

**California State Board of Pharmacy  
Public Board Meeting  
December 14, 2016**

**DATE:** December 14, 2016  
**TIME:** 8:30 a.m.  
**PLACE:** Hilton Glendale  
100 West Glenoaks Blvd.  
Glendale, CA 91202

**ADDITIONAL MATERIALS**

**VII. Stakeholder Summit Discussion on Implementation of Section 1557 of the Affordable Care Act (ACA) Regarding Nondiscrimination in Health Programs and Activities, Specifically Including Its Impact on Pharmacy Translations and Interpretations**

1. Section 1557: Ensuring Meaningful Access for Individuals with Limited English Proficiency (Source: U.S. Department of Health and Human Services)
2. New Federal Nondiscrimination Rule Imposes Requirements on Pharmacies (Source: American Pharmacists Association)
3. Section 1557 of the Affordable Care Act – A Civil Rights Training for Health Providers and Employees of Health Programs and Health Insurance Issuers (Source: U.S. HHS Office for Civil Rights)

1. Section 1557: Ensuring Meaningful Access for Individuals with Limited English Proficiency (Source: U.S. Department of Health and Human Services)

# Section 1557: Ensuring Meaningful Access for Individuals with Limited English Proficiency

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Section 1557 is the civil rights provision of the Affordable Care Act of 2010. Section 1557 prohibits discrimination on the grounds of race, color, national origin, sex, age, or disability in certain health programs and activities. The Section 1557 final rule applies to any health program or activity, any part of which receives funding from the Department of Health and Human Services (HHS), such as hospitals that accept Medicare or doctors who receive Medicaid payments; the Health Insurance Marketplaces and issuers that participate in those Marketplaces; and any health program that HHS itself administers.

## Protections for Individuals with Limited English Proficiency

- Consistent with longstanding principles under civil rights laws, the final rule makes clear that the prohibition on national origin discrimination requires covered entities to take reasonable steps to provide meaningful access to each individual with limited English proficiency who is eligible to be served or likely to be encountered within the entities' health programs and activities.
  - An individual with limited English proficiency is a person whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.
  - Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translation.
  - The standards in the final rule are flexible and context-specific, taking into account factors such as the nature and importance of the health program and the communication at issue, as well as other considerations, including whether an entity has developed and implemented an effective language access plan.
- Covered entities are required to post a notice of individuals' rights providing information about communication assistance for individuals with limited English proficiency, among other information.
- In each state, covered entities are required to post taglines in the top 15 languages spoken by individuals with limited English proficiency in that state that indicate the availability of language assistance.
- Covered entities are prohibited from using low-quality video remote interpreting services or relying on unqualified staff, translators when providing language assistance services.
- Covered entities are encouraged to develop and implement a language access plan to ensure they are prepared to take reasonable steps to provide meaningful access to each individual that may require assistance.

OCR has translated a sample notice of nondiscrimination and the taglines for use by covered entities into 64 languages. For translated materials, visit [www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html](http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html).

For more information about Section 1557, visit [www.hhs.gov/civil-rights/for-individuals/section-1557](http://www.hhs.gov/civil-rights/for-individuals/section-1557).

**2. New Federal Nondiscrimination Rule  
Imposes Requirements on Pharmacies  
(Source: American Pharmacists  
Association)**

## **New Federal Nondiscrimination Regulation Imposes Requirements on Pharmacies**

On May 18, HHS and its Office of Civil Rights released the Nondiscrimination in Health Programs and Activities Final Rule. According to HHS, under the Rule, individuals are protected from discrimination in health coverage and care on the basis of race, color, national origin, age, disability and sex, including discrimination based on pregnancy, gender identity and sex stereotyping. In addition to implementing Section 1557 of the Affordable Care Act's prohibition on sex discrimination, the Final Rule also enhances language assistance for people with limited English proficiency and helps to ensure effective communication for individuals with disabilities. This regulation is applicable health care entities and providers receiving federal funds from HHS, such as health insurers, hospitals, physicians and pharmacies. Most of the provisions relevant to pharmacies take effect on July 18, 2016.

