

# HHS Finalizes Section 1557 Nondiscrimination Rule – Impacts for RHCs



# Agenda

- History of the Statute and Regulation
- Ongoing Legal Challenges
- Components of the Rule and Timeline for Compliance
  - **Specific focus on compliance for November**
- Compliance Details / Enforcement of the Rule
- Q&A



# Note on Section 1557 Compliance

- Many RHCs and/or their parent hospitals may already be compliant with various aspects of the rule because they maintained compliance with the 2016 rule or for compliance with another program (e.g. National Health Service Corps nondiscrimination policy)
- Regardless, we encourage you to use this opportunity to ensure your facilities are compliant with all components as established in this 2024 1557 Final Rule specifically

# History of Section 1557

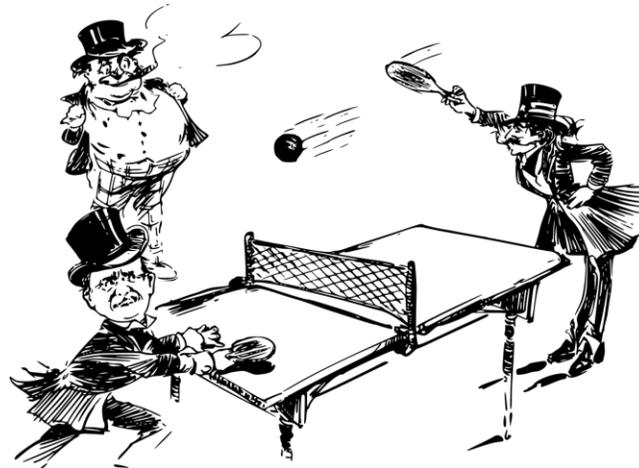


# Statute

- When the Affordable Care Act (ACA) was signed into law in 2010, it contained a non-discrimination provision, Section 1557.
- Section 1557 *"prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in specified health programs or activities, including those that receive Federal financial assistance."*
  - Federal financial assistance includes providers who receive reimbursement from Medicare/Medicaid/CHIP/ACA Marketplace Plans
- The law directed the Secretary of HHS to promulgate regulations to implement this section.

# Regulatory History

- Regulations were first implemented by the Obama Administration in 2016, revised by the Trump Administration in 2020, and revised in 2024 by the Biden Administration.



# On the basis of sex

- This regulation goes beyond past protections by extending "on the basis of sex" to include *sexual orientation, gender identity, sex characteristics, pregnancy or related conditions, and sex stereotypes*, consistent with the U.S. Supreme Court's decision in *Bostock v. Clayton County*
- [HHS / Office of Civil Rights FAQs](#)

# Religious Freedom / Conscience Exemptions

## **15. Does the final rule include a religious freedom and conscience exemption?**

Yes. The final rule reiterates that a recipient may rely on applicable Federal protections for religious freedom and conscience, and a particular application of a provision(s) of this final rule is not required when such protections apply. It also includes an administrative process for recipients to seek an assurance of exemption in writing from the application of a provision of Section 1557 under existing Federal religious freedom and conscience laws. The recipient will receive a temporary exemption while OCR decides the request. If the request is denied, the recipient can file an administrative appeal of that decision with HHS. OCR enforces a range of civil rights and conscience and religious freedom statutes and takes seriously the responsibility to effectively enforce each one. The final rule does not change or displace the rights already afforded under those statutes.

# Required Coverage / Provision of Treatment

## **16. Does the final rule require the coverage or provision of treatment (e.g., hormone therapy, surgery, etc.) for children and/or adults with gender dysphoria if prescribed by a doctor?**

The 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, including gender-affirming care, that they do not think is clinically appropriate or if religious freedom and conscience protections apply. HHS has a general practice of deferring to a clinician's judgment about whether a particular service is medically appropriate for an individual.

The final rule does not require those covered, including state Medicaid agencies, to cover a particular health service for the treatment of gender dysphoria for any individual, minor or adult. Rather, it prohibits health insurance issuers, state Medicaid agencies, and other covered entities from excluding categories of services in a discriminatory way. Coverage must be provided in a neutral and nondiscriminatory manner.



# Ongoing Legal Challenges



# Section 1557 Lawsuits

- Nearly half of states as well as many legal groups, conservative medical associates, and individual facilities have all filed lawsuits to block this rule given the expanded interpretation of "on the basis of sex"



# Status of Legal Challenges

- In early July, a U.S. Southern District Court Judge from MS blocked enactment of the rule for all states “to the extent that the final rule provides that ‘sex’ discrimination encompasses gender identity.”
  - Other components of the 1557 final rule still apply
- **Except for in Montana and Texas**, where a Fifth Circuit Court of Appeals blocked the entirety of the rule for those two states in a separate case



# Components of the Rule and Timeline for Compliance



# While the full rule is broadly applicable to the healthcare industry, the following sections are the most immediate and relevant sections of the rule for Rural Health Clinics.

