HHS Proposes Changes to 2016 Regulations for ACA Non-Discrimination Rule

Tuesday, May 28, 2019

On Friday, March 24, 2019, the US Department of Health and Human Services issued a proposed rule (along with a related fact sheet) under Section 1557 of the Affordable Care Act (ACA) that would make significant changes to the final regulations issued in 2016. Section 1557, in effect since the ACA was enacted in 2010, provides that an individual shall not—on the grounds prohibited under Title VII of the Civil Rights Act of 1964 (race, color, national origin), Title IX of the Education Amendments of 1972 (sex), the Age Discrimination Act of 1975 (age) or Section 504 of the Rehabilitation Act of 1973 (disability)—be excluded from participation in, be denied the benefits of or be subjected to discrimination under any health program or activity, any part of which is receiving federal financial assistance, or under any program or activity that is administered by an agency established under Title I of the ACA.

The proposed rule addresses a broad range of changes to the previously issued rule. These changes would include eliminating the non-discrimination notices and “tagline” translation notices in significant communications and revising prior guidance on sex discrimination to no longer include gender identity and termination of pregnancy, among other changes. Interested parties are invited to submit comments on the proposed rule through the period ending 60 days after publication in the Federal Register.