April 12. 2023

Submitted via regulations.gov

Mr. Bob Sivinski
Chair
Interagency Technical Working Group on Race and Ethnicity Standards
1650 17th St. NW
Washington, DC 20500

Re: Notice and request for comments.(88 FR 5375)
Subject: Initial Proposals For Updating OMB's Race and Ethnicity Statistical Standards

Dear Mr. Sivinski,

The American Health Care Association and the National Center for Assisted Living (AHCA/NCAL) appreciates the opportunity to comment on the *Initial Proposals For Updating OMB's Race and Ethnicity Statistical Standards*

AHCA/NCAL is the nation's largest association of long term and post-acute care providers representing more than 14,000 member facilities who provide care to approximately 1.08 million residents and patients every year. By delivering solutions for quality care, AHCA/NCAL aims to improve the lives of the millions of frail, elderly and individuals with disabilities who receive long term or post-acute care in our member facilities each day.

In this Notice, the Office of Management and Budget (OMB) requests comments on the initial proposals from the Federal Interagency Technical Working Group on Race and Ethnicity Standards (Working Group) for revising OMB's 1997 Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15). Responses to this Notice will be shared with the Working Group and will help the Working Group develop their final recommendations to OMB and will also help OMB determine how to revise SPD 15 to improve the quality and usefulness of Federal race and ethnicity data.

Background:
The goals of SPD 15 are to ensure the comparability of race and ethnicity across Federal datasets and to maximize the quality of that data by ensuring that the format, language, and procedures for collecting the data are consistent and based on rigorous evidence. To achieve these goals, SPD 15 provides a minimum set of categories that all Federal

agencies must use if they intend to collect information on race and ethnicity, regardless of the collection mechanism (e.g., Federal surveys versus program benefit applications).

In 2022, OMB convened the Federal Interagency Technical Working Group on Race and Ethnicity Standards (Working Group). OMB charged the Working Group with providing recommendations on topics including, but not limited to:

- Whether the minimum reporting categories should be changed and how to best address detailed race and ethnicity groups in the standards;
- Whether updates should be made to the question format, terminology, and wording of the questions, as well as the instructions for respondents and associated guidance; and
- Whether guidance for the collection and reporting of race and ethnicity data can be improved, including in instances when self-identification is not possible.

Governing Principles of the Working Group: In the deliberations leading to the 1977 and the 1997 race and ethnicity standards, principles were established to guide interagency consideration. For this current review, the Working Group adopted the following principles to guide their work.

1. Race and ethnicity are sociopolitical constructs.
2. Respect individuals.
3. Clear concepts and terminology.
4. Comprehensive categories.
5. Consider useful data aggregations.
6. Consider State/local government data needs.
7. Standards set forth minimum categories.
8. Consider operational feasibility.
9. Category changes are based on sound research.
10. Category revisions require a crosswalk.
11. Changes are based upon an interagency collaborative effort.
12. All racial and ethnic categories should adhere to public law.

OMBs Initial Proposals for Comment

Based upon the above background, OMB is now soliciting comment on the following initial proposals to update the OMBs Race and Ethnicity Statistical Standards across Federal programs.

1. Collect race and ethnicity information using one combined question.

The OMB provides evidence suggesting that the use of separate race and ethnicity questions confuses many respondents who instead understand race and ethnicity to be similar, or the same, concepts and now proposes to include both concepts into a single race/ethnicity question. The question would include an option to select all that would apply.

AHCA Comment:

- **AHCA supports in concept the proposal to collect race and ethnicity information using one combined question, including an option to select all that would apply, but do have some concerns about administrative burden on nursing facilities resulting from this change.**

In October 2023, the Centers for Medicare and Medicaid Services (CMS) is revising the skilled nursing facility (SNF) Minimum Data Set Resident Assessment Instrument (MDS-RAI) providers as this change will require race and ethnicity under separate questions beginning October 2023, replacing the current single combined race/ethnicity question. While we appreciate the importance of standardizing data collection for race and ethnicity questions across federal programs, we believe it is also important for OMB to recognize that it will take time and effort for CMS and SNF providers as well as their software vendors to again reverse course on how this data is being collected, and how personnel are trained to gather such information through the assessment interview.

