

COMPLIANCE OVERVIEW



HHS' FAQs on Section 1557 Nondiscrimination Final Rule



Section 1557 of the Affordable Care Act (ACA) prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities. Section 1557 has been in effect since its enactment in 2010, with the U.S. Department of Health and Human Services' (HHS) Office of Civil Rights (OCR) enforcing the provision.

However, the rules and guidance HHS has published to implement Section 1557 **have been the subject of numerous lawsuits**, dating back to when initial regulations were issued in 2016. The litigation has primarily focused on:

- Which health programs and activities are subject to Section 1557's nondiscrimination requirements; and
- Whether sex discrimination includes discrimination based on gender identity, sexual orientation and termination of pregnancy.

On April 26, 2024, HHS issued a [final rule](#) under Section 1557 that **expands the scope of prior regulations**. This Compliance Overview provides HHS' [Frequently Asked Questions](#) (FAQs) on the final rule, which becomes effective **July 5, 2024**.

Section 1557 Final Rule: FAQs

The OCR has provided the following FAQs to help aid compliance with Section 1557's final rule. However, the OCR encourages individuals to read the final rule in its entirety for a complete recitation of its contents.

What is Section 1557?

Section 1557 is the nondiscrimination provision of the Affordable Care Act (ACA). Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability in specified health programs or activities, including those that receive Federal financial assistance.

In what ways does Section 1557 protect patients?

Section 1557 makes it unlawful for health care providers, including doctors' practices and hospitals that receive Federal financial assistance, to refuse to treat—or to otherwise discriminate against—an individual on the basis on their race, color, national origin, sex, age or disability.

Section 1557 imposes similar requirements on health insurance issuers that receive Federal financial assistance and the health insurance Marketplaces. The rule applies to both in-person and telehealth care.

Is Section 1557 currently being enforced?

Yes, 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.

What is the effective date for the final rule?

The final rule is effective July 5, 2024.

Once the final rule is in effect, those covered should follow the timetable below for the applicability of certain provisions.

Section 1557 Requirement and Provision	Date by Which Covered Entities Must Comply
§ 92.7 Section 1557 Coordinator	Within 120 days of effective date.
§ 92.8 Policies and Procedures	Within one year of effective date.
§ 92.9 Training	Following a covered entity's implementation of the policies and procedures required by § 92.8, and no later than 300 days of effective date.
§ 92.10 Notice of Nondiscrimination	Within 120 days of effective date.
§ 92.11 Notice of Availability of Language Assistance Services and Auxiliary Aids and Services	Within one year of effective date.
§ 92.207(b)(1)-(5) Nondiscrimination in health insurance coverage and other health-related coverage (benefit design changes)	For health insurance coverage or other health-related coverage that was not subject to this part as of the date of publication of this rule, by the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025.
§ 92.207(b)(6) Nondiscrimination in health insurance coverage and other health-related coverage (benefit design changes)	By the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025.
§ 92.210(b), (c) Use of patient care decision support tools	Within 300 days of effective date.

Why is OCR issuing a new final rule addressing Section 1557?

OCR is issuing this final rule to restore and strengthen civil rights protections for individuals consistent with the plain meaning of the statutory text. The previous version of this rule, issued in 2020, covers fewer programs and services and limited nondiscrimination protections for individuals.

Notably, this updated rule recognizes the growing importance of telehealth and patient care decision support tools in the health care marketplace—including artificial intelligence and machine learning—and applies nondiscrimination protections to the use of these technologies. In addition, the final rule recognizes that protections against discrimination on the basis of sex include sexual orientation and gender identity, consistent with the U.S. Supreme Court's holding in *Bostock v. Clayton County*.

Whom does the final rule apply to?

The final rule applies to health programs or activities that receive HHS funding, health programs or activities administered by HHS (such as the Medicare Part D program), and the health insurance Marketplace (and all plans offered by issuers that participate in those Marketplaces that receive Federal financial assistance).

Those covered by the rule may include hospitals, health clinics, health insurance issuers, state Medicaid agencies, community health centers, physicians' practices and home health care agencies.

Does the final rule apply to Marketplaces?

Yes, Section 1557 covers both the Federally-facilitated Marketplaces and the State-based Marketplaces.

Are those covered by the rule required to provide notice to let patients and consumers know about their rights under Section 1557?

The final rule requires all those covered to provide and post notice informing individuals of their civil rights under Section 1557. Covered entities with 15 or more employees are also required to have a civil rights grievance procedure and an employee designated to coordinate compliance for the final rule.

Those covered by the rule must also provide a notice informing individuals that free language assistance services and auxiliary aids and services are available to protect individuals with limited English proficiency (LEP) and individuals with disabilities. The notice must be provided in the top 15 languages spoken by individuals with LEP in the relevant State or States where the entity operates. To minimize burden, OCR has prepared [sample notices in English and 47 other languages](#) that can be used if providers choose to do so; they are also free to create their own notices if they wish.

