

Rule Implementing ACA's Nondiscrimination Provisions Goes Into Effect: Section 1557

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On July 18, 2016, the [final rule](#) implementing **Section 1557** of the **Affordable Care Act ("ACA")** went into effect. Section 1557 prohibits health care providers and other covered entities from refusing to treat individuals or otherwise discriminating on the basis of race, color, national origin, sex, age, or disability in any health program or activity that receives federal financial assistance or is administered by an executive agency.

While the rule does not apply to employment, it derives many of its standards from existing federal civil rights laws and the federal government's current interpretations of those laws. Covered entities (which include, for example, hospitals, health clinics, health insurance programs, community health practices, physician's practices, and home health care agencies) should be particularly aware of the protections granted to individuals with these protected characteristics:

- **Sex** - Under the rule, prohibited sex discrimination includes differential treatment based upon pregnancy, false pregnancy, termination of pregnancy, or

recovery therefrom, childbirth or related medical conditions, sex stereotyping and gender identity. Covered entities should be particularly aware that they must treat individuals consistent with their gender identity; they cannot deny or limit sex-specific health care just because the individual seeking such services identifies as belonging to another gender; and they cannot categorically exclude coverage for health care services related to gender transition.

- *National Origin* – Covered entities must take “reasonable steps” – which may include providing language assistance services such as oral language assistance or written translation – to provide “meaningful access” to individuals with limited English proficiency.
- *Disability* – Covered entities must take “appropriate steps” to ensure that communications with individuals with disabilities are as effective as communications with others; make all programs provided through electronic and information technology accessible, unless doing so would impose financial or administrative burdens or fundamentally alter the program; and, in most instances, comply with the 2010 Americans with Disabilities Act Standards for Accessible Design when constructing or altering physical facilities.

Now that the final rule has gone into effect, a covered entity has 90 days to post various notices for beneficiaries, enrollees, applicants, and members of the public. The primary notice requires the covered entity to state its compliance with Section 1557 and the availability of the various accommodations under the rule. The Director of the Office for Civil Rights of the U.S. Department of Health and Human Services has made available a sample notice that covers the information required by this notice, but covered entities are advised to work with counsel to ensure they are in compliance with the rule. In addition, covered entities must post a nondiscrimination statement, and any tagline (*i.e.*, short statement indicating the availability of language assistance services) must be posted in at least the top 15 languages spoken by individuals with limited English proficiency of the relevant state(s) (sample translated resources may be found [here](#)). Again, covered entities are advised to work with counsel to ensure compliance with these notice and posting requirements.

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