

# SECTION 1557 OF THE AFFORDABLE CARE ACT

## A CIVIL RIGHTS TRAINING FOR HEALTH PROVIDERS AND EMPLOYEES OF HEALTH PROGRAMS AND HEALTH INSURANCE ISSUERS

### PRESENTER'S GUIDE



Content provided by the  
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Office for Civil Rights

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## OVERVIEW

On May 18, 2016, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) issued the implementing regulation for Section 1557 of the Affordable Care Act. The regulation builds upon longstanding nondiscrimination regulations and provides important new protections, including prohibitions against sex discrimination in health programs and activities, and nondiscrimination requirements for health insurance programs and activities.

HHS OCR strongly encourages covered entities to train their employees on compliance with Section 1557. To help covered entities, we have prepared this Presenter's Guide and accompanying PowerPoint slides titled "Section 1557 of the Affordable Care Act: A Civil Rights Training for Health Providers and Employees of Health Programs and Health Insurance Issuers." We anticipate that these training materials will supplement covered entities' trainings on their internal policies and procedures that are now required under Section 1557.

Covered entities should educate workforce members who regularly interact with the public, including those who have direct contact with patients, clients and their companions. These workforce members may include, but are not limited to, the following: physicians; physician assistants; dentists; dental hygienists; therapists; nurses; nurse practitioners; pharmacists; medical technicians; medical assistants; home health employees; administrative assistants; and certain employees working for the Federally-facilitated marketplaces, state-based marketplaces and issuers in those marketplaces. Additionally, compliance managers should study and understand the regulation well enough to make assessments of how their covered entities will promote compliance with the regulation, including assessing the training needs of their staff and training resources.

## GOALS

This training is intended to raise awareness of:

- Section 1557's prohibitions against race, color, national origin, sex, age or disability discrimination in health settings in order to prevent and address discriminatory conduct;
- Section 1557's new requirements regarding sex discrimination;
- Section 1557's new requirements for health insurance companies; and
- How the HHS Office for Civil Rights enforces Section 1557 through investigations and technical assistance to health providers, programs and issuers.

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### Section 1557 of the Affordable Care Act Civil Rights Training

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#### **SLIDE 1 NOTES**

**“Section 1557 of the Affordable Care Act: A Civil Rights Training for Health Providers and Employees of Health Programs and Health Insurance Issuers”**

Opening Slide and Introductions

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**SLIDE 2 NOTES**

**“Training objectives”**

**Talking Points**

During this training, we will discuss:

- Background on Section 1557 of the Affordable Care Act
- Section 1557's nondiscrimination requirements
- and
- How Section 1557 is enforced

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**SLIDE 3**  
**“Background”**

Transition Slide

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**SLIDE 4 NOTES**

**“What is Section 1557?”**

**Talking Points**

- Section 1557 is the nondiscrimination law in the Affordable Care Act (ACA).
- By eliminating barriers that are based on discrimination, Section 1557 is important to achieving the Affordable Care Act's goals of expanding access to health care and coverage, eliminating barriers, and reducing health disparities.
- Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability in certain health programs and activities.
- Section 1557 builds upon longstanding nondiscrimination laws and provides new civil rights protections, such as prohibiting sex discrimination in health settings.

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**SLIDE 5 NOTES**

**“What are some of the notable provisions of Section 1557?”**

**Talking Points**

- Section 1557 is the first Federal civil rights law to broadly prohibit sex discrimination in health programs and activities.
  - Sex discrimination includes, but is not limited to, discrimination based on an individual's sex, including pregnancy, related medical conditions, termination of pregnancy, gender identity and sex stereotypes.
    - Gender identity means an individual's internal sense of gender, which may be male, female, neither, or a combination of male and female.
    - Sex stereotypes means stereotypical notions of masculinity or femininity.
- Health insurance companies **may not** discriminate against their clients or potential clients based on their race, color, national origin, sex, age or disability. Section 1557 applies to the Health Insurance Marketplaces and to all health plans offered by health insurance companies that participate in the Marketplaces.

