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## Final Rule Implementing Section 1557 of the Affordable Care Act Provides Health Care Specific Anti-Discrimination Mandates

American Health Lawyers Association

July 15, 2016

### **Final Rule Implementing Section 1557 of the Affordable Care Act Provides Health Care Specific Anti-Discrimination Mandates**

Section 1557 of the Affordable Care Act of 2010 (Section 1557) mandates that individuals shall not be discriminated against in their efforts to participate in, be denied benefits of, or be subject to discrimination in health care or health coverage in any federal health program or activity that receives federal financial assistance or that is administered by an executive agency or similar entity. Section 1557 further authorized the U.S. Department of Health and Human Services (HHS) to promulgate and implement regulations to further efforts to curb discrimination and establish rules by which those involved in these programs must comply.

HHS issued the final rule for Section 1557, entitled “Nondiscrimination in Health Programs and Activities” (Rule), on May 13, and the Rule becomes effective on July 18. HHS also has promulgated helpful guidance available on its website to assist covered entities to comply with the Rule’s requirements.

Section 1557 and the Rule advance the coordination of and build upon well-established federal civil rights laws such as Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Covered entities include, for example, those receiving federal financial assistance through their participation in Medicare or Medicaid, any program administered by HHS, and those participating in the Health Insurance Marketplaces. In that context, the Rule recognizes and adopts general prohibitions on discrimination such as race, color, national origin, sex, age, and disability while also addressing specific forms of discrimination such as pregnancy, gender identity, and sex stereotyping. It is the first federal civil rights law prohibiting discrimination based upon sex in health care programs and activities receiving federal financial assistance. Further, the Rule enhances what services must be provided in regards to language assistance for those with limited English proficiency and individuals with disabilities. The HHS Office of Civil Rights (OCR) has been charged with enforcing the Rule.

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The Rule is far-sweeping for the “covered entities” that are subject to it. Covered entities must, for example, submit documentation of assurance, on a form specified by the OCR, that their health programs and activities are in compliance with Section 1557 when applying to participate in federal financial assistance programs covered by Section 1557. In addition, covered entities must post notice of an individual’s civil rights and the covered entities’ obligations under Section 1557 so that the individual has meaningful access to applicable health programs and activities. Certain notices and publications must have taglines in the top 15 languages spoken in that state or grouping of states that there is language assistance available.

As previously noted, a major element of Section 1557 and the Rule pertains to issues related to limited English proficiency. Under certain circumstances, the Rule requires that an individual with limited English proficiency be provided a qualified translator, interpreter, and other aids in a “timely manner” so that individual may take advantage of the covered entities’ health programs and activities. These aids must be provided free of charge. While “timely manner” is not defined, it is recognized that simply utilizing a staff member who does not meet the definition of “qualified” is not sufficient to meet the covered entity’s obligations.

Section 1557 and the Rule have now created a new area of compliance concern for those covered entities to which it applies. Covered entities should create and implement a compliance plan and appropriate training to ensure that the Rule’s requirements are satisfied.

*\*This alert was first published by Pat Souter for The American Health Lawyers Association.*