2. Add ''Middle Eastern or North African'' (MENA) as a new minimum category.

The OMB indicates that currently in SPD 15, the ''White'' minimum category specifically includes in its definition those having origins in any of the original peoples of the Middle East or North Africa. However, research suggests that many MENA respondents view their identity as distinct from White, and stakeholders have, for over 30 years, advocated for collecting MENA information separate from White. The definition of the new major category MENA would include all individuals who identify with one or more nationalities or ethnic groups with origins in the Middle East and North Africa. Examples include, but are not limited to, Lebanese, Iranian, Egyptian, Syrian, Moroccan, and Israeli.

AHCA Comment:

- **AHCA supports in concept the proposal to add the "MENA" category as a new minimum category that would be distinct from the "White" category these individuals have been historically listed under.**

While we support the importance of standardizing data collection for race and ethnicity questions across federal programs, we believe it is also important for OMB to recognize that it will take time and effort for CMS and SNF providers as well as their software vendors to revise the process for collecting and reporting this data, and how personnel are trained to gather such information through the assessment interview.

3. Require the collection of detailed race and ethnicity categories by default.

The OMB proposes that SPD 15 require data collection on race and ethnicity at the detailed category levels, as specified by the example in Figure 2 of the notice and comment, unless an agency determines that the potential benefit of the detailed data

would not justify the additional burden to the agency and the public or the additional risk to privacy or confidentiality. In those cases, agencies must at least use the SPD 15's minimum categories, as specified by the example in Figure 3. In any circumstance, agencies are encouraged to collect and provide more granular data than the minimum categories.

Figure 3. Proposed Example for Self-Response Data Collections: Combined Question with Minimum
Categories

> **What is your race or ethnicity?**
> *Select all that apply.*
> ☐ White
> ☐ Hispanic or Latino
> ☐ Black or African American
> ☐ Asian
> ☐ American Indian or Alaska Native
> ☐ Middle Eastern or North African
> ☐ Native Hawaiian or Pacific Islander

The example design in Figure 2 of the notice and comment (not pictured) represents one of potentially several options for establishing a consistent approach to collecting more detailed data, typically including a checkbox response for six of the most identified geographic regions for one of the seven major categories from Figure 3, as well as an option for a text entry to indicate a different geographic location of race/ethnicity identity.

AHCA Comment:

- **AHCA does not support the proposal that SPD 15 require data collection on race and ethnicity at the detailed category levels at this time but can encourage agencies to include as appropriate for agency purposes.**

    Unless there is a centralized mechanism to collect and disseminate race/ethnicity data as we discuss in our comment response to question 5 below, Federal agencies should be permitted flexibility in the form and format and how detailed their data collection extends beyond the seven major proposed categories, as long as any sub-category information collected is consistent with the OMB sub-categories.

    Unless an agency has a specified policy purpose identified for the detailed sub-categories discussed for each race/ethnicity category, the OMB should not mandate the additional administrative burden associated with collecting such detail. For example, the SNF MDS-RAI assessment instrument currently includes most of the proposed race/ethnicity major categories and many of the proposed

sub-categories based on the historical nursing home population. Additional populations consistent with the proposed subcategories have been recently added in a thoughtful and deliberative manner to balance the need to minimize administrative burden while helping inform policy decisions associated with health equity, quality of care, and clinical outcomes. Such agency flexibility should be maintained until the administrative burden of collecting and reporting all possible sub-categories is mitigated through enhanced interoperable technologies.

4. Update Terminology in SPD 15.

The OMB proposes several technical changes in terminology used that appear to be redundant, obsolete, or potentially offensive within categories, questions or instructions.

