

Section 1557 Nondiscrimination Training

Slide 1 – Title: Nondiscrimination Training Section 1557 of the Affordable Care Act

Slide 2 – Navigation Instructions

Slide 3 – Terms and Conditions

Slide 4 - Preamble

Section 1557 of the Affordable Care Act is the first federal law to specifically focus on nondiscrimination in healthcare. In 2016, the Obama Administration issued a Final Rule providing a broad interpretation of the law. Subsequently, the first Trump Administration in 2020 issued a much narrower interpretation of Section 1557, particularly regarding the meaning of sex and the scope of the law’s provisions regarding health insurance operations. In 2024, the Biden Administration reversed course with its own Final Rule interpreting Section 1557, which echoes the broader interpretation adopted by the Obama Administration.

On January 20, 2025, President Trump issued a series of Executive Orders (EOs), including EO 14148¹ rescinding President Biden’s EO 13988 issued in January 2021 entitled “Preventing and Combatting Discrimination on the Basis of Gender Identity and Sexual Orientation.”² However, the Biden Administration’s 2024 Final Rule interpreting Section 1557, while currently subject to various challenges in federal courts as of this writing, remains pertinent and is the subject of this training.

Slide 5 – Learning Objectives

Following the successful completion of this module, students will be able to:

- Identify the entities that must comply with the nondiscrimination protections of Section 1557 of the Affordable Care Act.
- Name the forms of discrimination prohibited by Section 1557.
- Summarize the steps that must be taken under the 1557 Final Rule of 2024 to serve limited English proficient individuals.
- Summarize the steps that must be taken to serve persons with disabilities.
- Understand the 2020 Rule changes made to the scope of earlier 1557 requirements and how the 2024 Final Rule reverses these changes regarding the definition of sex and adds additional protections for those covered by Section 1557.

Slide 6- Introduction

On July 25, 2022, the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued a Proposed Rule³ revising an earlier rule issued by the Trump Administration in 2020⁴. The Proposed Rule was finalized and published in the Federal Register on May 6, 2024.⁵ While some of the Final Rule’s provisions became effective 60 days after publication in the Federal Register, others did not. This module summarizes key points of the Final Rule throughout as deemed appropriate for those participating in this training program.

Slide 7 - Goals of the 2022 Proposed Rule

Goals enunciated by the Biden Administration in the 2022 Proposed Rule have largely been reflected in the 2024 Final Rule. These include:

- Clarification of the application of Section 1557 nondiscrimination requirements to health insurance issuers that receive federal financial assistance.
- Alignment of regulatory requirements with Federal court opinions to prohibit discrimination on the basis of sex including sexual orientation and gender identity.
- Ensure requirements to prevent and combat discrimination are operationalized by entities receiving federal funding by requiring civil rights policies and procedures.
- Require entities to give staff training on the provision of language assistance services for limited English proficient (LEP) individuals effective communication, and reasonable modification to policies and procedures for people with disabilities.
- Require covered entities to provide a notice of discrimination along with a notice of the availability of language assistance services and auxiliary aids and services.
- Prohibit discrimination in the use of patient care decision support tools in covered health programs and activities.
- Clarify that nondiscrimination requirements applicable to health programs and activities include those services offered via telehealth, which must be accessible to LEP individuals and individuals with disabilities.
- Interpreting Medicare Part B as federal financial assistance.
- Refine and strengthen the process for raising conscience and religious freedom objectives.

Slide 8 - Training Roadmap

What Section 1557 Does

- Race, Color, and National Origin
- Sex Discrimination
- Age and Disability
- Telehealth
- Other provisions (patient care decision support tools, conscience and religious freedom objectives, staff training)
- Exception(s) and Enforcement

Slide 9 – Title Slide: What Section 1557 Does

Slide 10 – ACA Section 1557

Section 1557 is part of the Affordable Care Act (ACA).⁶ Section 1557 of the Affordable Care Act (ACA), the Final Rule (2016) originally implementing it, and the Biden Administration’s Final Rule (2024) provide nondiscrimination protections for individuals seeking health care and health insurance coverage.

Slide 11 – Building on Earlier Legislation

Section 1557 incorporates earlier civil rights protections regarding race, color, national origin, disability, age, and sex.

