



## New Nondiscrimination Rules Impact Health Care Providers and Health Plans

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Earlier this year, the Department of Health and Human Services (“HHS”) finalized regulations under Section 1557 of the Patient Protection and Affordable Care Act (the “ACA”). Section 1557 prohibits certain “covered entities” from discriminating on the basis of race, color, national origin, sex, age, or disability with respect to any health program or activity.

**Covered Entities.** The new nondiscrimination rules apply to entities that (1) operate a “health program or activity” and (2) receive federal financial assistance administered by HHS. Entities that operate a “health program or activity” encompass most health care and insurance entities, including:

- Hospitals
- Health clinics
- Group health plans
- Health insurance issuers
- Physician practices
- Community health centers
- Nursing facilities
- Laboratories

Federal financial assistance means any HHS administered grants, loans, subsidies, contracts, or other arrangements by which the federal government provides assistance in the form of funds, services of federal personnel, or property. Medicare (other than Medicare Part B payments), Medicaid, and the Children’s Health Insurance Program are forms of “federal financial assistance.”

**Requirements.** The regulations impose the following requirements on covered entities.

- **Language Assistance.** Covered entities must take “reasonable steps” to provide access to individuals with limited English proficiency. Whether a form of language assistance is required is determined based on the nature of the communication and the importance of the health program or activity. Covered entities should have a written language access plan. If providing translation

services assistance is a “reasonable step,” the covered entity must offer a qualified interpreter for oral communications and a qualified translator for paper or electronic communications. Video remote interpreting services may be used under certain circumstances. Such language assistance must be provided free of charge and in a timely fashion.

- **Nondiscrimination.** The regulations prohibit covered entities from discriminating on the basis of race, color, national origin, sex, age, or disability with respect to participation in or receiving the benefits of any health program or activity. Discrimination on the basis of sex includes gender identity. Covered entities may not deny health care or health plan coverage based on gender identity. An individual must be treated in a manner consistent with his or her gender identity and may not be denied sex-specific care because he or she identifies as another gender. Covered health plans may not impose a categorical exclusion of coverage for all health services related to gender transition.
- **Responsible Employee.** Covered entities with at least 15 employees must designate an employee responsible for Section 1557 compliance.
- **Grievance Procedures.** A grievance procedure for alleged violations of Section 1557 must be adopted by covered entities employing at least 15 employees.
- **Notices.** A notice of Section 1557 rights and the availability of the grievance procedure must be posted. Taglines written in the top 15 languages spoken by individuals with limited English proficiency in the State also must be posted.
- **Effective Dates.** The regulations became effective on July 18, 2016. Notices and taglines must be posted by October 16, 2016. Health plans and insurance coverage must comply by January 1, 2017.

Please contact any member of the Williams Mullen Health Care, Employment, or Employee Benefits practice groups for more information about Section 1557 compliance.

## Related People

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