**Background information for presenter**

- The term “gender identity” means an individual's internal sense of gender, which may be male, female, neither, or a combination of male and female, and which may be different from an individual's sex assigned at birth. The way an individual expresses gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender. A transgender individual is an individual whose gender identity is different from the sex assigned to that person at birth; and an individual with a transgender identity is referred to as a transgender individual. An individual need not have sought medical treatment or have undergone specific processes to be transgender.
- The term “sex stereotypes” includes expectations that individuals will act in conformity with gender expressions associated with being male or female, such as dress, appearance, or behavior. Additional information is found on Slides 12-14.



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**SLIDE 6 NOTES**

**“How was the public involved in developing Section 1557?”**

**Talking Points**

- OCR consulted with consumers, health service providers, health insurance issuers, and other stakeholders about Section 1557.
- OCR received nearly 25,000 written comments on the proposed Section 1557 regulation.
- OCR published the final Section 1557 regulation on May 18, 2016; it reflects the public's comments and OCR's engagement with stakeholders.

**Background information for presenter**

- The HHS Office for Civil Rights (OCR) met with communities across the country as well as health care providers, health issuers, and other stakeholders about Section 1557.
- OCR published a Request for Information (RFI) in 2013 to obtain information on a variety of issues to better understand individuals' experiences with discrimination in health programs, as well as understand covered entities' experiences in complying with Federal civil rights laws.
- After receiving comments from the public, OCR drafted a Notice of Proposed Rulemaking (NPRM) to respond to the comments and suggestions it received, and drafted the specific nondiscrimination provisions for further comments.
- OCR received additional comments from the public and addresses them in the final regulation, which was published in May 2016.

**Additional resources**

The RFI, NPRM and the final Section 1557 regulation were published in the Federal Register, available at: [www.federalregister.gov](http://www.federalregister.gov) . Additional materials explaining individuals' rights and entities' responsibilities under Section 1557 are available at [www.hhs.gov/ocr](http://www.hhs.gov/ocr) .

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**SLIDE 7 NOTES**

**“Requirements”**

Transition Slide

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**SLIDE 8 NOTES**

**“Who must comply with HHS’s Section 1557 regulation?”**

**Talking Points**

The particular types of facilities that must comply are:

- All health programs and activities that receive Federal financial assistance (FFA) from HHS.
  - Examples of types of covered entities: hospitals, health clinics, physicians’ practices, community health centers, nursing homes, rehabilitation centers, health insurance issuers, and State Medicaid agencies.
  - Federal financial assistance includes grants, property, Medicaid, Medicare Parts A, C and D payments, and tax credits and cost-sharing subsidies under Title I of the ACA. (Medicare Part B is not included.)
- All health programs and activities administered by entities created under Title I of the ACA (e.g., State-based and Federally-facilitated Health Insurance Marketplaces).
- All health programs and activities administered by HHS (i.e., Medicare Program, Federally-facilitated Marketplaces).
- Where an entity is principally engaged in health services or health coverage, ALL of the entity’s operations are considered part of the health program or activity, and must be in compliance with Section 1557 (e.g., a hospital’s medical departments, as well as its cafeteria and gift shop).
- **Therefore, ALL staff in these types of programs and activities are responsible for ensuring that they do not discriminate against individuals.**
- Section 1557 requires employers to be responsible for their employee health benefit programs in certain circumstances.
- Section 1557 does *not* apply to employment practices such as hiring or firing. However, an employer may be subject to other employment discrimination laws.