More specifically, Section 1557 incorporates existing federal civil rights laws and applies them to federally funded health programs. The prohibited grounds for discrimination are specified in the following laws:

- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
- Title IX of the Education Amendments Act of 1972 prohibits discrimination on the basis of sex.
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability.
- Age Discrimination Act of 1975 prohibits discrimination on the basis of age.

Slide 12 – Changing Regulatory Approaches to Section 1557

Different Administrations have taken different approaches to implement this section of the law. The Obama Administration’s Section 1557 regulations, finalized in 2016, created broad requirements for health insurance issuers, third-party administrators (TPAs), and providers. The Trump Administration took a far narrower approach in its 2020 Final Rule. It reduced the scope of entities subject to 1557 and loosened some nondiscrimination requirements. The regulations issued by both the Obama and Trump Administrations were both subject to challenges.

The Final Rule set forth by the Biden Administration in 2024 harks back to the Obama Administration’s more expansive interpretation of Section 1557 and has also been subject to various challenges.

Slide 13 – Related State and Federal Requirements

- In some states, additional requirements protecting people from discrimination may apply. These requirements are *in addition to* federal Section 1557 requirements. The federal requirements do not supersede applicable state requirements.
- State requirements address categories including but not limited to race, color, national origin, sex, gender identity, sexual orientation, age, or disability.
- There are also separate federal Medicare program requirements for providing information in another language to people with limited English proficiency.

Slide 14 – Who Must Comply?

Who must comply with Section 1557 and its regulations?

All health programs and activities that are administered by the federal Department of Health and Human Services (HHS) or receive **federal financial assistance (FFA)** from HHS. This includes any entity that operates a health program or activity, any part of which receives FFA. These are referred to as “covered entities.”

Federal financial assistance (for purposes of Section 1557) includes grants, property, Medicaid, Medicare Parts A, C, and D payments. Under the 2024 Final Rule, federal financial assistance now also includes Medicare Part B payments. FFA also includes tax credits and cost-sharing subsidies under Title I of the ACA.

Slide 15 – Covered Entities

Section 1557 covered entities include:

- An entity that offers a Medicare Advantage Plan or a Medicaid Managed Care Plan.
- An entity that offers a qualified health plan sold on an Exchange (Marketplace).
- A physician who accepts Medicaid payment of the Medicare cost-sharing for dual eligible individuals.
- A hospital or nursing home that accepts Medicare or Medicaid payment
- A provider who accepts Medicare Part B could now also be considered a covered entity under the Final Rule.

Under Medicare Advantage, those engaged in the marketing and sales of MA products are subject to Section 1557. Because the ACA Marketplaces operate under Title I of the ACA, Section 1557 protections extend to individuals who enroll in coverage through these Marketplaces.

Slide 16 – The Scope of Operations Subject to Section 1557

The Trump Administration in its 2020 Final Rule (2020) took a narrow approach to the entities covered by ACA 1557. It held:

- Entities principally engaged in health care had to comply with Section 1557 for all programs they offered.
- Health insurers, however, were not considered to be principally engaged in delivering health care, and because of that, only programs that received federal funding or are administered under Title I of the ACA, including health plans sold on the ACA Marketplaces, had to comply with Section 1557, but other products sold by those same companies did not.

Example of 2020 Final Rule: An organization offers Medicare Advantage plans – the type of plans that receive federal funding. The organization is also engaged in the sale of other products, such as disability income, that do not receive federal funding. Only the Medicare Advantage plans would fall under the scope of the 2020 rule.

Background

Under the 2016 Obama Administration Final Rule, if a health insurer received federal funding, *ALL of the company's operations were subject to the scope of Section 1557*. The 2020 Final Rule cut back the scope of the 2016 Final Rule in this regard. The Biden Administration's Final Rule of 2024 now returns to a broadened scope of operations covered by Section 1557.

Example of 2024 Final Rule:

An organization offers Medicare Advantage plans – the type of plans that receive federal funding. The organization is also engaged in the sale of other products, such as disability income, that do not receive federal funding. Both the Medicare Advantage plans and the disability income operations would now be covered by Section 1557.

