

## **Strengthening Nondiscrimination Protections and Advancing Civil Rights in Health Care through Section 1557 of the Affordable Care Act: Fact Sheet**

*The following provides summarized information, not any independent interpretation of Section 1557; readers are directed to the final rule itself for a full and complete recitation of its contents.*

The Department of Health and Human Services (HHS) has issued a final rule to advance health equity and reduce disparities in health care. [Section 1557 of the Affordable Care Act](#) (ACA) prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in any health program or activity that receives Federal financial assistance, State-based health insurance Exchanges, and HHS health programs and activities, and is one of the government's most powerful tools to ensure nondiscriminatory access to health care. This rule provides clarity on Section 1557 and will help ensure nondiscriminatory access to care for all, including women, people with disabilities, LGBTQI+ people, people with limited English proficiency (LEP), people of color, and people regardless of age. If you believe that you or another party has been discriminated against on the basis of race, color, national origin, sex, age, or disability, please visit the [Office for Civil Rights \(OCR\) complaint portal](#) to file a complaint online.

### **Summary of the Final Rule**

#### **Brings health insurance issuers back into coverage under Section 1557 (45 CFR 92.2, 92.4, and 92.207).**

The final rule reinstates and strengthens Section 1557's application to health insurance issuers that receive Federal financial assistance. Recognizing the significant role health insurance plays in the provision of health care, the rule provides clear nondiscrimination standards for the industry.

#### **Reinstates application of Section 1557 to *all* of HHS-administered health programs and activities (45 CFR 92.2(a)(2)).**

The rule applies nondiscrimination standards to all of HHS's health programs and activities. The 2020 Rule ([85 Fed. Reg. 37160](#) (June 19, 2020)) limited the scope of Section 1557's nondiscrimination requirements. The Department believes that interpreting Section 1557 to cover all of the health programs and activities administered by HHS is the best reading of the statute and the one that protects more people from discrimination across the Department's broad range of health programs and activities, including but not limited to those administered by the Indian Health Service, Centers for Medicare & Medicaid Services, and the National Institutes of Health.

#### **Protects LGBTQI+ patients from discrimination and clarifies 1557's prohibition on sex discrimination (45 CFR 92.101, 92.206).**

Consistent with the U.S. Supreme Court's holding in [Bostock v. Clayton County – PDF](#), the final rule affirms that protections against sex discrimination include protections against discrimination on the basis of sexual orientation and gender identity.

The final rule also clarifies that sex discrimination includes discrimination on the basis of sex stereotypes; sex characteristics, including intersex traits; and pregnancy or related conditions.

**Requires those covered by the rule, including providers, insurance issuers, and HHS-administered programs, to let people know that language assistance and services are available (45 CFR 92.11).**

The final rule requires recipients of Federal financial assistance, HHS-administered health programs and activities, and State and Federally-Facilitated Exchanges to let people know that language assistance services and auxiliary aids are available if needed. The notice must be provided in English and in at least the 15 most common languages spoken by people with limited English proficiency (LEP) in the State(s) served. To ensure effective communication, these notices must be communicated to individuals with disabilities as effectively as they are to individuals without disabilities. Covered entities are required to provide these notices in prominent locations both physically and on their websites, make them available upon request, and include them with a specific list of communications.

**Requires those covered by the rule to take steps to identify and mitigate discrimination when they use patient care decision support tools (45 CFR 92.210).**

The final rule states that recipients of Federal financial assistance, HHS-administered health programs and activities, and State and Federally-Facilitated Exchanges must not discriminate against any individual on the basis of race, color, national origin, sex, age, or disability through the use of patient care decision support tools, which include automated and non-automated tools, mechanisms, methods, and technology to provide patient care. This provision is not intended to hinder the use of such tools: It balances technology's role in reducing health disparities and increasing access to care with the need for responsible use of these tools that does not lead to discrimination in patient care. The final rule requires those covered to make reasonable efforts to identify patient care decision support tools that use input variables or factors that measure race, color, national origin, sex, age, or disability, and to make reasonable efforts to mitigate the risk of discrimination that may result from the use of such tools.

**Requires those covered by the rule to implement Section 1557 policies and staff training (45 CFR 92.8-92.9).**

The final rule requires recipients of Federal financial assistance, HHS-administered health programs and activities, and State and Federally-Facilitated Exchanges to implement policies and procedures to ensure compliance with the rule. In particular, covered entities must have policies for providing language assistance services for people with LEP and to ensure effective communication and reasonable modifications for people with disabilities. Covered entities are

also required to train their staff on these policies and procedures. These requirements will help improve compliance.

**Clarifies that nondiscrimination requirements apply to health programs and activities provided through telehealth services (45 CFR 92.211).**

The final rule specifically addresses nondiscrimination in telehealth services. This provision clarifies that recipients of Federal financial assistance, HHS-administered health programs and activities, and State and Federally-Facilitated Marketplaces must not discriminate in their delivery of health programs and activities provided through telehealth services. This means ensuring that such services are accessible to individuals with disabilities and providing meaningful program access to people with LEP.

**Respects federal guarantees regarding religious freedom and conscience (45 CFR 92.3 and 92.302).**

The final rule states that no application of the rule will be required if it would violate federal protections for religious freedom and conscience. Under this rule, a recipient of federal financial assistance may simply rely on those protections or seek assurance of them from HHS OCR.

**Notice Regarding Medicare Part B as Federal financial assistance.**

This rulemaking provides notice of the Department's interpretation that Medicare Part B payments constitute Federal financial assistance for the purpose of coverage under the Federal civil rights statutes the Department enforces. These include [Title VI of the Civil Rights Act of 1964](#), [Section 504 of the Rehabilitation Act of 1973](#), [Title IX of the Education Amendments of 1972](#), the [Age Discrimination Act of 1975](#), and Section 1557 of the ACA. Medicare Part B funds meet the definition of Federal financial assistance under the law, as defined in the regulations for the above statutes. The Department believes that previous rationales provided for the Medicare Part B exclusion are outdated given changes to the law and to the Medicare program, and that the policy change is the best reading of the civil rights laws given the purpose and operation of the Medicare Part B program.

The Final Rule may be viewed or downloaded at: [hhs.gov/1557](https://www.hhs.gov/1557)