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**SLIDE 9 NOTES**

**“Discrimination based on an individual’s race, color or national origin is prohibited”**

**Talking Points**

Under Section 1557, a covered entity may not:

- Segregate, delay or deny services or benefits based on an individual’s race, color or national origin. For example,
  - A covered entity may not assign patients to patient rooms based on race.
  - A covered entity may not require a mother to disclose her citizenship or immigration status when she applies for health services for her eligible child.
- Delay or deny effective language assistance services to individuals with limited English proficiency (LEP). The term “national origin” includes, but is not limited to, an individual’s, or his or her ancestor’s, place of origin (such as a country), or physical, cultural, or linguistic characteristics of a national origin group.
- Section 1557 protects individuals in the United States, whether lawfully or not, who experience discrimination based on any of Section 1557’s prohibited bases.

**Background information for presenter**

- People of every race, color and national origin are protected under the law. Discrimination in health settings based on an individual’s race, color or national origin has been prohibited for decades. However, discrimination, stereotyping and biases persist in the health care system.\*
- An individual with LEP is an individual whose primary language is not English and who has a limited ability to read, write, speak, or understand English often because they are not originally from the United States.
- National origin discrimination can occur through unintentional actions, such as an entity’s use of policies or practices that appear to be nondiscriminatory but have discriminatory effects on a particular national origin group. OCR has seen such issues arise when an eligible individual living in mixed-immigration status households applies to participate in a health program or activity. Sometimes the application process contains inquiries into the citizenship or immigration status of immigrant family members not applying for the health program. There would be compliance concerns raised if the application questions about the immigrant family members are irrelevant to the applicant’s eligibility and result in discouraging the eligible applicant and others of his or her national origin from applying for the health program. There would also be compliance concerns raised if the covered entity delays or denies the benefit application because the immigrant family member refuses to provide information about his or her immigration status.

**Additional resources**

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d et seq., and its implementing regulations, 45 C.F.R. Part 80, available at [www.gpo.gov](http://www.gpo.gov)

\*Institute of Medicine. *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*. Washington, DC: The National Academies Press, 2003. [www.nap.edu](http://www.nap.edu)

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**SLIDE 10 NOTES**

**“Requirements for communicating with LEP individuals”**

**Talking Points**

- A covered entity must take reasonable steps to provide meaningful access to each individual with LEP eligible to be served or likely to be encountered in its health programs and activities. Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translations.
- A covered entity must publish taglines, which are short statements in non-English languages, in significant publications and post in prominent locations and on its website, to notify the individual about the availability of language assistance services.
- A covered entity must offer a qualified interpreter when oral interpretation is a reasonable step to provide an individual with meaningful access.
- Where language services are required, they must be provided free of charge and in a timely manner.
- A covered entity must adhere to certain quality standards in delivering language assistance services. For instance, a covered entity may not:
  - Require an individual to provide his or her own interpreter.
  - Rely on a minor child to interpret, except in a life threatening emergency where there is no qualified interpreter immediately available.
  - Rely on interpreters that the individual prefers when there are competency, confidentiality or other concerns.
  - Rely on unqualified bilingual or multilingual staff.
  - Use low-quality video remote interpreting services.

**Background Information for presenter**

- A covered entity cannot require individuals who are LEP to use family members, friends, and children as interpreters because there are serious concerns such as competency, confidentiality, and conflicts of interest. However, under special circumstances, such as emergency situations, it may be necessary for a family member, friend or minor child to interpret initially if there is an imminent threat to the safety of the patient or the public, and there is no other interpreter available.
- Sometimes, a patient prefers and requests to have a family member or friend interpret for them. A covered entity may allow the patient's adult companion to interpret if the companion agrees to interpret, the covered entity's reliance on the companion is appropriate under the circumstances, and there are no competency or confidentiality concerns.

**Additional resources**

Section 1557 regulation requirements – § 92.201 Meaningful access for individuals with limited English proficiency  
Linguistic and cultural competency resources available at: [www.minorityhealth.hhs.gov](http://www.minorityhealth.hhs.gov)  
Limited English Proficiency: Federal Interagency website & resources: [www.LEP.gov](http://www.LEP.gov)

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#### SLIDE 11 NOTES

##### **“Examples of race, color or national origin discrimination”**

##### **Talking Points and background information for presenter**

These examples are based on actual complaints that HHS OCR received and investigated.