**Compliance and Notice Requirements.** The Final Rule requires entities to file an assurance of compliance (form HHS-690) as a condition of any application for Federal financial assistance<sup>1</sup> and to take continuous steps to notify the public regarding the following: (1) the entity does not discriminate; (2) the entity can provide free services and materials for those with limited English proficiency or a disability; (3) how to obtain aids and services; (4) contact method for the employee responsible for compliance; (5) the availability of a grievance procedure; and (6) OCR's contact information for discrimination complaints. Posting of such information must be in conspicuous physical locations, on entities' websites and in significant public communications. Translated resources made available by HHS for the purpose of satisfying notice requirements are available here.

**Individuals with Limited English Proficiency (LEP).** Covered entities must take reasonable steps to provide meaningful access for each LEP individual eligible to be served or likely encountered. The Proposed Rule listed relevant factors to consider when determining whether language obligations have been satisfied. The Final Rule only specifies one relevant factor - whether or not the entity had an effective and appropriate written language access plan. Although such a plan is not explicitly required by the Final Rule, APhA strongly encourages pharmacies to develop such plans to establish a framework to provide health care and services

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<sup>1</sup> Nondiscrimination in Health Programs and Activities; Final Rule, 42 C.F.R. 92, §92.4 (2016) stating. "Federal financial assistance. (1) Federal financial assistance means any grant, loan, credit, subsidy, contract (other than a procurement contract but including a contract of insurance), or any other arrangement by which the Federal government provides or otherwise makes available assistance in the form of: (i) Funds; (ii) Services of Federal personnel; or (iii) Real and personal property or any interest in or use of such property, including: (A) Transfers or leases of such property for less than fair market value or for reduced consideration; and (B) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal government. (2) Federal financial assistance the Department provides or otherwise makes available includes Federal financial assistance that the Department plays a role in providing or administering, including all tax credits under Title I of the ACA, as well as payments, subsidies, or other funds extended by the Department to any entity providing health-related insurance coverage for payment to or on behalf of an individual obtaining health related insurance coverage from that entity or extended by the Department directly to such individual for payment to any entity providing health-related insurance coverage."

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non-discriminatorily and the reasonable steps that will be taken to provide access to persons with LEP. HHS notes that substantial weight will be given to the nature and importance of the program or activity and the particular communication in relation to whether language obligations have been satisfied.

The Final Rule reiterates that covered entities may not rely on family members, friends, and minor children to provide interpretation services. In addition, the Final Rule describes the skills needed for on-site staff able to provide interpretive services (i.e. qualified bilingual/multilingual staff standard). The Final Rule provides exceptions to these prohibitions, clarifies that the individual with LEP is not required to accept language assistance services<sup>2</sup> and encourages staff to record when language assistance services were offered and denied.

The Final Rule does not set thresholds for the number of languages assistance services that must be provided but does set a threshold for taglines — short statements written in non-English languages that indicate the availability of language assistance services free of charge. Covered entities must supply taglines in at least the top 15 languages spoken by limited English proficient populations statewide.

**Individuals with disabilities.** Covered entities must provide effective communications with individuals with disabilities and must adhere to federal law and standards of Title II of the Americans with Disabilities Act (ADA), which are more stringent standard. Under the Final Rule, covered entities must provide auxiliary aids and services to individuals with impaired sensory, manual or speaking skills, and certain facilities will need to conform for ADA 2010 accessible design standards. The rule does not adopt specific technology standards but does require covered entities to ensure that programs and activities provided in electronic or information technology are accessible to individuals with disabilities unless doing so would pose undue financial/administrative burden and would result in a fundamental alteration in the nature of the program or activity. If such conditions occur, the entity must provide information in another format that strives to ensure that individuals with disabilities have access to the services or benefits.

**Sexual Orientation.** The proposed rule does not resolve whether there is a prohibition of discrimination based on sexual orientation, but OCR will evaluate sexual orientation discrimination complaints to determine whether they involve discriminatory stereotyping of sexual attraction or behavior.

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<sup>2</sup> Language assistance services may include, but are not limited to:

- (1) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with limited English proficiency, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with limited English proficiency;
- (2) Written translation, performed by a qualified translator, of written content in paper or electronic form into languages other than English; and
- (3) Taglines.

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**Exceptions to the discrimination rule.** The proposed rule does not answer whether an exception exists for discrimination rooted in religious beliefs.

