



PROPOSED CHANGES TO ACA SECTION 1557 RULES

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Introduction to Section 1557

Section 1557 is the nondiscrimination provision of the ACA and prohibits discrimination on the basis of race, color, national origin, sex, age, and disability. Discrimination on the basis of national origin includes language access.

Section 1557 extends these protections to:

- Health care programs and activities receiving federal funding (e.g., health care providers, hospitals, nursing homes) or administered by the federal government (e.g., Medicare or Medicaid);
- Entities created under Title I of the ACA (such as marketplaces and QHPs).

Sex Discrimination – Gender Identity & LGBTQ Health

Current Section 1557 regulations define sex discrimination to include gender identity, sex stereotyping, and pregnancy status, including termination of pregnancy.

The proposal eliminates this definition entirely, leaving individuals vulnerable to discrimination based on these categories. It also removes references to “sexual orientation” appearing in other HHS regulations, such as those that prevent discrimination in Essential Health Benefits, Qualified Health Plan marketing and design, outreach and enrollment activities, etc.

Sex Discrimination – Gender Identity & LGBTQ Health

The impact:

- Covered entities may not be required to treat transgender individuals in a manner consistent with their gender identity and could exclude or limit coverage for gender transition services.
- Providers could refuse to provide care for transgender individuals or for individuals who do not adhere to sex stereotypes (clothing, mannerisms, etc.).
- Covered entities could deny, limit access, or impose additional cost-sharing for services generally or exclusively available to one sex or gender.

Reproductive Health and Abortion

Section 1557 prohibits sex-based discrimination and incorporates the prohibition against pregnancy-based discrimination from Title IX regulations.

Under the current rules there is no blanket "religious refusal" for covered entities. But any application of § 1557 that violates existing religious exemptions is not required.

The Section 1557 Final Rule neither created nor displaced any new "religious refusals" in the provision of health care services.

Reproductive Health and Abortion

Under HHS's proposal:

- Covered entities and providers could invoke a blanket abortion and religious exemption from Section 1557's prohibition on sex-based discrimination (Title IX).
- Covered entities would be exempt from Section 1557's prohibition on sex-based discrimination if compliance would violate existing or future abortion or religious exemption laws.
- Individuals could be denied access to abortion services or other health care services if such services were to violate a provider's religious beliefs.

Language Access/LEP

There are approximately 25 million LEP (Limited English Proficient) individuals in the United States and over 500,000 in Washington State alone.

Currently covered entities are required to take reasonable steps to provide meaningful access to each individual with limited English proficiency (LEP) including: placing taglines on all significant documents; posting notices about the availability of language access services; providing translation services and access to qualified interpreters.

Other Considerations

Disability Discrimination: The proposal does not change existing protections against disability-related discrimination but does ask for public comment on several potential rollbacks.

Notice & Grievance: The proposal seeks to eliminate existing provisions related to providing individuals information on their rights and grievance procedures.

Applicability: The proposal seeks to limit the number of federal health programs subject to § 1557 and narrows the applicability of the protections by eliminating the comprehensive definitions of “covered entities” and “health program or activity” in the current regulations.

Takeaways – What Happens Next?

These proposed regulatory changes **do not repeal** Section 1557 of the ACA. That is still the law and only Congress can change that.

However, these proposed changes will significantly curtail existing nondiscrimination protections in health care if formally adopted—particularly for transgender individuals, people with LEP, and those seeking reproductive health care services.

Take Action! You can participate in the public comment period and share your views on how this will impact the people you work with. The comment period is open until August 13, 2019.

Resources

- You can submit a comment, [here](#).
- More information is available at:
 - ▣ National Health Law Program, <https://healthlaw.org/resource/qa-proposed-rollback-of-nondiscrimination-protections-under-the-acas-section-1557/>
 - ▣ Families USA, <https://familiesusa.org/product/trump-administration-proposes-undo-nondiscrimination-protections-health-care>

Thank You!

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