

# SECTION 1557 OF THE AFFORDABLE CARE ACT

# NONDISCRIMINATION

# REQUIREMENTS



## INFORMED ON REFORM

### Overview

Under Section 1557 of the Affordable Care Act (ACA), individuals may not be denied, cancelled, limited or refused health coverage on the basis of race, color, national origin, sex, age or disability. In May 2016, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) published a final rule on nondiscrimination in health programs and activities.

The final rule is broad in scope and became effective July 18, 2016. Affected group health plans that required changes in benefits design were required to comply on the first day of the plan or policy year beginning on or after January 1, 2017.

Generally, the key requirements affecting health plans and services include:

- › Expanded protection for transgender individuals
- › Language assistance and the use of “taglines” for people with limited English proficiency
- › Communication assistance notices for individuals with disabilities
- › Grievance procedures for individuals who believe they have been subjected to discrimination in their health care or health care coverage

The broad application of this final rule affects the federal and state Marketplaces, all health care providers and health insurance issuers and any health program or activity that receives financial assistance from HHS,

including employer sponsored health plans. Financial assistance from HHS includes Medicare Part A, student health plans, advanced premium tax credits and many other programs. Additionally, all federal contractors (a group, company, institution, etc.) must comply with the final rule.

### Group health plan impacts by funding arrangement

- › **Insured health plans:** All insured health plans provided by insurance issuers that receive federal assistance must comply with Section 1557’s requirements.
- › **Self-insured health plans:** Section 1557 does not apply to self-insured plans except when the plan sponsor’s purpose is to provide health care, health insurance, or other health services (including hospitals, clinics, hospices, nursing facilities, health insurance carriers and health insurance exchange subsidies), as well as companies who receive federal financial assistance via HHS, regardless of their type of business.

In addition, the Equal Employment Opportunity Commission (EEOC) requires all self-insured plans (regardless of whether they are covered by Section 1557) to comply with similar nondiscrimination requirements under Title VII of the Civil Rights Act of 1964.

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## Section 1557 requirements further defined

<p><b>Protecting transgender individuals</b></p> <p><i>Effective 7/18/2016 for claims, and upon renewal on/after 1/1/2017 for changes in benefits design</i></p>	<p>Insurers and group health plans cannot limit accessibility to health services typically or exclusively available to one gender. In other words, certain services cannot be denied or limited due to an individual's sex assigned at birth, gender identity, or recorded gender. See the example provided in the first FAQ on the next page. With that, plans are not required to cover any specific item or service, but if they do cover a service, it must be covered equally for both genders.</p>
<p><b>Language assistance</b></p> <p><i>Effective 10/17/2016</i></p>	<p>Insurers, employers and other entities sponsoring group health plans must provide nondiscrimination notices and "taglines" to employees and the general public that explain how individuals can obtain free language services.</p> <p>Nondiscrimination notices and taglines must be provided in at least the top 15 non-English languages spoken by individuals with limited English proficiency in the state or states in which the covered entity conducts business, and must be displayed:</p> <ul style="list-style-type: none"><li>• On any physical premises where services are provided</li><li>• On the website of respective health plans and services</li><li>• In significant documents, such as a Summary of Benefits and Coverage (SBC)</li></ul> <p>The following resources are available on <a href="https://www.hhs.gov">HHS.gov</a>:</p> <ul style="list-style-type: none"><li>• A sample notice: <a href="https://www.hhs.gov/sites/default/files/sample-ce-notice-english.pdf">https://www.hhs.gov/sites/default/files/sample-ce-notice-english.pdf</a>, which reads: "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)."</li><li>• A table listing the top 15 non-English languages by state: <a href="https://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf">https://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf</a></li></ul>
<p><b>Communication assistance for individuals with disabilities</b></p> <p><i>Effective 7/18/2016</i></p>	<p>Notices must be readily available for individuals and the general public that explain how auxiliary aids and communication services for individuals with disabilities can be received for free and in a timely manner.</p> <p>These services include qualified interpreters and information in alternate formats, such as braille, to ensure equal participation opportunity.</p>
<p><b>Grievance procedures</b></p> <p><i>Effective 7/18/2016</i></p>	<p>Covered entities must establish grievance procedures for any individual who believes they have been subjected to discrimination in a covered health program or activity on the basis of race, color, national origin, sex, age or disability.</p> <p>Complaints that involve self-insured plans will be reviewed on a case-by-case basis to determine liability for discriminatory activity between the employer, insurer and/or third-party administrators.</p> <p>Third-party administrators of self-insured plans will generally be liable only for their own discriminatory actions, such as discriminatory denial of claim, but not for a discriminatory plan benefit designed by the plan sponsor.</p> <p>Insured plans are liable for any discriminatory benefit design.</p>

## Frequently asked questions

### **Q How are most employer health plans affected by the Section 1557 requirements?**

**A** For most employer plans, including COBRA plans, the primary impact will be eliminating categorical exclusions or limitations for health services related to gender reassignment surgery and ensuring that their plans do not limit access to services based on gender. *For example, a plan that covers medically appropriate pelvic exams cannot deny coverage solely on the fact that the individual either identifies as a transgender man or is enrolled in the health plan as a man.*

Employers are also affected in their interactions with their own employees and/or clients if they operate a health program or activity which, in any part, receives federal financial assistance or funding (examples include Medicare Part A, student health plans, advanced premium tax credits, and more).

### **Q Should self-funded plans remove or adjust dollar maximums on transgender services?**

**A** Self-funded plans should remove any transgender limits or dollar maximums to comply with Section 1557 of the ACA as well as the Mental Health Parity and Addiction Equity Act (MHPAEA).

Under MHPAEA, the diagnosis of gender dysphoria is a behavioral condition for which limitations should not be applied. If there are limits around transgender benefits (i.e., transgender therapy), there is potentially a Mental Health Parity issue if similar limits are not also applied to medical conditions and benefits.

### **Q Are employers with onsite health clinics impacted by the Section 1557 requirements?**

**A** Yes, all health clinics, including the onsite health clinics of an employer or business should have notices of nondiscrimination and taglines that alert individuals to the availability of language assistance services and disability services for hearing impaired, and how such services can be made available for free. They must also provide full access to people with mobility restrictions, assuring equal access to services for persons in a protected class.

### **Q Are employers who receive federal financial assistance more directly affected by Section 1557?**

**A** Yes, employers such as hospitals or other provider types that receive federal financial assistance are impacted by the rule, including requirements for language assistance, disability services, building and facilities accessibility and assuring equal access to services for persons in a protected class.

### **Q What are some examples of “significant documents” with which health care customers should expect to see nondiscrimination taglines?**

**A** “Significant documents” include standard communications in administering plan benefits and services, including:

- › Summary of Benefits and Coverage disclosures, Summary Plan Descriptions, insurance certificates, Notice of Privacy Practices, or similar legally required documents for customers
- › A plan’s explanation of benefits or similar claim processing information
- › Consent, grievance and complaint forms
- › Notices pertaining to the denial of a claim for benefits
- › Coverage application forms



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