- A physician at a hospital's emergency department denied a mother with LEP a Spanish interpreter when she requested language assistance. Instead, the physician used the mother's 13-year-old son as the interpreter, while he was being treated for a dog bite. The hospital also failed to translate or orally explain the discharge instructions in Spanish.

OCR provided the hospital with technical assistance regarding its obligation to ensure meaningful access to individuals with LEP and their authorized representatives. OCR also provided technical assistance to the hospital concerning its obligation to communicate information contained in vital documents (e.g., discharge instructions, consent forms, prescriptions, etc.). As a result of the investigation, the hospital took voluntary corrective actions, which included re-training its staff members who worked directly with the complainant and her family. Additionally, the hospital revised its LEP policy so that language needs are assessed immediately, and documents are translated or orally interpreted. Finally, the hospital posted signs in the Emergency Department intake area and in various admitting areas throughout the hospital, which have been translated into multiple languages that the hospital encounters, advising patients of the availability of free interpreter services.

- A nurse ignored an African-American female, who needed medical attention, and made her wait in the lobby for close to an hour. While she was waiting, a Caucasian male arrived for his appointment with the same health provider. Although he did not have a health emergency, he waited less than five minutes before the nurse called him for a patient room. Computer records verified that the woman had arrived 15 minutes early for her appointment and that her appointment was scheduled before his. The clinic did not have a legitimate, nondiscriminatory reason for treating the Caucasian male first.

OCR provided the hospital with technical assistance and the hospital took a number of voluntary corrective steps, including retraining the staff that were involved in the incident on providing nondiscriminatory treatment and appropriate check-in/check-out procedures. The hospital also included a clause in its Patient's Rights and Responsibilities Procedure and its Equal Employment Opportunity Procedure that it does not discriminate in its provision of services to its patients or in its employment practices on the basis of race. As a result of this investigation, the hospital also provided a mandatory code of conduct training to all of its employees.

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**SLIDE 12 NOTES**

**“Discrimination based on an individual’s sex is prohibited”**

**Talking Points**

- Covered entities must:
  - Provide equal access to health care, health insurance coverage, and other health programs without discrimination based on sex, including pregnancy, gender identity or sex stereotypes.
  - Treat individuals consistent with their gender identity, including with respect to access to facilities, such as bathrooms and patient rooms.

**Background information for presenter**

- The intention of this slide is to promote awareness about different types of sex discrimination, which includes discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions, sex stereotyping, and gender identity.
- Sex stereotypes means stereotypical notions of masculinity or femininity, such as an assumption that a male is always the primary earner in a family or that women should always wear makeup. Unlawful sex discrimination occurs where an individual is treated differently based on his or her failure to conform to gender-based stereotypes about how men or women should present themselves or behave. When a covered entity discriminates against an individual based on his or her sexual orientation, the entity may well be relying on stereotypical notions or expectations of how members of a certain sex should act or behave.
- Under Section 1557, discrimination on the basis of an individual’s sexual orientation status alone is not a form of sex discrimination. However, OCR will process complaints that allege sex discrimination related to an individual’s sexual orientation to determine if they involve the sorts of stereotyping that are prohibited by 1557. The rule makes clear that HHS supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor the evolving case law on this issue.
- The term “gender identity” means an individual's internal sense of gender, which may be male, female, neither, or a combination of male and female, and which may be different from an individual’s sex assigned at birth. The way an individual expresses gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender. A transgender individual is an individual whose gender identity is different from the sex assigned to that person at birth.

