

Section 1557: Frequently Asked Questions

1. What is Section 1557?

Section 1557 is the nondiscrimination provision of the Affordable Care Act (ACA). The law prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health programs or activities that receive Federal financial assistance or are administered by an Executive agency or any entity established under Title I of the ACA. Section 1557 has been in effect since enactment of the ACA.

2. In what ways does Section 1557 protect consumers?

Section 1557 makes it unlawful for any health care provider that receives funding from the Federal government to refuse to treat an individual – or to otherwise discriminate against the individual – based on race, color, national origin, sex, age or disability. Section 1557 imposes similar requirements on health insurance issuers that receive federal financial assistance. Health care providers and insurers are barred, among other things, from excluding or adversely treating an individual on any of these prohibited bases. The Section 1557 final rule applies to recipients of financial assistance from the Department of Health and Human Services (HHS), the Health Insurance Marketplaces and health programs administered by HHS.

3. How is the final rule under Section 1557 different from rules under the other civil rights laws the Office for Civil Rights already enforces?

The final rule is consistent with existing, well-established Federal civil rights laws and clarifies the standards HHS will apply in implementing Section 1557 of the ACA. These standards provide that individuals cannot be denied access to health care or health coverage or otherwise be subject to discrimination because of race, color, national origin, sex, age, or disability.

Building on long-standing and familiar civil rights principles, the final rule is an important step toward eliminating unlawful discrimination in federally funded programs and HHS programs. Section 1557 is the first Federal civil rights law to broadly prohibit discrimination on the basis of sex in all federally funded health care programs. The final rule extends nondiscrimination protections to individuals enrolled in coverage through the Health Insurance Marketplaces and certain other health coverage. It also applies to HHS's own health programs.

4. Is Section 1557 currently being enforced?

Section 1557 has been in effect since the enactment of the ACA in 2010. Since that time, the Office for Civil Rights (OCR) has been receiving and investigating discrimination complaints under Section 1557.

5. What is the effective date for the final rule?

The final rule is effective 60 days after publication in the Federal Register. There are three situations in which covered entities have additional time to comply with the rule's requirements: posting notices of consumer rights and taglines; accessibility standards for buildings not previously covered by the Americans with Disabilities Act; and design changes to health coverage.

6. What can I do if I believe my civil rights under Section 1557 have been violated?

If you feel that you have been subject to discrimination in health care or health coverage, you may file a complaint of discrimination under Section 1557. Please visit OCR's website at www.hhs.gov/ocr to file a complaint or to request a complaint package, or call OCR's toll free number at (800) 368-1019 or (800) 537-7697 (TDD) to speak with someone who can answer your questions and guide you through the process. OCR's complaint forms are available in a variety of languages. Individuals can also file lawsuits under Section 1557.

7. Why is OCR issuing a final rule addressing Section 1557?

OCR is issuing this final rule to educate consumers about their rights and to help covered entities understand their legal obligations under Section 1557. The final rule builds on the standards of the four Federal civil rights laws referenced in Section 1557 and their implementing regulations: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Among other things, the final rule implements prohibitions against sex discrimination in federally funded health care programs and establishes standards that apply to the Health Insurance Marketplaces and health programs administered by HHS.

8. Who does the final rule apply to?

The final rule applies to every health program or activity that receives HHS funding, every health program or activity administered by HHS, such as the Medicare Part D program, and the Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces. Covered entities may include hospitals, health clinics, health insurance issuers, state Medicaid agencies, community health centers, physician's practices and home health care agencies.

While the final rule applies only to HHS and the health programs and activities it funds, the Section 1557 statute applies more broadly to health programs and activities that receive financial assistance from any Federal department or agency.

9. Does the final rule apply to the Marketplaces?

Yes, both the Federally-facilitated Marketplaces and the State-based Marketplaces are covered by Section 1557.

10. How are covered entities supposed to let consumers know about their rights?

The final rule requires all covered entities to post a notice of consumer civil rights; covered entities with 15 or more employees are also required to have a civil rights grievance procedure and an employee designated to coordinate compliance. Under a new requirement, covered entities are required to post information telling consumers about their rights and telling consumers with disabilities and consumers with limited English proficiency (LEP) about the right to receive communication assistance. They are also required to post taglines in the top 15 languages spoken by individuals with LEP in the states in which the covered entity operates, advising consumers of the availability of free language assistance services.

To minimize burden on covered entities, OCR has prepared a model notice and model nondiscrimination statement that covered entities can use if they choose to do so; covered entities are free to create their own notices or statements if they wish. For more information

about translated notices and taglines, visit www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html.

11. What does the final rule require for individuals with limited English proficiency (LEP)?

The final rule adopts the longstanding civil rights principle that covered entities must take reasonable steps to provide meaningful access to each individual with LEP. The standards incorporated into 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 and other relevant considerations, such as whether an entity has developed and implemented an effective language access plan appropriate to its circumstances.

