

# PUBLICATION

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## Health Care Employers Heads Up: What You Need to Know About Section 1557 of the Affordable Care Act

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As the current presidential administration winds up its time in office, the administrative branch is hard at work completing its regulatory agenda. Part of this effort is implementing Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination in health care and health care insurance coverage based on race, color, national origin, disability and gender. Many health care companies are covered and most probably don't have at least a few of 1557's requirements in place. So here is the who, what, when, where and how on Section 1557:

### Who?

*Who is covered?* Under Section 1557, covered entities include (1) employers that receive federal financial assistance and that are principally engaged in providing health care or health coverage; and (2) employers that are not principally engaged in providing health care or health coverage but that receive federal funding for their employee health benefit program or for another particular health program. This includes most hospitals, nursing homes, health clinics, home health agencies, physician practices, clinical labs, hospices, organ recovery centers, health care insurers and even state Medicaid agencies.

*Who is protected?* Under the final rule, covered entities may not exclude individuals from participation in health-related services or coverage based on their race, color, national origin, sex, age or disability. The final rule builds on the standards set forth in Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. In doing so, it prohibits employment discrimination by prohibiting covered employers from discriminating in the administration of employee health benefits.

### What?

*What does 1557 do?* Section 1557 prohibits covered entities from discriminating in the application of health care programs and activities because of the protected traits listed above. The final rule also requires covered entities to post various notices to ensure disabled individuals and individuals whose primary language is not English have access to health-related services and coverage. The U.S. Department of Health and Human Services (HHS) has provided model non-discrimination documents – a model notice, statement, tagline and grievance procedure – at its site, though entities are not required to use them:

- [HHS Model Notice, Statement and Tagline](#)
- [HHS Model Grievance Procedure](#)

*What do I have to post?* All covered entities must post a notice of consumer civil rights. Covered entities with at least 15 employees must post a notice and statement of non-discrimination, taglines, appoint a compliance coordinator and adopt a grievance procedure. The notice, statement and taglines must be posted in at least the following three places:

1. in conspicuous physical locations open to the public;

2. in all "significant publications and significant communications" targeted to beneficiaries, enrollees, applicants and members of the public, except for "small-sized publications" described below.\* Significant communications include outreach, education and marketing materials, patient handbooks, notices requiring a response from individuals and written notices such as those pertaining to rights or benefits. In a flourish of unexpected practicality, HHS has agreed to allow entities to exhaust their current inventory of non-compliant printed materials as long as the next batch they order includes the requisite material; and
3. in a conspicuous location on the entity's website. This requirement may be satisfied by posting links on the entity's homepage that send users to the information, though there should also be links in non-English languages.

\*If the publication is small – think pamphlets and postcards – the entity must include only the following language:

4. "The covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities"; and
5. Taglines in at least the top two languages spoken by individuals with limited English proficiency in the relevant state.

*What is a tagline?* An example:

Attention: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).

Taglines must be provided in the top 15 non-English languages in the state. HHS has provided various translations [at their site](#).

In addition to providing taglines, Section 1557 also requires that covered entities take "reasonable steps" to provide "meaningful access" to individuals with limited English proficiency.

When?

*When is my deadline?* Three dates potentially apply: The final rule was effective on July 18, 2016, but the notice requirements are not effective until 90 days later, which is October 24, 2016. Any changes to group health plan benefit design, however, are not required until the first day of the first plan year on or after January 1, 2017.

Where?

*Where did this come from?* Strongly-worded complaints and/or letters expressing appreciation should be addressed to the U.S. Department of Health and Human Services Office for Civil Rights. It was responsible for implementing the final rule. You can read more about their process and Section 1557's purpose [here](#), where you can also find the full text of the final rule.

How?

*How do I comply with Section 1557?*

6. Determine if you are covered. According to HHS, "[t]he final rule applies to every health program or activity that receives HHS funding, every health program or activity administered by HHS, such as the

Medicare Part D program, and the Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces." If you are unsure, HHS's summary of the final rule provides a fairly simply break down of which entities are covered.

7. Ensure that you are aware of all of Section 1557's requirements and compare them to your company's policies. For instance, review policies and practices to ensure the company is not treating individuals differently based on the protected traits listed above without a compelling reason for doing so. Specifically question the necessity of any gender-based decisions or assumptions. HHS has provided [examples](#) of potential violations that will help inform your review.
8. Appoint a compliance coordinator, draft the required notice, statement, taglines and grievance procedure (or make sure current policies will comply), and add them to the entity's publications and website (making sure they are accessible to foreign-language speakers).
9. Train your compliance coordinator, managers and other affected employees. HHS has provided training materials [here](#).

The final rule is long and complicated, and no article, including this one, can provide an exhaustive list of its requirements. If your company is covered, much more study of Section 1557 is necessary. For more guidance, see Layna Cook Rush's in-depth discussion of Section 1557 from a Health Law perspective [here](#).