Slide 17- Medicare Supplement (Medigap)

For agents and brokers working in the senior marketplace, it is important to note that the Biden Administration’s Final Rule, extends to organizations that offer both Medicare Advantage plans and Medicare Supplement plans. Furthermore, the nondiscrimination rules extend to the sale of Medigap plans offered by insurers that also offer Medicare Advantage plans.⁷

Slide 18 – Forms of Discrimination

As a general rule, covered entities may not discriminate in providing or administering health-related insurance or other health-related coverage based on these characteristics:

- race
- color
- national origin
- sex
- age
- disability⁸

Slide 19 – Prohibited Actions

Covered entities may not discriminate based on the characteristics discussed previously, in these areas:

- Denying, canceling, limiting, or refusing to issue or renew a health insurance plan or other health coverage.
- Denying or limiting coverage of a claim or imposing additional cost-sharing or other limitations or restrictions on coverage.

Example: Blackheart Agency determines it will require all female members to pay an additional \$20 copay for any wellness visit.

Result: Prohibited.

Slide 20 - Title Slide: Race, Color, and National Origin

Slide 21 – Discrimination Based on Race, Color, or National Origin

Section 1557 prohibits covered entities from segregating, delaying, or denying services or benefits based on an individual's race, color, or **national origin**.

Examples:

Agent John Smith refuses to accept an application from an individual of a different race.

Result: Prohibited.

Broker Mary Jones has recruited a diverse workforce. Broker Jones encourages agents to prospect through community-based marketing and within their community of influence.

Result: Permissible.

Broker Charles Lee has also recruited a diverse workforce. However, Broker Lee requires agents to work only in areas populated by those of their ethnic backgrounds.

Result: Prohibited.

Mandy Blake is an administrative assistant at the ABC Agency. Her duties include handling walk-in clients. John Washington, an African American male, arrives at ABC's offices seeking assistance with a Medicare Advantage application; he asks to speak to Agent Oliver Howard. Thirty minutes later, Leslie King, a Caucasian female, arrives without an appointment and also asks to speak to Agent Howard. She is admitted to Agent Howard's office while Mr. Washington is asked to continue to wait.

Result: Prohibited.

Slide 22—Individuals with Limited English Proficiency (LEP)

For programs subject to Section 1557, a health plan must take reasonable steps to provide meaningful access to everyone with **limited English proficiency (LEP)** eligible to be served by 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.

Such services must be provided free of charge and be accurate and timely. Such services must also protect the privacy of the individual with limited English proficiency (LEP).⁹

Slide 23 – The Meaning of LEP

The 2016 Final Rule (Obama Administration) provided a list of definitions. These definitions were either eliminated or incorporated elsewhere in the 2020 Final Rule. The reinterpreted Final Rule (2024) of the Biden Administration contains a list of definitions.

An individual with **limited English proficiency (LEP)** means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.

The definition goes on to say that an individual with limited English proficiency may be competent in English for certain types of communication (*e.g.* speaking or understanding) but still be limited English proficient for other purposes (*e.g.* reading or writing).¹⁰

Slide 24 - When Are LEP Services Appropriate?

The 2024 Final Rule (Biden Administration) specifies that the OCR will use a two-part test to evaluate when LEP services are appropriate and whether a covered entity has met its obligation:

1. OCR will evaluate and give substantial weight to the nature and importance of the health program or activity and the particular communication at issue, to the LEP individual.
2. OCR will consider other relative factors including the effectiveness of the entity's written language access procedures.¹¹

This evaluation is done on a case-by-case basis.

Slide 25 -The Quality of Language Services

A covered program must adhere to certain quality standards in delivering language assistance services. For instance, health plans subject to Section 1557 may NOT:

- require an individual to provide their 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 staff other than qualified bilingual or multilingual staff.

In addition, a covered program may not rely on an adult accompanying an individual with limited English proficiency, except where such individual specifically requests that the accompanying adult interpret or facilitate communication and such accompanying adult agrees to provide such assistance.¹²

Slide 26 – Communicating with LEP Individuals: Some Examples

Here are some examples of how the antidiscrimination rules for LEP individuals might apply to agents and brokers.

Example A: Agent Esther Milbank, whose primary language is English, is working in an area that is home to many individuals whose primary language is Mandarin Chinese. Esther is asked by these individuals for information on the plans she represents. Esther works with her plan to obtain language assistance services.