AHCA Comment:

- **AHCA does not oppose the proposed terminology changes but defers to the opinion of the populations that would be impacted by the proposed changes.**

5. Guidance is necessary to implement SPD 15 revisions on Federal information collections.

The OMB proposes that SPD 15 and its related documents be placed online in a central location and include implementation guidance on:

- The dates agencies must meet as they incorporate revisions to information collections,
- Statistical methods to connect data produced from previous and revised collection formats (e.g., bridging between data collected via two questions without MENA and data collected via one question with MENA),
- Procedures for collecting, processing, and reporting detailed racial and ethnic categories,
- Approaches for collecting race and ethnicity information when self-identification is not possible, i.e., data collected by a proxy or observation and/or by entities outside of SPD 15's purview (e.g., State or local governments, hospitals, or schools),
- Approaches for reporting data for respondents who select more than one race or ethnicity. Specifically, guidance is needed on how to balance providing detailed information, for example by including all possible combinations of multiple responses, and providing a single category when needed (e.g., ''multiracial''),
- Guidance on obtaining approval under the Paperwork Reduction Act 16 to revise existing race and ethnicity data collections, and
- Best practices for agencies to rely on when communicating SPD 15 revisions to stakeholders.

AHCA Comment:

- **AHCA believes that OMB should not adopt any specific compliance date agencies must meet as they incorporate revisions to information collections until full consideration is given to the various other statutory and regulatory requirements related to public notice and comment as well as the associated costs with the data collection and reporting compliance.**

Such considerations include:

a. The need for standardized data specifications for health information technologies and interoperable information exchange.
b. The need for consensus agreement from researchers, data experts, and the public on remapping the merging of race/ethnicity questions into one, the creation of a new major MENA category modified by this proposal, as well as any sub-categories that may be collected or not collected by various federal agencies.
c. The need to identify how the response(s) were reported (e.g. by self-report, interview, proxy, or observation.
d. The need to have the core instructions for data collection standardized as much as possible across agencies such as self-entry form instructions, proxy instructions, observation instructions, and interview questions being standardized across all agencies.

Ideally, since the proposal is to capture the self-identified race/ethnicity of an individual, which is unlikely to change over time for most people, the OMB should consider opportunities for a centralized method to collect and maintain this information at one time, and then make the information available to entities authorized to access the information, rather than the redundant burden of each entity collect the information independently. For example, under the Medicare program, beneficiaries upon enrollment could be able to self-identify their race/ethnicity, or could update that data, which could then be accessed by providers.

Conclusion

The OMB notes that this Notice is a request for the public to comment on the initial proposals of the Working Group. None of the initial proposals have been adopted, and no interim decisions have been made concerning them. OMB can modify or reject any of the proposals, and OMB has the option of making no changes. The initial proposals are published in this Notice because OMB believes that they are worthy of public discussion and that OMB and the Working Group's further and continuing deliberations will benefit from obtaining the public's views on the proposals. OMB plans to complete revisions to SPD 15 no later than Summer 2024.

AHCA Comment:

Overall AHCA is in favor of the direction of these proposed changes but we have concerns about the extent and timing of the changes.

- **We support the proposed seven race/ethnicity categories but ask OMB to recognize that the addition of the new ''Middle Eastern or North African'' (MENA) major category will add burden and may take several years to be incorporated into the SNF MDS-RAI assessment data set.**
- **We ask the OMB to be deliberative and not to aggressively pursue mandating a national adoption of all the seven proposed race/ethnicity categories <u>and</u> sub-categories without further considering whether every federal agency and the entities subject to those agencies policies have an administrative need for such detailed information.**
- **We ask the OMB to be considerate of the various timelines Federal agencies need to revise regulations, forms, instructions, data specifications, and other activities (such as SNF quality measure specification updates) necessary to implement any finalized revisions to SPD 15.**
- **We ask the OMB to consider opportunities for leveraging technology to collect and maintain this information, and then make the information available to entities authorized to access the information, rather than the redundant burden of each entity collect the information independently. Such an approach would effectively mitigate most of our concerns.**

AHCA/NCAL is dedicated to improving lives by offering solutions for quality care. We thank OMB for the opportunity to offer comments on the *Initial Proposals For Updating OMB's Race and Ethnicity Statistical Standards* and would be happy to discuss further. Please contact Dan Ciolek at dciolek@ahca.org or with any questions or requests to discuss our comments.

Sincerely,

[Transmitted Electronically]

Daniel E Ciolek, PT, MS, PMP
Associate Vice President, AHCA/NCAL