

Anti-Discrimination Regulations

The U.S. Office for Civil Rights has issued final anti-discrimination regulations under Section 1557 of the Affordable Care Act (ACA). The regulations prohibit covered entities from discriminating in the provision of a health program or activity based on race, color, national origin, sex, age or disability.

Does Section 1557 apply to your company?

Section 1557 regulations apply to the following “covered entities”:

- health plans, insurers, hospitals, doctors and other medical providers that receive federal funding from the U.S. Department of Health and Human Services (HHS), including Medicaid and Medicare Parts A, C and D payments (prescription-drug subsidies) but not Medicare Part B;
- qualified health plans offered on either state or federal Health Insurance Marketplaces, also known as exchanges; and
- all of a health insurance issuer’s operations, including the issuer’s third-party administrator services or ASO services, if an issuer receives federal financial assistance from HHS.

NO

Section 1557 regulations do not apply to your company.

YES

The regulations do apply. Continue to Action Items.

Action Items

1. Remove discriminatory exclusions from Plan Documents by the renewal date on or after Jan. 1, 2017.

Examples of exclusionary language include charges for services, supplies or treatment for transexualism, gender dysphoria or sexual reassignment or change, including medication, implants, hormone therapy, surgery and medical or psychiatric treatment.

Please note that the regulations do not require the addition of any benefits. If your company decides to voluntarily add a covered service, such as supplies or treatment for transsexualism, your company would only have to comply with Section 1557 if your company is a covered entity.

Sex Stereotypes

According to the preamble of the regulations, sex stereotypes can include the belief that gender can only be binary and that an individual cannot have a gender identity other than male or female.

The Office for Civil Rights recognizes that an individual’s gender identity involves the interrelationship between an individual’s biology, gender, internal sense of self and gender expression related to that perception; thus the gender identity spectrum includes an array of possible gender identities beyond male and female.

2. Notify beneficiaries, enrollees, applicants and members of the public of the following:

By Oct. 16, 2016, each covered entity must post the required notice and taglines in a conspicuously-visible font size in:

a. “significant publications” and “significant communications”¹

Large-size (including 8.5”-by-11”²) significant publications and communications must contain:

- The required notice*
- Taglines in the top 15 languages** for all states in which the covered entity operates (aggregated when the covered entity operates in multiple states). For the top 15 languages in each state, follow this link: www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Appendix-A-Top-15-non-english-by-state-MM-508_update12-20-16.pdf.

Small-size significant publications and communications, such as postcards and tri-fold brochures, must contain:

- The required one-sentence anti-discrimination statement***
- Taglines in the top two languages in the states in which the covered entity operates (aggregated when the covered entity operates in multiple states)

b. conspicuous physical locations where the covered entity interacts with the public; and

c. conspicuous locations on the covered entity’s website accessible from the home page of the covered entity’s website.

In order for CoreSource to fill out the sample notice from the federal government and attach it to the “significant publications” and “significant communications”¹ that CoreSource produces, clients will need to provide the following to their CoreSource Client Managers: name of Civil Rights Coordinator; title of Civil Rights Coordinator; telephone number; TTY number, if the client has one; fax and e-mail address.

¹According to the preamble to the regulations, the federal government intends the scope of “significant publications” and “significant communications” of a covered entity to include not only documents intended for the public, such as outreach, education and marketing materials, but also written notices requiring a response from an individual and written notices to an individual, such as those pertaining to rights or benefits. Examples of some of these publications and communications may include: open enrollment materials; Summary Plan Description/Plan Document (however, these documents don’t have to be updated until renewed on or after Jan. 1, 2017); COBRA communications; member-only Explanations of Benefits (EOBs); member-only appeals and grievance notices; other federal notices; and applications to participate in, or receive benefits or services from, a covered entity’s health program or activity, as well as written correspondence related to an individual’s rights, benefits or services, including correspondence requiring a response. ²U.S. Office for Civil Rights, *General Questions about Section 1557*, #23

Notice Content

The notice informs beneficiaries, enrollees and member of the public of the following:

1. The covered entity does not discriminate on the basis of race, color, national origin, sex, age or disability in its health programs and activities;
2. The covered entity provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities.
3. The covered entity provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency;
4. How to obtain the aids and services in paragraphs (2) and (3).
5. An identification of, and contact information for, the responsible employee designated the Civil Rights Coordinator³, if applicable for covered entities that employ 15 or more persons, to coordinate its efforts to comply with and carry out its responsibilities under Section 1557, including the investigation of any grievance communicated alleging noncompliance with Section 1557. (Please note, for covered entities that employ 15 or more persons, the covered entity has to adopt grievance procedures.⁴)
6. The availability of the grievance procedure and how to file a grievance, if applicable.
7. How to file a discrimination complaint with the Office for Civil Rights.

³The Civil Rights Coordinator is the employee responsible for coordinating efforts to comply with these anti-discrimination regulations and to carry out duties under Section 1557, including the investigation of any complaint alleging noncompliance.

⁴Visit <http://www.hhs.gov/sites/default/files/section1557-sample-grievance-procedure.pdf> for a sample grievance procedure.

Non-Compliance Penalties

A covered entity that does not comply with Section 1557 may face:

1. enforcement mechanisms under federal law that ultimately may result in loss of federal funding, and
2. lawsuits from individuals, including the potential for compensatory damages.

*Visit <http://www.hhs.gov/sites/default/files/sample-ce-notice-english.pdf> for a federal notice of nondiscrimination.

**Visit <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/> for taglines in the top 15 languages.

***Visit <http://www.hhs.gov/sites/default/files/sample-ce-statement-english.pdf> for a one-sentence nondiscrimination statement.

Court Ruling

On Dec. 31, 2016, a U.S. District Court judge issued a nationwide preliminary injunction prohibiting HHS from enforcing certain provisions of the rules in Section 1557 of the ACA.

The plaintiffs, eight states⁵ and three private entities⁶, argued the rules extending antidiscrimination protections to transgender individuals and allegedly requiring the performing of and coverage of pregnancy terminations conflict with their beliefs. The federal government argued that the rules do not mandate any particular procedure, rather the rules require only that covered entities provide nondiscriminatory health services and health insurance in a nondiscriminatory manner.

Preliminary injunction

The preliminary injunction was issued after the judge determined that the federal government exceeded its authority with rules that extended anti-discrimination protections to transgender individuals and that the rules likely violated certain laws, including religious freedom protections for the private entities regarding pregnancy terminations. Other provisions of the anti-discrimination rules issued under Section 1557 of the ACA were not affected by the preliminary injunction.

Moving forward

CoreSource clients should consult with their attorney regarding compliance with Section 1557 rules before making any changes to their previously decided course of action.

⁵Plaintiffs include eight states: Arizona, Kansas, Kentucky, Louisiana, Mississippi, Nebraska, Texas and Wisconsin.

⁶Plaintiffs also include three religiously affiliated private entities: Franciscan Alliance, Inc., its wholly owned entity Specialty Physicians of Illinois, LLC, and the Christian Medical & Dental Society.

PLEASE NOTE: This material represents a high-level summary of ACA provisions and may not be construed as tax, legal or compliance advice. Please consult your professional benefits adviser or legal counsel regarding how these provisions may impact your specific benefit plan.

Last Updated: Jan.16, 2017

Visit www.coresource.com/healthcarereform for more information on the ACA.