What does the final rule require for individuals with limited English proficiency?

The final rule adopts the longstanding interpretation of civil rights laws that Federal financial assistance recipients must take reasonable steps to provide meaningful access to each individual with limited English proficiency. Those covered are required to provide notice that language assistance services will be provided free of charge when necessary to comply with this rule. Those covered must also adopt language access procedures describing their process for providing language assistance services to individuals with limited English proficiency when required. Those covered have flexibility in adopting procedures to comply with the final rule, which accounts for factors such as the nature and importance of the health program and the communication at issue. The rule also accounts for other relevant considerations, such as whether an entity has developed and implemented an effective language access plan appropriate to its circumstances.

What does the final rule require concerning individuals with disabilities?

The final rule requires effective communication, including through the provision of appropriate auxiliary aids and services; establishes standards for accessibility of buildings and facilities; requires that health programs provided through electronic and information technology be accessible; requires those covered to make reasonable modifications to their policies, procedures, and practices to provide individuals with disabilities access to health programs and activities; and requires health insurance coverage and other health-related coverage to be provided in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Those covered are required to provide notice that auxiliary aids and services will be provided free of charge when necessary to comply with this rule. Those covered must also adopt effective communications procedures describing their process for ensuring effective communication for individuals with disabilities when required.

Does the final rule prevent covered providers from using algorithms, devices, or tools in a way that results in discrimination?

Yes, the final rule codifies the existing prohibition on discrimination against individuals based on race, color, national origin, sex, age or disability through the use of patient care decision support tools, which include any automated or non-automated tool, mechanism, method, or technology (such as AI or clinical algorithms) used to support decision-making to provide care for patients. Under the final rule, covered providers have an ongoing responsibility to identify their use of patient care decision support tools that directly measure race, color, national origin, sex, age or disability and to make reasonable efforts to mitigate the risk of discrimination from their use of these tools.

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

The final rule provides that sex discrimination includes, but is not limited to, discrimination on the basis of sexual orientation, gender identity, sex characteristics (including intersex traits), pregnancy or related conditions, and sex stereotypes. In June of 2020, the U.S. Supreme Court held that the prohibition of sex discrimination in Title VII of the Civil Rights Act of 1964 includes discrimination on the basis of sexual orientation and gender identity. OCR's final rule is consistent with this ruling.

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

The final rule prohibits insurers from discriminating on the basis of race, color, national origin, sex, age or disability. This prohibition applies to all health insurance issuers that are recipients of Federal financial assistance, which includes Medicare Parts C and D payments, as well as state Medicaid agencies.

Does the final rule cover employment discrimination?

The final rule does not apply to employment practices, including the provision of employee health benefits.

Does the final rule include a religious freedom and conscience exemption?

Yes. The final rule reiterates that a recipient may rely on applicable Federal protections for religious freedom and conscience, and a particular application of a provision(s) of this final rule is not required when such protections apply. It also includes an administrative process for recipients to seek an assurance of exemption in writing from the application of a provision of Section 1557 under existing Federal religious freedom and conscience laws. The recipient will receive a temporary exemption while OCR decides the request. If the request is denied, the recipient can file an administrative appeal of that decision with HHS. OCR enforces a range of civil rights and conscience and religious freedom statutes and takes seriously the responsibility to effectively enforce each one. The final rule does not change or displace the rights already afforded under those statutes.

Does the final rule require the coverage or provision of treatment (e.g., hormone therapy, surgery, etc.) for children and/or adults with gender dysphoria if prescribed by a doctor?

The rule does not require a specific standard of care or course of treatment for any individual, minor or adult. Providers do not have an affirmative obligation to offer any health care, including gender-affirming care, that they do not think is clinically appropriate or if religious freedom and conscience protections apply. HHS has a general practice of deferring to a clinician's judgment about whether a particular service is medically appropriate for an individual.

The final rule does not require those covered, including state Medicaid agencies, to cover a particular health service for the treatment of gender dysphoria for any individual, minor or adult. Rather, it prohibits health insurance issuers, state Medicaid agencies and other covered entities from excluding categories of services in a discriminatory way. Coverage must be provided in a neutral and nondiscriminatory manner.

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

If you believe that you or someone else has been subject to discrimination in health care or health coverage, you may [file a complaint](#) with OCR under Section 1557. Learn how to file a complaint and 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 file a complaint online via [OCR's Complaint Portal](#).

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.

LINKS AND RESOURCES

- OCR's Section 1557 [webpage](#) and [fact sheet](#) on the final rule
- Current 2024 final rule [text](#)
- Prior 2020 final rule [fact sheet](#)
- Prior 2026 final rule [text](#)
- OCR's [Translated Resources for Covered Entities](#) (notice of nondiscrimination, statement of nondiscrimination and taglines)

Source: Office for Civil Rights (OCR)

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