly identified here as not applying to these regulations.

Commented [SR(2)]: This is replaced with a citation to the coronavirus emergency because rationing of care will not be limited to those with coronavirus symptoms, but all people needing care.

Commented [SR(3)]: This provisions is moved to Section b

~~related to coronavirus. In this subsection, the term
“coronavirus” means coronavirus as defined in section 506~~

KIN20164 S.L.C.

1 (b) INCLUDED DISCRIMINATION.—Such unlawful dis

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~~(a), in providing health care services through a program
or activity or at an accommodation described in subsection~~

6 prioritization of care, denial or limitation of health care

7 resources, or removal or suspension of care, on the basis of disability or age

(including on the basis of

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9 the provisions or aids or supports related to disability or age, or the perception

of

10 a lower quality of life related to disability or age).

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Commented [SR(4)]: This is problematic with respect to age.