**Enforcement.** OCR will enforce section 1557 using the procedures detailed in Title VI of the Civil Rights Act. However, the procedures of the Age Act will be used in issues regarding age discrimination. Covered entities must provide OCR with requested information in a timely manner or be at risk of being found in noncompliance. In such circumstances, OCR can apply enforcement tools, including suspension or termination of funding. Although OCR has discretion when evaluating efforts entities have taken to maintain and achieve compliance, good faith attempts are not a defense.

In addition to OCR's authority, individuals may sue directly under section 1557 in federal court, and compensatory damages are available in such actions.

**Discrimination by insurers and in employee health benefit programs.** The proposed rule also addresses discrimination by insurers and employee health benefit programs.

**More information regarding the Final Rule is available [here](#).**

#### **Summary of Key Requirements Affecting Pharmacies:**

*The compliance date of the below requirements is July 18, 2016 unless otherwise noted.*

1. Designation of responsible employee (only if the covered entity has 15 or more employees)
  - Must designate at least one employee to coordinate its efforts to comply with and carry out Section 1557 and this regulation's requirements, including investigation of any grievance or allegation that action would be prohibited by Section 1557 or this regulation)
  - **Tip:** Pharmacies that have a designated employee to satisfy standards under Section 504 or Title IX may use that individual to comply with Section 1557
  
2. Adoption of grievance procedures (only if the covered entity has 15 or more employees)
  - Must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by Section 1557 or this regulation)
  - **Tip:** Pharmacies that have a grievance procedure to satisfy standards under Section 504 may use that procedure to address disability claims under Section 1557 and all other Section 1557 claims, provided that the entity modifies the procedure to apply to race, color, national origin sex, and age discrimination

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- **Resource:** Example of a Section 504 grievance procedure that incorporates due process standards (<http://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/section-504-grievance-procedure/index.html>)
3. File assurance of compliance form when applying for federal funding
- Will be revised to include all civil rights law which covered entities must comply
  - **Resource:** Assurance of compliance form (HHS 690 Form):  
<http://www.hhs.gov/sites/default/files/hhs-690.pdf>
4. Training (encouraged, not required)
- Covered entities are encouraged, but not required, to train employees periodically on compliance with Section 1557. In the assumptions of the proposed rule, used to determine cost, it assumes that employers are most likely to train employees who interact with the public which is estimated to be 50% of employees. Pharmacists are included in the pool of staff anticipated to need training.
  - **Useful resource:** To facilitate training that covered entities choose to provide, OCR will make available a training curriculum, and will engage in outreach and technical assistance to promote understanding of and compliance with the final rule (as of 5/25 this resource has not been made available)
5. Notices of nondiscrimination (a), taglines (b), and significant publications and communications (c & d) [Pharmacies must comply within 90 days of the rule's July 18 effective date]:
- a. *Notice of nondiscrimination:* Must be placed in conspicuous physical locations where the entity interacts with the public (i.e. in store) and in a conspicuous location on the covered entity's website accessible from the home page of the covered entity's website – the notice posting must adhere to the following:
- (1) the covered entity does not discriminate on the basis of race, color, national origin, sex, age or disability in its health programs and activities;
  - (2) the covered entity provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;
  - (3) the covered entity provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency;
  - (4) how to obtain aforementioned aids and services;

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- (5) an identification of, and contact information for, the responsible employee (required if there are 15 or more employees);
- (6) the availability of a grievance procedure and how to file a grievance; and
- (7) how to file a discrimination complaint with OCR.

b. *Taglines*<sup>3</sup>: Must be in at least the top 15 languages spoken by individuals with limited English proficiency of the relevant State or States

**Tagline example:** ATTENTION: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).

c. *Significant publications and significant communications* targeted to beneficiaries, enrollees, applicants, and members of the public (except those that are small-sized) posting must include:

Content: same as that of notices in physical locations/ website

Taglines: same as that of physical locations

d. *Significant publications and significant communications that are small-sized* (e.g., postcards and tri-fold brochures) posting must include in a conspicuously visible font-size:

(1) Non-discrimination statement (the covered entity does not discriminate on the basis of race, color, national origin, sex, age or disability in its health programs and activities)

(2) Taglines: In at least the top two languages spoken by individuals with limited English proficiency of the relevant State or States.

**Tip:** A covered entity may combine the notice's content with the content of other notices if the combined notice clearly informs individuals of their civil rights under Section 1557 and this regulation.