Result: The required steps have been taken.

Example B: Agent David Winters is working with a LEP (limited English proficiency) prospect. Rather than seeking out the language assistance services offered by the health plan he represents, David asks the prospect's 10-year-old grandson to help answer the application questions.

Result: Prohibited. The use of a minor is permitted only in a life-threatening emergency when a qualified interpreter is not available.

Slide 27 - Title Page-Sex Discrimination

Slide 28 – Sex Discrimination

Covered entities (such as health plans) must provide equal access to health care, health insurance coverage, and other health programs without discrimination based on sex.

The Meaning of Sex

The 2020 Final Rule, issued by the Trump Administration, defined sex as biologic sex only, meaning whether a person was determined to be male or female at birth. In a May 2021 notice, the Department of Health and Human Services (HHS) said it would now more broadly define sex and interpret and enforce Section 1557 and Title IX's prohibitions on discrimination based on sex to include:

1. discrimination on the basis of sexual orientation; and
2. discrimination on the basis of gender identity.¹³

HHS's Office of Civil Rights (OCR) indicated it would use this interpretation as a guide when processing complaints and conducting investigations.

Slide 29 – Background – May 2021 OCR Decision Regarding Section 1557

According to HHS's May 2021 notice, its reasoning behind including sexual orientation and gender identity within the meaning of sex for Section 1557 interpretation and enforcement purposes is to be consistent with the Supreme Court's decision in *Bostock v. Clayton County*.

Bostock Decision – On June 15, 2020, the Supreme Court held that Title VII of the Civil Rights Act of 1964's prohibition on employment discrimination based on sex encompasses discrimination based on sexual orientation and gender.

The case plaintiff, Gerald Bostock, was fired after he expressed interest in a gay softball league at work. Mr. Bostock was an employee of Clayton County, within the Atlanta metropolitan area, as an official for its juvenile court system. He had been employed since 2003, with good performance records through the years until his firing in 2013.

The majority in a 6-3 decision, concluded that the plain language and meaning "because of sex" in Title VII necessarily included discrimination based on sexual orientation and gender identity. Since *Bostock*,

two federal circuits have concluded that the plain language of Title IX's Education Amendments of 1972 prohibition on sex discrimination must be read similarly. In addition, on March 26, 2021, the Civil Rights Division of the US Department of Justice issued a memorandum to Federal Agency Civil Rights Directors and General Counsel concluding that the Supreme Court's reasoning in *Bostock* applies to Title IX of the Education Amendments of 1972.

As made clear by the Affordable Care Act, Section 1557 prohibits discrimination "on the grounds prohibited under Title IX."¹⁴

Slide 30 – Meaning of Sex: 2024 Final Rule

The Final Rule, issued by the Biden Administration in 2024, continued this broader interpretation of the meaning of sex stating:

Discrimination on the basis of sex includes, but is not limited to, discrimination on the basis of:

- sex characteristics, including intersex traits
- pregnancy or related conditions
- gender identity
- sex stereotypes¹⁵

Slide 31 - Marital Status

The Final Rule includes a new provision that prohibits entities covered under Section 1557 from discriminating on the basis of sex regarding an individual's marital, parental, or family status¹⁶. The Final Rule also prohibits discrimination on the basis of association or relationship.¹⁷ For example, a medical practice could not refuse to see a female patient because she has a same-sex spouse or partner.

Slide 32 – Examples of Sex Discrimination

Example 1: Agent Leslie Chen places a substantial amount of business with Health Plan A. She directs her male clients to Health Plan A. This plan offers generous benefits. At the same time, Agent Chen believes that women often have higher health care costs, so she directs her female clients to Health Plan B, which offers less generous benefits, rather than risk her relationship with Health Plan A.

Result: Prohibited action (sex discrimination)

Example 2: Agent Wendell Morris is referred to a man who is considering enrolling in a MA-PD plan. On meeting with the prospect, Wendell suspects that he is gay, based on his attire. Wendell feels uncomfortable dealing with the prospect, so he suggests that participating in Original Medicare would be more appropriate for him and that enrollment is best handled online.

Result: Prohibited action (discrimination based on sexual orientation).

