

Summary: Final Rule Implementing Section 1557 of the Affordable Care Act

The Department of Health and Human Services (HHS) issued the Final Rule implementing the prohibition of discrimination under Section 1557 of the Affordable Care Act (ACA) of 2010. The Final Rule, *Nondiscrimination in Health Programs and Activities*, will help to advance equity and reduce health disparities by protecting some of the populations that have been most vulnerable to discrimination in the health care context. The final rule explains consumers' rights under the law and provides covered entities important guidance about their obligations.

Section 1557 prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities.

Section 1557 builds on long-standing and familiar Federal civil rights laws: Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act of 1975 (Age Act). Most notably, Section 1557 is the first Federal civil rights law to prohibit discrimination on the basis of sex in all health programs and activities receiving Federal financial assistance.

Section 1557 has been in effect since enactment of the ACA in 2010 and the HHS Office for Civil Rights (OCR) has been enforcing the provision since it was enacted.

Coverage of the Rule

The rule covers:

- Any health program or activity, any part of which receives funding from HHS (such as hospitals that accept Medicare or doctors who accept Medicaid);
- Any health program that HHS itself administers;
- Health Insurance Marketplaces and issuers that participate in those Marketplaces.

Protections under the rule

Section 1557 builds on prior Federal civil rights laws to prohibit sex discrimination in health care. The final rule requires that women be treated equally with men in the health care they receive and also prohibits the denial of health care or health coverage based on an individual's sex, including discrimination based on pregnancy, gender identity, and sex stereotyping. The final rule also requires covered health programs and activities to treat individuals consistent with their gender identity.

For individuals with disabilities, the final rule requires covered entities to make all programs and activities provided through electronic and information technology accessible; to ensure the physical accessibility of newly constructed or altered facilities; and to provide appropriate auxiliary aids and services for individuals with disabilities. Covered entities are also prohibited

from using marketing practices or benefit designs that discriminate on the basis of disability and other prohibited bases.

Covered entities must take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in their health programs and activities. In addition, covered entities are encouraged to develop and implement a language access plan.

The final rule on Section 1557 does not include a religious exemption; however, the final rule does not displace existing protections for religious freedom and conscience.

Procedural Requirements

The final rule implementing Section 1557 requires covered entities with 15 or more employees to have a grievance procedure and a compliance coordinator. The final rule includes an Appendix that provides a model grievance procedure for covered entities. Entities with fewer than 15 employees are not required to have a grievance procedure or compliance coordinator.

The final rule requires that covered entities post notices of nondiscrimination and taglines that alert individuals with limited English proficiency to the availability of language assistance services. To reduce burden and costs, OCR has translated a sample notice and taglines for use by covered entities into 64 languages. For translated materials, visit www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html.

The final rule requires each covered entity to post taglines in at least the top 15 non-English languages spoken in the State in which the entity is located or does business. Those requirements are modified for small sized significant communications such as postcards; for these, the final rule requires entities to post a nondiscrimination statement and taglines in at least the top two non-English languages spoken by individuals with limited English proficiency in the State.

Enforcement

The existing enforcement mechanisms under Title VI, Title IX, Section 504 and the Age Act apply for redress of violations of Section 1557. These mechanisms include: requiring covered entities to keep records and submit compliance reports to OCR, conducting compliance reviews and complaint investigations, and providing technical assistance and guidance.

Where noncompliance or threatened noncompliance cannot be corrected by informal means, available enforcement mechanisms include suspension of, termination of, or refusal to grant or continue Federal financial assistance; referral to the Department of Justice with a recommendation to bring proceedings to enforce any rights of the United States; and any other means authorized by law. The final rule also recognizes that an individual may bring a civil action to challenge a Section 1557 violation.

Responses to Comments on the Proposed Rule Reflected in the Final Rule

- Sexual orientation discrimination: While the final rule does not resolve whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination under Section 1557, the rule makes clear that OCR will evaluate complaints that allege sex discrimination related to an individual's sexual orientation to

determine if they involve the sorts of stereotyping that can be addressed under Section 1557. HHS supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor legal developments on this issue.

- No new religious exemption: The proposed rule sought comment on whether there should be an exemption for religious organizations in circumstances in which nondiscrimination obligations conflict with religious beliefs. As noted above, the final rule on Section 1557 does not include a religious exemption; however, the final rule does not displace existing protections for religious freedom and conscience.
- Benefit design in health coverage plans: OCR received comments that issuers would need time to come into compliance with the requirement prohibiting discrimination in benefit design. The final rule establishes that to the extent the provisions of the rule require changes to health insurance or group health plan benefit design, such provisions have an applicability date of the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2017.
- Complaints against Third-Party Administrators (TPAs): The proposed rule noted that where an entity acts as a TPA for a health plan, OCR would engage in a case-by-case analysis to determine coverage under Section 1557. The final rule states that OCR will investigate the TPA when the alleged discrimination is in the administration of the plan; where the alleged discrimination is in benefit design, OCR will process the complaint against the employer/plan sponsor and typically will refer the matter to the Equal Employment Opportunity Commission (EEOC) if OCR lacks jurisdiction over the employer.
- Standards for single sex programs: The proposed rule sought comment on the standard for evaluating single sex health programs. The final rule allows these programs only where a covered entity has an exceedingly persuasive justification.
- Language access: Covered entities are encouraged to development of a language access plan.

For more information about Section 1557, including factsheets on key provisions and frequently asked questions, visit www.hhs.gov/civil-rights/for-individuals/section-1557.