**Resource:** Translated materials for covered entities (<http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>): includes a sample notice of nondiscrimination, statement of nondiscrimination and taglines, all translated into various languages and developed for compliance with the regulation.

6. Take reasonable steps to provide meaningful access, free of charge and in a timely manner, for individuals with limited English proficiency to each individual with limited English proficiency eligible to be served or likely encountered in its health programs and activities
- Must be provided free of charge, be accurate and timely, and protect the privacy and independence of the individual with limited English proficiency

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<sup>3</sup> Taglines mean short statements written in non-English languages that indicate the availability of language assistance services free of charge.

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- Specific requirements for interpreter and translation services (required if it is a reasonable step)
  - o Offer a qualified interpreter<sup>4</sup> to an individual with limited English proficiency
  - o Use a qualified translator<sup>5</sup> when translating written content in paper or electronic form
- Restrictions: Covered entity cannot:
  - o Require a LEP individual to provide his/her own interpreter
  - o Rely on an adult accompanying an individual with LEP to interpret or facilitate communication, exceptions are:
    - i. Emergency involving imminent threat to safety of welfare of an individual or the public and no qualified interpreter is immediately available
    - ii. Specific request from the LEP individual to have the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances
    - iii. Rely on staff other than qualified bilingual/multilingual staff to communicate directly with LEP individuals
  - o Additional requirements are listed for video remote interpreting services
- Language Access Plan: not required, but **APhA strongly encourages** covered entities to develop a language access plan to establish a framework to deliver health care and services non-discriminatorily and outline the reasonable steps that will be taken to provide access to persons with LEP

**Tip:** Although individuals with LEP are not required to accept language assistance services, covered entities should document when such services are offered and the patients refuses them

**Resource: HHS Language Access Plan (2013)**

**<http://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf>** (referenced in the Final Rule)

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<sup>4</sup> Qualified interpreter for an individual with limited English proficiency means an interpreter who via a remote interpreting service or an on-site appearance:

- (1) Adheres to generally accepted interpreter ethics principles, including client confidentiality;
- (2) has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; and
- (3) is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

<sup>5</sup> Qualified translator means a translator who:

- (1) Adheres to generally accepted translator ethics principles, including client confidentiality;
- (2) has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and
- (3) is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

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7. Take reasonable steps to provide meaningful access, free of charge and in a timely manner to provide effective communication for individuals with disability
  - A covered entity shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities
  
8. Must make accessible electronic and information technology programs or activities to individuals with disabilities unless there is undue financial and administrative burdens or a fundamental alteration in the nature of the health program or activity
  - Expectation to adapt: When undue financial and administrative burdens or a fundamental alteration exist, the covered entity must provide information in a format other than an electronic format that would not result in such undue financial and administrative burdens or a fundamental alteration but would ensure, to the maximum extent possible, that individuals with disabilities receive the benefits or services of the health program or activity that are provided through electronic and information technology.
  
9. Requirement to make reasonable modifications to policies, practices or procedures
  - A covered entity shall make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. For the purposes of this section, the term “reasonable modifications” shall be interpreted in a manner consistent with the term as set forth in the ADA Title II regulation at 28 CFR 35.130(b)(7).
  
10. Covered entities that were required to adhere to the 2010 ADA Standards for Accessible Design prior to July 18, 2016 must comply with those standards for new construction or alteration prior to July 18, 2016
  - *If construction or alteration commenced on or after July 18, 2016:* Must comply with 2010 ADA Standards for Accessible Design.
  - *If a facility was not covered by the 2010 ADA Standards prior to July 18, 2016:* Must now comply with the 2010 Standards if the construction was commenced after December 18, 2017 (18 months after the effective date of the Final Rule).
  - *If a facility was constructed or altered in conformance with the 1991 Standards or the 2010 Standards:* Will be deemed to comply with the requirements of this section and other relevant sections noted in the Final Rule
  - *If a facility was constructed or altered in accordance with the Uniform Federal Accessibility Standards (UFAS):* Will be deemed compliance with this section only if construction or alteration was commenced before July 18, 2016 and the facility or part of the facility was not covered by standards under the ADA

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- *Note:* According to the Final Rule “As nearly all covered entities under the final rule are already covered by the ADA standards, these changes impose a de minimis cost.”