12. What does the final rule require concerning individuals with disabilities?

The final rule is consistent with existing directives implementing the requirements under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. It requires effective communication, including through the provision of auxiliary aids and services; establishes standards for accessibility of buildings and facilities; requires that health programs provided through electronic and information technology be accessible; and requires covered entities to make reasonable modifications to their policies, procedures, and practices to provide individuals with disabilities access to a covered entity's health programs and activities.

13. What types of discrimination constitute discrimination on the basis of sex?

Under the final rule, sex discrimination includes, but is not limited to, discrimination on the basis of pregnancy, gender identity and sex stereotyping. More than 25 years ago, the U.S. Supreme Court held that discrimination based on stereotypical ideas about gender is unlawful sex discrimination.

While the final rule does not resolve whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination under Section 1557, the rule makes clear that OCR will evaluate complaints that allege sex discrimination related to an individual's sexual orientation to determine if they involve the sorts of stereotyping that can be addressed under 1557. HHS supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor legal developments on this issue.

14. Why did OCR choose to include provisions that specifically address equal program access on the basis of sex in health programs and activities?

Many of the provisions of the final rule incorporate long-standing principles and protections of civil rights law and thus will be familiar to entities governed by the final rule. The final rule provides additional guidance in areas for which application of these principles may not be as familiar. Because Section 1557 is the first Federal civil rights law that broadly prohibits sex discrimination in all federally funded health care programs and activities, the final rule contains provisions designed to educate consumers and covered entities specifically about sex discrimination in the health care context. OCR is also providing additional information about the application of nondiscrimination principles to health insurance and other health coverage.

15. What does the provision that specifically addresses equal program access on the basis of sex in health programs and activities require?

The final rule requires covered entities to provide individuals equal access to health programs and activities without discrimination on the basis of sex and to treat individuals consistent with their gender identity. This provision applies to all health programs and activities, including with regard to access to facilities, administered by the covered entity.

16. What does the provision regarding nondiscrimination in health insurance and other health coverage prohibit?

The final rule prohibits covered entities from discriminating on the basis of race, color, national origin, sex, age or disability when providing or administering health-related insurance or other health-related coverage. This prohibition applies to all health insurance issuers that are recipients of Federal financial assistance, which includes premium tax credits and cost sharing reductions associated with coverage offered through the Health Insurance Marketplaces or Medicare Parts A, C and D payments.

Under the final rule, a covered entity cannot: deny, cancel, limit, or refuse to issue or renew a health-related insurance policy or other health-related coverage; deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions; or employ marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, or disability. The final rule does not require plans to cover any particular benefit or service or prohibit issuers from determining whether a particular health service is medically necessary, but a covered entity cannot have a coverage policy that operates in a discriminatory manner.

The final rule also prohibits a covered entity from denying or limiting coverage, denying or limiting a claim, or imposing additional cost sharing or other limitations, on any health services that are ordinarily or exclusively available to individuals of one gender, based on the fact that an individual's sex assigned at birth, gender identity, or recorded gender is different than the one to which the health care services are ordinarily or exclusively available. For example, when a plan covers medically appropriate pelvic exams, coverage cannot be denied for an individual for whom a pelvic exam is medically appropriate based on the fact that the individual either identifies as a transgender man or is enrolled in the health plan as a man.

Under the final rule, categorical coverage exclusions or limitations for all health services related to gender transition are discriminatory. Also, a covered entity cannot deny or limit coverage, deny or limit a claim, or impose additional cost sharing or other limitations or restrictions, for any specific health services related to gender transition if such denial, limitation or restriction results in discrimination against a transgender individual.

17. Does the final rule cover employment discrimination?

The final rule provides limited coverage of employment discrimination. The final rule prohibits an employer that receives Federal financial assistance that is principally engaged in providing health care or health coverage, such as a hospital or nursing home, from discriminating in employee health benefits. The final rule also applies to employee health benefits offered by an entity that is not principally engaged in providing health care or health coverage if the entity receives Federal funding that is specifically for the employee health benefit program itself or for a particular health program. In the latter situation, however, only the employees who work for the health program would be covered by the rule. The final rule's treatment of employment discrimination under Section 1557 does not change the protections under Title VII of the Civil

Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, or the other civil rights statutes referenced in Section 1557.

18. Does the final rule include a religious exemption?

The final rule on Section 1557 does not include a religious exemption; however, the final rule does not displace existing protections for religious freedom and conscience.

19. Can I review the final regulation?

Yes. You can review a copy of the final regulation at www.federalregister.gov.

20. Can I get a copy of the regulation in large print, Braille, or some other alternative format?

Yes. To get a copy in an alternative format, please contact the Office for Civil Rights and provide the specifications for the format. To contact us, call our toll-free number at (800) 368-1019 or (800) 537-7697 (TDD) for assistance.