

# Final Section 1557 Regulation Brings New Requirements for Health Care Providers

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The United States Department of Health and Human Services (HHS)'s Office for Civil Rights (OCR) has issued a Final Rule to implement Section 1557 of the Affordable Care Act, which makes it unlawful for covered health care providers to refuse to treat, or otherwise discriminate against individuals on the basis of race, color, national origin, sex, age, or disability (See 42 U.S.C. § 18116). The Final Rule is effective July 5, 2024. While there are new requirements to implement, these are not all required to be in effect on the day of implementation and have staggered compliance dates, discussed further below.

The Final Rule clarifies the set of standards medical Providers are expected to implement to understand and comply with Section 1557. It applies to Providers participating in federal healthcare programs or receiving federal financial assistance from HHS. While Section 1557 has been in effect since 2010, interpretation and enforcement of Section 1557 has widely varied depending on the presidential administration and been subject to legal challenges. The first set of regulations was promulgated in 2016, but many of those requirements were reversed in 2020. The latest Final Rule restores some of the original 2016 provisions and provides some additional steps for Providers to implement.

Consistent with the U.S. Supreme Court's holding in *Bostock v. Clayton County*, protections against discrimination on the basis of sex have been clarified. Discrimination on the basis of sex 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.

## What Does the Final Rule Do?

Below are some of the bigger changes put in place by the Final Rule that Providers will need to address. While Providers may already have some of these policies in place, we recommend that these policies be reviewed to determine compliance with the updated requirements in the Final Rule.

### Written Policies and Procedures (Within One Year of Effective Date)

Covered entities must implement written policies and procedures designed to comply with Section 1557. This language must include a statement that the entity does not discriminate on the bases prohibited by Section 1557, that it provides free language assistance services and auxiliary aids and services, and that when necessary for compliance, it will provide reasonable modifications for individuals with disabilities. It should also include the current information for the Section 1557 Coordinator.

Additionally, it is best practice for the policy to provide information about a temporary exemption or granted assurance of an exemption process related to religious freedom.

Covered entities with fifteen (15) or more employees must also have a written grievance process and keep confidential the identity of individuals who file grievances.

### Required Training (No Later than 300 Days from Effective Date)

Covered entities are required to train relevant employees on the civil rights policies and procedures required as necessary for the employees to carry out their jobs within 30 days of the implementation of required policies, or at the latest, 360 days after the publication of the final rule.

### Notices of Non-Discrimination, Language Assistance Services, and Disability Services (Within 120 Days from Effective Date)

#### SUMMARY

The United States Department of Health and Human Services (HHS)'s Office for Civil Rights (OCR) has issued a Final Rule to implement Section 1557 of the Affordable Care Act, which makes it unlawful for covered health care providers to refuse to treat, or otherwise discriminate against individuals on the basis of race, color, national origin, sex, age, or disability (See 42 U.S.C. § 18116). The Final Rule is effective July 5, 2024. While there are new requirements to implement, these are ...

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Covered entities must provide a notice of non-discrimination on an annual basis to participants, beneficiaries, enrollees, and applicants. This notice must be provided upon request, in a conspicuous location on the entity's website, and in a prominent physical location in no smaller than 20-point sans serif font. It may be combined with other civil rights notices. A sample notice is forthcoming from OCR.

Notices are still required informing individuals that free language assistance services and auxiliary aids and services are available for individuals with limited English proficiency and individuals with disabilities. OCR has prepared sample notices that can be used to satisfy this requirement. The Final Rule does implement some additional requirements to provide meaningful access to individuals with limited English proficiency, including providing access to qualified interpreters, and Providers should consider implementing a written plan to provide meaningful access to these patients.

#### Non-Discrimination in Data Tools

The Final Rule also prohibits Providers from using algorithms, devices, or tools in a way that results in discrimination based on a protected class. These may include patient care decision support tools, which may include any automated or non-automated tool, mechanism, method, or technology, such as AI or clinical algorithms, used to support decision-making care for patients.

## What Does the Final Rule *Not* Do?

The Federal 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 services that they do not think is clinically appropriate or if religious freedom and conscience protections apply. Covered Providers are also not in violation of the Final Rule if they decline to provide health care services based on religious or conscience objections to performing the procedure, based on professional or business judgment about the scope of the services, or any other non-discriminatory reason.

Federal religious freedom and conscience objection laws remain in place and may be relied on by individuals who satisfy those requirements. An administrative process is also included for organizations to seek assurance from OCR of their protections under the Federal religious freedom and conscience laws.

Providers should keep in mind that the religious freedom and conscience protections apply to protect Providers from being required to provide specific *medical services* that they have a religious or conscience objection to, but do not provide the same level of protection for refusing to provide general medical services to a specific *classification* or protected class in general.

You can read more about the Final Rule here: <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557-fact-sheet/index.html>.

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