Example 3: Agent Louis Sanchez is a successful agent who has helped many clients secure health insurance both on and off the Affordable Care Marketplace(s). Evan, who was born male and currently self-identifies as female, visits Agent Sanchez’s office seeking health insurance. Agent Sanchez makes disparaging comments about Evan’s attire and demeanor. He refuses to assist and tells Evan to seek advice about health insurance elsewhere.

Result: Prohibited action (discrimination based on gender identity)

Slide 33 – Discrimination Based on Sex

Sex-specific programs are allowed only if a covered entity can show an exceedingly persuasive justification for the program. This means that the sex-specific nature of the program must be substantially related to an important health-related or scientific objective.¹⁸

Example: A breast cancer program cannot refuse to treat men with breast cancer solely because its female patients would feel uncomfortable.

Slide 34 – Title Page: Age and Disability

Slide 35 – Age Discrimination

As a general rule, Section 1557 prohibits a covered entity (such as a health plan) from excluding, denying, or limiting benefits and services based on an individual’s age.

Example: Agent Vanessa Martinez consistently steers younger retirees to a Medicare Advantage plan she represents, even when a Medicare Supplement policy might better suit their needs because they are healthier and will cost the plan less money. Agent Martinez also consistently steers older retirees to Medicare Supplement policies, even when a Medicare Advantage plan might better suit their needs.

Result: Prohibited discrimination based on age.

Slide 36 – Permissible Age Distinctions

A covered entity (such as a health plan) may take actions based on age when it is a factor necessary to the normal operation of a program or to the achievement of a statutory objective of a program.

Therefore, the general rule does NOT apply to any age distinction authorized under federal, state, or local law. For instance, the Affordable Care Act permits health plans to consider age in setting premiums (within permissible ratios), and this does not violate Section 1557.¹⁹

Example: Agent Marissa Matthews refuses to sell a Medicare Advantage-Prescription Drug (MA-PD) plan to Solomon, age 55, who does not have ESRD or another disability qualifying him for Medicare.

Result: Permissible. This is not discriminatory since Solomon is not Medicare eligible.

Example: Well-You Health Plan charges Kevin a premium for an ACA regulated plan that is twice that of a younger applicant, Josh.

Result: Permissible. The ACA permits regulated health plans to charge up to three times more based on age, and this does not violate Section 1557.

Different treatment options may be based on age when such variances are justified by scientific or medical evidence or based on a specialty.

For example, pediatricians are not required to treat adults, and gerontologists are not required to treat children.

Slide 37 – Disability

Under Section 1557, an individual may not be excluded or denied benefits or services because of a **disability**. The 2024 Final Rule provides a definition of disability:

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment or being regarded as having such an impairment.²⁰

Slide 38 – Reasonable Accommodations for Disabled Persons

Under Section 1557, covered entities **must** take the following steps, unless doing so would result in an undue financial burden or would fundamentally alter the program:

- Make reasonable changes in policies, procedures, and practices where necessary to provide equal access to individuals with disabilities.
- Make all programs and activities provided electronically accessible to individuals with disabilities.
- 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.

The Final Rule (2024) substantially carries forth these requirements.²¹ Commentators on the Final Rule have also pointed out that entities must in general implement benefit designs in the most integrated setting appropriate to the needs of individuals with disabilities. For example, an insurer could not cover durable medical equipment in an institutional setting but not for individuals living in their own home.

Slide 39 – Disability: Permissible and Impermissible Actions

Here are some examples of actions to be taken when dealing with individuals with disabilities to comply with Section 1557.

Example A: Equal Access – ABC Brokerage has a no pets policy. This policy must be modified to allow a prospect with impaired vision to be accompanied by their service (“seeing eye”) dog.

Example B: Visual Impairment – Agent Jones is reviewing plan information with Lena, a client. Lena is visually impaired, and the standard materials are in a font size too small for her to read. Agent Jones should contact the plan to obtain large print materials for Lena.

Example C: Physical Accessibility – Agent Menendez is scheduling a sales seminar to present plan benefits for the upcoming year. Agent Menendez must ensure that the location of the seminar is accessible to individuals with disabilities. For example, he must review prospective locations to see that they have ramps in place of or in addition to stairs in entryways.