**Additional Resources**

Section 1557 regulation requirements – § 92.206 Equal program access on the basis of sex

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**SLIDE 13 NOTES**

**“Discrimination based on an individual’s sex is prohibited (cont.)”**

**Talking Points**

- Under Section 1557:
  - Providers cannot deny or limit sex-specific health services based solely on the fact that the gender identity or gender recorded for an individual does not align with the sex who usually receive those types of sex-specific services (e.g., denying a transgender male a pap smear or denying a transgender woman a prostate exam).
  - Sex specific programs are allowed only if a covered entity can show an exceedingly persuasive justification for the program. That means the sex-specific nature of the program must be substantially related to an important health-related or scientific objective.
    - For example, a breast cancer program cannot refuse to treat men with breast cancer solely because its female patients would feel uncomfortable.

**Background information for presenter**

- OCR recognizes that not every health service typically or exclusively provided to individuals of one sex would be a health service appropriately provided to a transgender individual. However, a covered entity must provide coverage for health services that are appropriate for a transgender individual (e.g., a prostate exam for a transgender woman with a prostate) on the same terms as provided to other individuals.
- The rule does not require, for example, gynecologists to treat individuals for whom the services they provide are not medically appropriate. However, where the provision of sex-specific health services would be medically appropriate, services must be provided without regard TO an individual’s gender identity.
- In evaluating a covered entity’s sex-specific health program or activity, OCR may consider a variety of factors relevant to the particular program or activity. OCR expects a covered entity to supply objective evidence and empirical data if available, to justify the need to restrict program participation to one sex.
- OCR recognizes that under some existing laws, rules or regulations, certain types of sex-specific facilities (such as restrooms) are permitted. However, even where it is permissible to make sex-based distinctions, individuals may not be excluded from health programs and activities (for which they are otherwise eligible) based on their gender identity.

**Additional Resources**

Section 1557 regulation requirements – § 92.206 Equal program access on the basis of sex



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**SLIDE 14 NOTES**

**“Examples of sex discrimination”**

**Talking Points and background information for presenter**

These examples are based on actual complaints that HHS OCR received and investigated.

- Multiple staff at a hospital created a hostile environment for a transgender woman because she was transgender. She was also required to share a room with a male patient.

OCR and the hospital entered into a formal voluntary resolution agreement during the course of the investigation. The agreement required the hospital to revise its admissions policy to include prohibitions against sex discrimination. For example, during the intake process, patients are now provided an opportunity to identify their preferred name and gender/transgender status. The hospital committed to revising its room placement policy to ensure the safe, ethical, appropriate, and nondiscriminatory assignment of rooms for patients who are transgender. Additionally, the hospital will implement policies and train staff to prevent and address derogatory statements and adverse treatment based on sex. OCR will monitor the hospital for two years.

- A pharmacist would not provide a flu vaccine to a woman and questioned her about her non-gender-conforming clothing and hairstyle.

OCR provided extensive technical assistance to the pharmacy and its parent company. The pharmacy took a number of voluntary actions at its pharmacies nationwide, which included:

- developing and posting nondiscrimination notices;
  - developing grievance procedures and appointing a national coordinator to oversee compliance; and
  - developing and implementing a comprehensive training to ensure nondiscriminatory services.
- Staff at a hospital’s emergency department ridiculed a male patient who arrived after sustaining injuries in a domestic incident. Staff did not evaluate the patient under a domestic violence protocol because he was male.

After OCR initiated an investigation, the Hospital revised its abuse protocol to provide gender-neutral procedures for reporting incidents involving domestic abuse. The

Hospital also provided training to its emergency department staff on identifying and assessing victims of domestic abuse.