Section 1557 Requirement and Description	Covered entities must comply by:
<b>§ 92.7 Section 1557 Coordinator</b>	November 2, 2024
<b>§ 92.10 Notice of Nondiscrimination ~ Longer notice required in English explaining Nondiscrimination rules to patients</b>	November 2, 2024
<b>§ 92.210 Nondiscrimination via Patient Care Decision Support Tools</b>	May 1, 2025
<b>§ 92.211 Nondiscrimination via Telehealth</b>	May 1, 2025
<b>§ 92.8 Policies and Procedures</b>	July 5, 2025
<b>§ 92.9 Training</b>	After the creation of a covered entities P&P and no later than July 5, 2025
<b>§ 92.11 Notice of Availability ~ Shorter notice in English and top 15 foreign languages explaining the availability of translation and auxiliary aid services free of charge</b>	July 5, 2025



# Section 1557 Coordinator § 92.7

- Entities with **15 or more employees** must have a civil rights grievance procedure and an employee (or several) designated to coordinate compliance with the requirements in this rule. The Section 1557 Coordinator will be responsible for:
  - receiving and reviewing grievances;
  - coordinating Section 1557 recordkeeping requirements;
  - coordinating language access procedures;
  - coordinating effective communication procedures;
  - coordinating procedures for providing reasonable modifications for individuals with disabilities; and
  - coordinating training of relevant employees



- The section 1557 coordinator(s) must be designated before November 2, 2024.
- Their contact information must be listed on your notice of discrimination.

# Common Questions § 92.7

- Who counts towards 15 employees?
  - Full and part-time employees and independent contractors including clinical and non-clinical staff
- Can a large health system have a single Coordinator or does each covered entity need its own?
  - "In order to provide covered entities with flexibility, OCR clarifies that large health systems may customize their Coordinator and designee configurations as long as each individual covered entity has either a Coordinator or designee responsible for section 1557 compliance."
- Does the coordinators name or just contact information need to be on your notice of nondiscrimination?
  - Just contact information will suffice!

# Notice of Nondiscrimination § 92.10

- Longer notice, in English (with translations available as necessary), informing patients that your RHC does not discriminate on the basis of race, color, national origin, sex, age, or disability.
  - Must be provided to all patients annually and upon request.
  - No smaller than 20-point sans serif font, be posted in prominent physical location in office and a conspicuous location on website.
  - [Sample Notice](#)
-  • The notice of nondiscrimination must be posted by November 2, 2024.

## Sample Notice Informing Individuals About Nondiscrimination and Accessibility

### Requirements and Sample Nondiscrimination Statement:

Discrimination is Against the Law

[Name of covered entity] complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex (consistent with the scope of sex discrimination described at 45 CFR § 92.101(a)(2)) [optional: (or sex, including sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; gender identity, and sex stereotypes).<sup>1</sup>] [Name of covered entity] does not exclude people or treat them less favorably because of race, color, national origin, age, disability, or sex.

[Optional: [Name of the covered entity] currently holds a [religious and/or conscience] exemption from the HHS Office for Civil Rights, which exempts [name of the covered entity] from complying with [list provisions of Section 1557 to which the exemption applies, and the scope/terms of that exemption].

[Name of covered entity]:

- Provides people with disabilities reasonable modifications and free appropriate auxiliary aids and services to communicate effectively with us, such as:
  - Qualified sign language interpreters
  - Written information in other formats (large print, audio, accessible electronic formats, other formats).
- Provides free language assistance services to people whose primary language is not English, which may include:
  - Qualified interpreters

<sup>1</sup> This language/approach is not required under Section 1557 regulations.

- Information written in other languages.

If you need reasonable modifications, appropriate auxiliary aids and services, or language assistance services, contact [name of Civil Rights Coordinator].

If you believe that [name of covered entity] has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with: [name and title of Civil Rights Coordinator], [mailing address], [telephone number ], [TTY number—if covered entity has one], [fax], [email].

You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, [name and title of Civil Rights Coordinator] is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services

200 Independence Avenue, SW

Room 509F, HHH Building

Washington, D.C. 20201

1-800-368-1019, 800-537-7697 (TDD)

Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

[If applicable: This notice is available at [name of covered entity's] website: [insert covered entity's URL]].



# Compliance Details / Enforcement of the Rule



# Enforcement

- These requirements will be enforced by the Office of Civil Rights (OCR)
- Individuals may [file complaints directly](#) if they believe they have been discriminated against; this may result in an investigation
- The OCR aims to work with the covered entity to achieve compliance
  - If voluntary compliance cannot be achieved, OCR can issue a formal findings letter and refer the case to the Department of Justice



# Enforcement Continued

- These requirements are not a formal part of RHC-*specific* survey regulations; however, some surveyors may consider this to be an element of **§491.4 Compliance with Federal, State and local laws.**



# Final Regulations ~ All In One Place

- **PART 92—NONDISCRIMINATION IN HEALTH PROGRAMS OR ACTIVITIES**
- Finalized language can be found here: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-92>



# Questions?

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