Example D: Effective Communication – Agent De Rosa was referred to Wilbur, a deaf prospect. Agent De Rosa learns that Wilbur can speak American Sign Language (ASL) and arranges with her manager to have an ASL interpreter available during the appointment.

Slide 40 – Auxiliary Aids and Services

Auxiliary aids and services must be provided to individuals with disabilities, such as those suffering from vision or hearing impairments, free of charge and in a timely manner.²²

Auxiliary aids and services include, but are not limited to:

- Qualified sign language interpreters
- Large print materials
- Text telephones (TTYs)
- Telephone handset amplifiers
- Captioning
- Braille materials and displays
- Large print materials
- Screen reader software
- Video text display²³

Slide 41 – Title Page – Telehealth

Slide 42 - Telehealth Services

HHS finalizes that covered entities must not, in their delivery of health programs and activities through telehealth services, discriminate on the basis of race, color, national origin, sex, age, or disability.

It provides a definition of telehealth to mean the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration. These technologies include videoconferencing, the Internet, streaming media, and wireless communications.²⁴

The Final Rule includes additional accessibility requirements for the provision of telehealth services.²⁵ HHS notes that it will consider complaints raising the issues of whether inadequate reimbursement of telehealth or disparate medical management requirements limiting access to telehealth is discriminatory under Section 1557 on a case-by-case basis.

Slide 43 - Title Page – Other Provisions (Patient Decision Support Tools, Conscience and Religious Exemptions Training)

Slide 44 – Patient Decision Support Tools

The Final Rule applies Section 1557 nondiscrimination requirements to patient decision support tools.²⁶ A patient care decision support tool means any automated or non-automated tool, mechanism, technology, or combination thereof used to support clinical decision-making in health programs or activities.²⁷

Clinical decision support tools aim to provide timely information to clinicians, patients, and others to inform decisions about health care. Examples of these tools include artificial intelligence (AI), algorithms, databases that can provide information relevant to particular patients, reminders for preventive care, and alerts about potentially dangerous situations.²⁸ These tools are increasingly used in the determination of medical treatments and thus the issue of non-discrimination in their design and use is becoming increasingly important.

Covered entities are charged with an ongoing duty to make reasonable efforts to identify uses of patient decision support tools in their health programs or activities that employ input variables or factors that measure race, color, national origin, sex, age, or disability. For each of these tools employed, reasonable efforts must be made to mitigate the risk of discrimination resulting from the tool's use in health programs or activities.²⁹

Slide 45 – Conscience and Religious Freedom Exemptions

In the Final Rule, HHS indicates that it is fully committed to respecting Federal conscience and religious freedom laws. Once notified of a recipient’s view that it is exempt from certain provisions, OCR indicates it will promptly consider those views. The Final Rule adds an administrative appeal process for those who receive an adverse determination for their exemption request.³⁰

Slide 46- Training: 1557 Coordinator

The Final Rule calls for entities with 15 or more persons to designate at least one employee to coordinate the entity’s compliance efforts. The Final Rule refers to this person as a Section 1557 Coordinator.³¹

Slide 47 - Coordinator Responsibilities and Staff Training

Responsibilities of the Section 1557 coordinator include investigation of any grievance in regard to Section 1557 matters. These responsibilities also include coordinating:

- Section 1557 recordkeeping
- implementation of the entity’s language access procedures
- implementation of the entity's reasonable modification procedures

In addition, the Section 1557 coordinator would be responsible for coordinating the training of relevant employees on the civil rights policies and procedures related to Section 1557 nondiscrimination matters. Relevant staff would be those involved in direct interactions with patients, clients, or the public and would be limited to the entity’s Section 1557 policies and procedures.³² Initial training would need to take place within one year of the final rule’s effective date.³³

Slide 48 - Title Page - Exception(s) and Enforcement

Slide 49 – Exception(S)

Medical Necessity Standard

The antidiscrimination provisions of Section 1557 do not prohibit covered entities from determining whether a particular health service is medically necessary or otherwise meets applicable coverage requirements in any individual case.³⁴

Slide 50 – Enforcement

The Final Rule incorporates the existing enforcement tools and mechanisms that are currently in place.³⁵ As we have previously seen, those who believe that parts of the Section 1557 rule would violate Federal conscience or religious freedom laws as applied to them could notify HHS of their concerns and those concerns would then be considered.