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## SLIDE 15 NOTES

### “Discrimination based on an individual’s age is prohibited”

#### Talking Points

- Under Section 1557, a covered entity may *not* exclude, deny or limit benefits and services based on an individual’s age (e.g., a physician’s practice may not deny a 62-year-old man health services because it only accepts patients under age 60).
- A covered entity may base its actions on age when it is a factor necessary to the normal operation, or achievement of a statutory objective of a program. Therefore, this standard does not apply to any age distinction that is authorized under Federal, State, or local law. For example, age rating in premium rates within a 3:1 ratio in Marketplace<sup>SM</sup> plans would not violate Section 1557 because it is permitted under the ACA.
- A covered entity may also provide different treatment based on age when the treatment is justified by scientific or medical evidence (e.g., a physician may decide to deny a mammogram to a woman under a certain age because recent medical studies have suggested that mammograms may be more harmful than helpful to young women), or based on a specialty (e.g., pediatricians are not required to treat adults and gerontologists not required to treat children).

#### Additional Resources

Age Discrimination Act of 1975 (Age Act), 42 U.S.C. 6101 et seq., and its implementing regulations, available at [www.gpo.gov](http://www.gpo.gov)

Rogers, S. et.al., *Discrimination in Healthcare Settings is Associated with Disability in Older Adults: Health and Retirement Study, 2008–2012* Journal of General Internal Medicine, Oct 2015, Vol. 30, Issue 10, pp. 1413-1420.

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**SLIDE 16 NOTES**

**“Discrimination based on an individual’s disability is prohibited”**

**Talking Points**

- Under Section 1557, an individual may not be excluded or denied benefits or services because of a disability.
- Under Section 1557, covered entities must take the following steps, unless they would result in an undue financial burden or would fundamentally alter the program:
  - Make reasonable changes to policies, procedures and practices where necessary to provide equal access for individuals with disabilities. For example, a clinic must modify its “no pets” policy to permit an individual with a disability to be accompanied by a service animal. Additionally, a clinic must allow an individual with an anxiety disorder to wait for an appointment in a separate, quiet room if the individual is unable to wait in the patient waiting area because of anxiety.
  - Make all health programs and activities provided electronically (e.g., through online appointment systems, electronic billing, information kiosks, etc.) accessible to individuals with disabilities. For example, a doctor’s office that requires patients to make appointments only online must modify its procedures so that a person with a disability who cannot use the required method can still make an appointment.
- Ensure newly constructed and altered facilities are physically accessible to individuals with disabilities.
- Provide effective communication with individuals with disabilities, including patients and their companions.

**Background information for presenter**

- *Disability* means a physical or mental impairment that substantially limits one or more of the major life activities of such individual; having a record of such an impairment; or being regarded as having such an impairment.
  - The phrase *physical or mental impairment* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
  - The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

**Additional resources**

Section 1557 regulation requirements – § 92.205 Requirement to make reasonable modifications; § 92.204 Accessibility of electronic and information technology; § 92.203 Accessibility standards for buildings and facilities, § 92.202 Effective communication for individuals with disabilities

National Council on Disability. *The Current State of Health Care for People with Disabilities*, 2009 [www.ncd.gov](http://www.ncd.gov)

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**SLIDE 17 NOTES**

**“Auxiliary aids and services”**

**Talking Points**

- A covered entity must provide auxiliary aids and services to individuals with disabilities free of charge and in a timely manner when necessary to ensure an equal opportunity to participate and benefit from the entity’s health programs or activities.
- Auxiliary aids and services include, but are not limited to:
  - \*Qualified sign language interpreters
  - \*Captioning
  - \*Large print materials
  - \*Screen reader software
  - \*Text telephones (TTYs)
  - \*Video remote interpreting services
- A covered entity may not:
  - Require an individual to provide his or her own interpreter.
  - Rely on a minor child to interpret, except in a life threatening emergency where there is no qualified interpreter immediately available.
  - Rely on interpreters that the individual prefers when there are competency, confidentiality or other concerns.
  - Rely on unqualified staff interpreters.
  - Use low-quality video remote interpreting services.

**Background information for presenter**

- Auxiliary Aids include, but are not limited to, the following: qualified interpreters; video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices and systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, video-based telecommunication products and systems; text telephones (TTYs); videophones or captioned telephones; videotext displays; accessible electronic and information technology; qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; and large print materials.

