



# **Section 1557 of the Affordable Care Act**

**A Civil Rights Training for Health Providers and  
Employees of Health Programs and  
Health Insurance Issuers**

Content provided by the U.S. Department of Health and Human Services, Office for Civil Rights

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# Training objectives

During this training, participants will learn:

1. Background on Section 1557
2. Section 1557's nondiscrimination requirements
3. Federal enforcement and Section 1557 resources

# **BACKGROUND**



# What is Section 1557?

- Section 1557 is the nondiscrimination law in the Affordable Care Act (ACA).
- Section 1557 is important to achieving the ACA'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.



# What are some of the notable provisions of Section 1557?

- 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.
- Section 1557 applies to the Health Insurance Marketplaces and to all health plans offered by health insurance companies that participate in the Marketplaces.



# How was the public involved in developing Section 1557?

- 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.

# REQUIREMENTS



# Who must comply with HHS's Section 1557 regulation?

- All health programs and activities that receive Federal financial assistance from HHS.
  - Examples of types of covered entities: hospitals, health clinics, physicians' practices, community health centers, nursing homes, rehabilitation centers, health insurance issuers, State Medicaid agencies, etc.
  - 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 (i.e., State-based and Federally-facilitated Health Insurance Marketplaces).
- All health programs and activities administered by HHS (e.g., 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).
- The rule does not apply to employment practices such as hiring or firing, except that covered employers are responsible for their employee health benefit programs in certain circumstances.



# Discrimination based on an individual's race, color or national origin is prohibited

- 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.



# Requirements for communicating with LEP individuals

- 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.



# Examples of race, color or national origin discrimination

- 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.
- 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.



# Discrimination based on an individual's sex is prohibited

- 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.



# Discrimination based on an individual's sex is prohibited (cont.)

- 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 of individuals 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.



# Examples of sex discrimination

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



# Discrimination based on an individual's age is prohibited

- 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).



# Discrimination based on an individual's disability is prohibited

- 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.



# Auxiliary aids and services

- 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.



# Examples of disability discrimination

- 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.
- 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.



# Discrimination in health insurance or other health coverage is prohibited

- 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.
  - Use discriminatory marketing practices or benefit designs (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.



# Exceptions

- 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.

# ENFORCEMENT



# Federal Enforcement

- 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>.



# VISIT OUR WEBSITE!

## [www.hhs.gov/ocr](http://www.hhs.gov/ocr)

The screenshot shows the top navigation bar of the HHS.gov Office for Civil Rights website. It includes the HHS.gov logo, the Office for Civil Rights name, and the U.S. Department of Health & Human Services text. Below the navigation bar is a search bar with the placeholder text "I'm looking for..." and a magnifying glass icon. To the right of the search bar is a link to the "HHS A-Z Index". Below the search bar is a row of four navigation buttons: "About Us" (with a people icon), "Filing with OCR" (with a document icon), "Civil Rights" (with a shield icon), and "Health Information Privacy" (with a shield icon). Below this row is a "Newsroom" button (with a document icon). Below the buttons is a breadcrumb trail: "HHS Home > Office for Civil Rights (OCR)". At the bottom of the header is a utility bar with "Text Resize" (with "A A A" icons), "Print" (with a printer icon), and "Share" (with Facebook, Twitter, and a plus icon).

### Office for Civil Rights (OCR)

The screenshot shows the main content area of the HHS.gov Office for Civil Rights website. On the left is a sidebar with the heading "I would like info on. . ." and three links: "Contact the Office for Civil Rights", "Section 1557: Nondiscrimination", and "Health Information Privacy". To the right of the sidebar is a large image of a diverse group of people. Below the image is a dark grey box with the heading "Section 1557" and the text "Civil Rights Provision of the Affordable Care Act".

On OCR's website....

- Read about civil rights and HIPAA laws
- Download fact sheets
- Access sample policies and resources in English and other languages
- File a complaint
- Contact us!



# Office for Civil Rights U.S. Department of Health and Human Services



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# **REVISED POLICIES & PROCEDURES**

# Revised policies and procedures related to Section 1557

*Insert slides explaining revised policies and procedures specific to your facility related to Section 1557, such as notices of nondiscrimination; provision of language assistance services; provision of auxiliary aids and services; and grievance coordination procedures.*

*Policy requirements and samples are included in the Section 1557 final rule.*