The Office for Civil Rights (OCR) of HHS enforces Section 1557 for programs that receive funding from or are administered by HHS.

OCR is a fact-finding agency that receives, investigates, and resolves thousands of complaints from the public alleging discrimination in health services and health coverage.³⁶

Slide 51 – Consequence of Violations

OCR actions and investigations should not be taken lightly, and violations of Section 1557 are serious. They can result in:

- A health plan's decision to terminate an agent's or broker's appointment with the health plan.
- termination of a health plan's ability to conduct federally funded lines of business (such as those related to Medicare).
- the payment of compensatory damages.

Slide 52 – OCR Actions

When OCR finds violations, it requires the covered entity to take **corrective actions**. This may include revising policies and procedures and/or implementing training and monitoring programs.³⁷

If 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. The Department of Justice has a variety of tools at its disposal to redress violations of Section 1557 under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Further information about OCR, its work, and how to contact its offices can be found at www.hhs.gov/ocr

Corrective action – sometimes also called corrective and preventive action are improvements to an organization's processes taken to identify and eliminate causes on non-conformities or other undesirable situations.

Slide 53 – Summary

Section 1557 of the Affordable Care Act includes nondiscrimination protections for individuals seeking health care and health insurance coverage.

It applies to all entities that operate a health program or activity, which receives federal financial assistance and programs created under Title I of the ACA. Federal financial assistance includes amounts paid by Medicaid and Medicare Parts A, C, and D, and under the Final Rule (2024) Medicare Part B. ACA Health Insurance Marketplaces are included because they were created under Title I of the ACA.

Programs subject to Section 1557 may not discriminate based on race, color, national origin, sex, age, or disability. They must take certain steps to meet the needs of persons with limited English proficiency or disabilities.

References

¹ Executive Order 14148, *Initial Rescissions of Harmful Executive Orders and Actions*, January 20, 2025, available at <https://www.presidency.ucsb.edu/documents/executive-order-14148-initial-rescissions-harmful-executive-orders-and-actions>

² Executive Order 13988, *Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation*, 86 FR 7023, January 25, 2021. Available at <https://www.federalregister.gov/documents/2021/01/25/2021-01761/preventing-and-combating-discrimination-on-the-basis-of-gender-identity-or-sexual-orientation>

³ Department of Health and Human Services, *Nondiscrimination in Health Programs and Activities*, 1557 Proposed Rule, Federal Register, Vol. 87, No.149, August 4, 2022, available at <https://www.govinfo.gov/content/pkg/FR-2022-08-04/pdf/2022-16217.pdf>

⁴ Department of Health and Human Services, *Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority*, 1557 Final Rule, Federal Register, Vol. 85, No. 119, June 19, 2020, available at <https://www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-11758.pdf>

⁵ Department of Health and Human Services, *Nondiscrimination in Health Programs and Activities*, Final Rule, Federal Register, Vol, 89, May 6, 2024, available at <https://www.govinfo.gov/content/pkg/FR-2024-05-06/pdf/2024-08711.pdf> ; hereinafter referred to as Final Rule (2024).

⁶ Section 1557 ACA, 42 US Code Section 18116 – Nondiscrimination, available at <https://www.law.cornell.edu/uscode/text/42/18116>; See also, HHS.gov, Section 1557 of the Patient and Affordable Care Act, Fact Sheet, available at <https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>

⁵ Preamble, Final Rule (2024) , Federal Register Vol. 89, No. 99, May 6, 20024, p. 37622

⁸ Final Rule (2024), Section 92.101, Discrimination Prohibited, pp. 37698-37699.

⁹ Final Rule (2024), Section 92.201, Meaningful Access for Individuals with Limited English Proficiency, pp. 37699-37700.

¹⁰ Final Rule (2024), Section 92.4, Definitions, Individual with limited English proficiency, p. 37694.

¹¹ Final Rule (2024), Section 92.201, Meaningful Access for Individuals with Limited English Proficiency, p. 37699.