**Additional resources**

Section 1557 regulation requirements – § 92.202 Effective communication for individuals with disabilities  
Section 1557 regulation Appendix A to Part 92 — Sample Notice Informing Individuals About Nondiscrimination and Accessibility Requirements  
Information and technical assistance materials regarding disability rights and legal requirements, available at [www.ada.gov](http://www.ada.gov)

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**SLIDE 18 NOTES**

**“Examples of disability discrimination”**

**Talking Points and Background information for presenter**

These examples are based on actual complaints that HHS OCR received and investigated.

- A hospital denied a visually impaired woman her request for a consent form in an alternative format that was accessible to her. The woman informed the hospital that she could access the information on the form if it was provided in large print or an accessible electronic format that she could read with her screen reader, but the hospital provided her with neither.

In the first case example, the hospital took voluntary corrective actions, which included implementing three auxiliary aids to ensure written information is accessible to people who are visually impaired. The hospital reported that these auxiliary aids include large font print prescription labels, Scriptalk, and Braille. The hospital also implemented a process to transcribe handwritten patient-specific information contained in clinical documents into a text- to-speech compatible format.

- A hospital provided individuals who are deaf or hard of hearing with sign language interpreters through an ineffective video relay interpreting device. The hospital operated the device through an unreliable internet connection, which produced irregular pauses and blurry images during the individuals' medical appointments.

To resolve the issues in the complaint, OCR provided the hospital with technical assistance to ensure that the hospital could provide effective communication services and auxiliary aids in hospital settings.

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**SLIDE 19 NOTES**

**“Discrimination in health insurance or other health coverage is prohibited”**

**Talking Points**

- Under Section 1557, covered entities may **not**, in providing or administering health-related insurance or other health-related coverage, discriminate on the basis of race, color, national origin, sex, age, or disability.
- Covered entities may not, on any of the above covered bases:
  - Deny, cancel, limit or refuse to issue or renew a health insurance plan or other health coverage;
  - Deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage; or
  - Use marketing practices or benefit designs that discriminate (e.g., plan covers treatment for eating disorders in women but not men).
- Categorical exclusions or limitations in coverage for all health care services related to gender transition are prohibited.
- Section 1557 does not prohibit covered entities from determining whether a particular health service is medically necessary or otherwise meets applicable coverage requirements in any individual case.

**Background information for presenter**

- OCR will determine whether a benefit design feature is discriminatory by analyzing the facts and circumstances of a given scenario. When OCR receives a complaint alleging discriminatory benefit design, OCR will evaluate whether the covered entity used, in a nondiscriminatory manner, a neutral rule or principle when deciding to adopt the design feature or whether the reason is a pretext for discrimination. Notably, categorical exclusions of all services related to gender transition are facially discriminatory; therefore, they will be declared invalid immediately, without a facts and circumstances analysis.
- If a plan limits or denies coverage for certain services or treatment for a specific condition, OCR will evaluate whether coverage for the same or a similar service or treatment is available to individuals outside of that protected class or those with different health conditions, and will evaluate the reasons for any differences in coverage. For example, if an issuer denies a claim for coverage for a hysterectomy that a patient's provider says is medically necessary to treat gender dysphoria, OCR will evaluate the extent of the covered entity's coverage policy for hysterectomies under other circumstances.
- Section 1557 does not require covered entities to cover any particular procedure or treatment and does not prevent covered entities from using reasonable medical management techniques. Covered entities have discretion in developing benefit designs and determining what specific health services will be covered, but they cannot employ benefit design or program administration practices that operate in a discriminatory manner.

**Additional Resources** - Section 1557 regulation requirements – § 92.207 Nondiscrimination in health-related insurance and other health-related coverage

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**SLIDE 20 NOTES**

**“Exceptions”**

**Talking Points**

There are some issues that are not covered by Section 1557.