**11. Evaluation of compliance** – the Director shall consider:

- Nature and importance of the health program or activity and the particular communication at issue, to LEP individual
- Other relevant factors, including whether a covered entity has developed and implemented an effective written language access plan, the is appropriate to its particular circumstances, to be prepared to meet the obligation of this section

**Tip:** A language access plan is not required, but APhA strongly encourages covered entities to develop a language access plan to establish a framework to provide health care and services non-discriminatorily and the reasonable steps that will be taken to provide access to persons with LEP

**Resource: HHS Language Access Plan (2013)**

**<http://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf>** (referenced in the Final Rule)

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3. Section 1557 of the Affordable Care Act – A Civil Rights Training for Health Providers and Employees of Health Programs and Health Insurance Issuers (Source: U.S. HHS Office for Civil Rights)

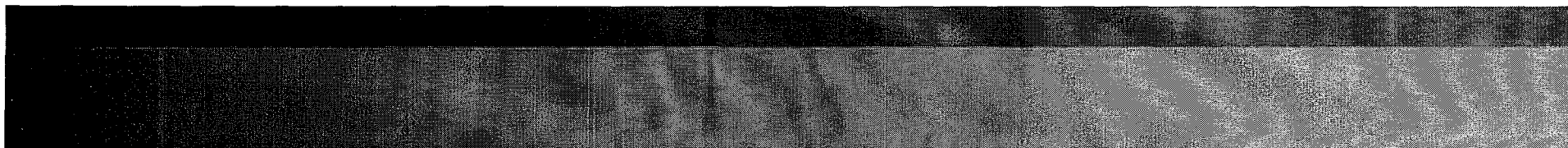


# **Section 1557 of the Affordable Care Act**

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

July 2016





# 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?

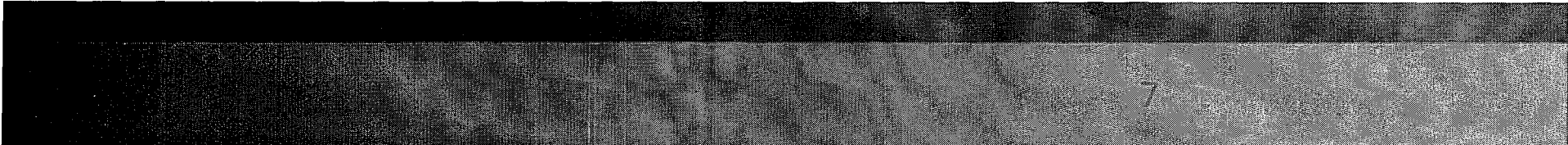
- Section 1557 is the **FIRST** Federal civil rights law to broadly prohibit sex discrimination in health programs and activities.
  - Sex discrimination includes, but is not limited to, discrimination based on an individual's sex, including pregnancy, related medical conditions, termination of pregnancy, 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.

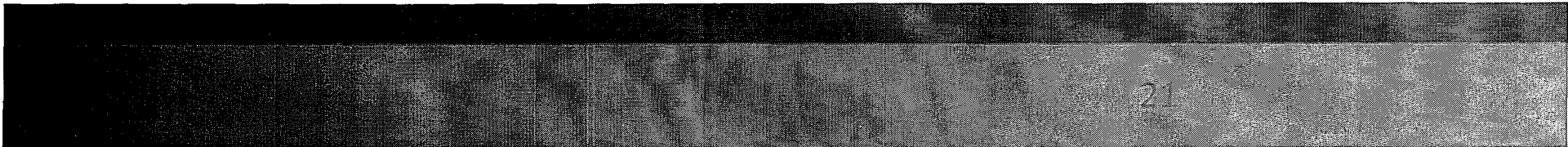




# Exceptions

- 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>.



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### Section 1557

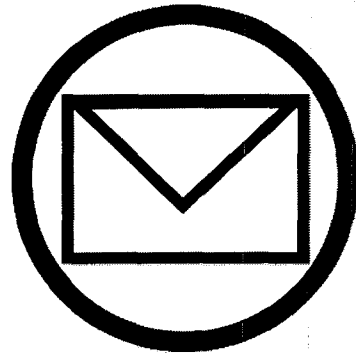
Civil Rights Provision of the Affordable Care Act

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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TDD Toll-Free: (800) 537-7697

# **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.*