¹² Ibid

¹³ Department of Health and Human Services; Notification of Interpretation and Enforcement of Section 1557 of the Affordable Care Act and Title IX of the Education Amendments of 1972, 86 Fed. Reg. 27984 (May 25, 2021) available at <https://www.govinfo.gov/content/pkg/FR-2021-05-25/pdf/2021-10477.pdf>

¹⁴ *Bostock v. Clayton County*, 140 S.Ct. 1711 (2020), available at https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf Title IX of the Education Amendments of 1972, 20 USC, Section 1681 *et seq*, available at <https://www.law.cornell.edu/uscode/text/20/1681> March 26, 2021, the Civil Rights Division of the US Department of Justice memorandum to Federal Agency Civil Rights Directors and General Counsel re; Application of *Bostock v. Clayton County* to Title IX of the Education Amendments of 1972, available at <https://www.justice.gov/crt/page/file/1383026/download>

¹⁵ Final Rule (2024), Section 92.101(a) (2), Discrimination on the basis of sex, p. 37699.

¹⁶ Final Rule (2024), Section 92.208, Prohibition on sex discrimination related to marital, parental, or family status, p. 37701.

¹⁷ Final Rule (2024), Section 92.209, Nondiscrimination on the basis of association, p. 37701.

¹⁸ Final Rule (2024), Section 92.206 (b) (1) and (c), Equal program access on the basis of sex, p. 3700.

¹⁹ CMS.gov, Market Rating Reforms, Fact Sheet, September 6, 2023, available at <https://www.cms.gov/marketplace/private-health-insurance/market-rating-reforms>

²⁰ Final Rule (2024), Section 92.4, Definitions, Disability. p. 37694.

²¹ Final Rule (2024), Section 92.202, Effective communication for individuals with disabilities; Section 92.203, Accessibility for buildings and facilities; Section 92.204, Accessibility of information and communication technology for individuals with disabilities, and Section 92.205, Requirement to make reasonable accommodations, p.37700.

²² Final Rule (2024), Section 92.202 (b), Effective communication for individuals with disabilities, p. 37700.

²³ Final Rule (2024), Section 92.4, Definitions, Auxiliary aids and services, p. 37694.

²⁴ Final Rule (2024), Section 92.4, Definitions, Telehealth, p. 37695.

²⁵ Final Rule (2024), Section 92.211, Nondiscrimination in the delivery of health programs and activities through telehealth services, p. 37701.

²⁶ Final Rule (2024), Section 92.210, Nondiscrimination in the use of patient care decision support tools, p.37701.

²⁷ Final Rule (2024), Section 92.4, Definitions, Patient care decision support tool, p 37695.

²⁸ Agency for Healthcare Research and Quality (AHRQ), Clinical Decision Support, Fact Sheet, available at <https://www.ahrq.gov/cpi/about/otherwebsites/clinical-decision-support/index.html>

²⁹ Final Rule (2024), Section 92.210 (b) and (c), Nondiscrimination in the use of patient care decision support tools, p.37701

³⁰ Final Rule (2024), Section 92.302, Notification of views regarding application of Federal religious freedom and conscience laws, pp. 37701-37702.

³¹ Final Rule (2024), Section 92.7, Designation and responsibilities of a Section 1557 Coordinator; Section 92.7 (a) Section 1557 Coordinator and designees, p. 37698.

³² Final Rule (2024), Section 92.7, Designation and responsibilities of a Section 1557 Coordinator; Section 92.7 (b) Responsibilities of Section 1557 Coordinator

³³ Final Rule (2024), Section 92.1, Purpose and effective date, p. 37693, and Section 92.8, Policies and procedures, pp. 37696-37697.

³⁴ Final Rule (2024), Section 92.206 (c), Equal program access on the basis of sex, p. 37701.

³⁵ Final Rule (2024), Section 92.301, Enforcement mechanisms, p. 37701; Section 92.6, Remedial action and voluntary action, p. 37696.

³⁶ HHS.gov, Section 1557 of the Patient Protection and Affordable Care Act, Fact Sheet, available at <https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>

³⁷ HHS.gov, Office of Civil Rights, Filing a Complaint, What to Expect, Fact Sheet, available at <https://www.hhs.gov/civil-rights/filing-a-complaint/what-to-expect/index.html>