- Employment discrimination is not covered under Section 1557 except in certain circumstances and for certain employers related to discrimination in employee health benefit programs.
- If the application of the Section 1557 requirement would violate applicable Federal laws protecting religious freedom and conscience, it is not required.

**Background information for presenter**

- An employer will not be liable under Section 1557 for discrimination in relation to hiring, firing or promotion decisions.
- Under specific circumstances, however, an employer *will* be liable for discrimination in its employee health benefit programs. Those circumstances are the following:
  - The employer is principally engaged in health care or health coverage (e.g., a hospital, nursing home or a health insurance company).
  - The employer receives Federal financial assistance (FFA) that is primarily to fund the entity's employee health benefit program (e.g., if an entity receives FFA specifically for its employee wellness program, then the rule would apply to employees involved in the entity's administration of that wellness program).
  - The employer is not principally engaged in health care but operates a health program or activity that receives FFA; then it will be responsible only for the employee health benefits for employees in that health program or activity.
  - Note that other laws may govern employee benefit plans and employment discrimination independent of Section 1557. Thus, for example, Title VII of the Civil Rights Act of 1964 bars discrimination based on race, color, national origin, sex and religion by all employers with 15 or more employees; similarly, the Americans with Disabilities Act bars disability discrimination by employers with 15 or more employees. It is important that entities be aware that there may still be prohibitions on discrimination even where Section 1557 does not apply.
  - Also, note that there is a separate analysis of whether health plan issuers are accountable for discrimination in health plans that are offered through employment. Even if the employer is not covered by Section 1557, an issuer that receives Federal financial assistance and is principally engaged in health coverage will be.



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**SLIDE 21**

**“Enforcement”**

Transition Slide

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**SLIDES 22, 23 and 24 NOTES**

**“Federal Enforcement”**

**Talking Points**

- The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) enforces Section 1557 as to programs that receive funding from HHS.
- OCR is a neutral, fact-finding agency that receives, investigates and resolves thousands of complaints from the public alleging discrimination in health services and health coverage.
- When OCR finds violations, a covered entity will be required to take corrective actions, which may include revising policies and procedures, and implementing training and monitoring programs. Covered entities may also be required to pay compensatory damages.
- When a covered entity refuses to take corrective actions, OCR may undertake proceedings to suspend or terminate Federal financial assistance from HHS. OCR may also refer the matter to the U.S. Department of Justice for possible enforcement proceedings.
- Section 1557 also provides individuals the right to sue covered entities in court for discrimination if the program or activity receives Federal financial assistance from HHS or is a State-based Marketplace<sup>SM</sup>.

**Background information for presenter**

- A covered entity may take voluntary steps, in addition to any action that is required by Section 1557, to overcome conditions that result in limited participation in the covered entity's health programs or activities by individuals on the basis of race, color, national origin, sex, age, or disability.

**Additional Resources**

Section 1557 regulation requirements – § 92.6 Remedial action and voluntary action

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**SLIDES 25 and 26**

**“Revised policies & procedures related to Section 1557”**

**Background information for presenter**

- HHS OCR recommends that covered entities insert slides regarding their internal Section 1557 related policies and procedures.
- These slides should explain policies and procedures for notifying the public about their rights to nondiscriminatory services as well as grievance coordination procedures that address complaints of discrimination from the public and who they should contact if they have further questions.
- These slides should explain how staff should obtain language assistance services for individuals with LEP, and auxiliary aids and services for individuals with disabilities. Policies should describe the process for identifying individual's communication needs and obtaining qualified interpreters or translators in a timely manner.
- Policy requirements and samples are included in the Section 1557 final rule.

**Additional Resources**

Section 1557 regulation Appendix A to Part 92 — Sample Notice Informing Individuals about Nondiscrimination and Accessibility Requirements

Appendix B to Part 92—Sample Tagline Informing Individuals with Limited English Proficiency of Language Assistance Services

Appendix C to Part 92 – Sample Section 1557 of the Affordable Care Act Grievance Procedure