

Section 1557: What your practice needs to know

What is Section 1557?

Section 1557 is the civil rights provision of the Affordable Care Act (ACA) that prohibits discrimination on the grounds of race, color, national origin, sex, age, or disability in certain health programs and activities. On May 18, 2016, the Office for Civil Rights (OCR) under the Department of Health and Human Services (HHS) released a final rule implementing Section 1557. Many of the provisions in the final rule already exist in other federal nondiscrimination rules, such as the Civil Rights Act and the Americans with Disabilities Act. OCR's rule applies these pre-existing nondiscrimination requirements to health care and creates new protections in order to implement Section 1557.

Does it apply to my practice?

This rule applies to every health program or activity that receives funding from or is administered by HHS, and the health insurance marketplaces and all plans offered by issuers that participate in those marketplaces. Covered entities under this rule may include physician practices, hospitals, health clinics, health insurance issuers, state Medicaid agencies, community health centers and home health care agencies.

If your practice's ONLY source of federal funds is through Medicare Part B, then this rule would not apply to you. HHS intends the rule to apply broadly and estimates that it would cover "almost all" licensed physicians because they accept federal financial assistance from sources other than just Medicare Part B. For instance, if you receive Medicare Parts A, D or Medicaid payments, this rule would apply to you. Additionally, if you are receiving a Meaningful Use incentive payment, this rule also applies to you.

What must practices do:

Ensure "Meaningful Access" for those with Limited English Proficiency (LEP) by adhering to the following requirements by October 17, 2016:

1. *Notice and tagline requirement:*
 - Practices must post a [notice of nondiscrimination](#) in English and may combine the content of the Sec. 1557 notice with other notices required under other federal laws.
 - Practices must post [taglines](#) in the top 15 languages in the state where your practice does business indicating the availability of language assistance. HHS has determined the top 15 languages for each [state](#).
 - **Note:** According to OCR, in many circumstances, a binder holding the 15 taglines may not be sufficient to provide prominent or conspicuous notice.
 - **MGMA tip:** The language of the tagline should be in the language to which it refers. For example: [Español \(Spanish\)](#)
2. Where must the notices and taglines be posted?
 - a. Physical location: Notices must be posted in a sufficiently prominent and noticeable place in your physical office.
 - b. Sec. 1557 requires the top 15 language taglines in your state to be posted on all significant publications or communications.
 - i. What is a significant publication or communication?



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1. An important document of which the patient needs to be aware. A document that if a person did not get, there would be substantial consequences to them – for example a notice of a treatment plan or a termination of coverage.
 - ii. If electronic, the publications or communications must have a link to the notice of nondiscrimination and 15 taglines on bottom.
 - iii. If paper mail, the publications must have the [statement of nondiscrimination](#) and taglines. If a small piece of paper mail like a postcard, it only needs the statement of nondiscrimination and the top 2 language taglines.
- c. Website:
 - i. Notice of Nondiscrimination and top 15 taglines should be at the bottom of your website. See example from HHS.gov:

| Language Assistance Available | Español | Tagalog | Polski | Deutsch |
|-------------------------------|------------|----------------|-----------|---------|
| | 繁體中文 | Русский | Português | 日本語 |
| | Tiếng Việt | Kreyòl Ayisyen | Italiano | English |
| | 한국어 | Français | | |

Ensure effective communication with and accessibility for individuals with disabilities through:

1. *Communication:*
 - a. Ensure communications with individuals with disabilities are as effective as communication with others;
 - b. Provide appropriate auxiliary aids and services such as qualified sign language interpreters where necessary for effective communication.
2. *Use of technology:*
 - a. Must make all programs and activities provided through electronic and information technology accessible to individuals with disabilities unless doing so would impose undue financial or administrative burdens.
3. Most of this information is consistent with existing requirements under the ADA, including physical accessibility of the building and office space for those with disabilities.

Protecting individuals against sex discrimination by guaranteeing:

1. *Access to facilities:*
 - a. Individuals must be treated consistently with their gender identity. For example, a hospital may not room a transgender woman with a cisgender (gender identity that corresponds with their biological sex) man.
2. *Access to care:*
 - a. Providers may not deny or limit treatment for any health services that are ordinarily or exclusively available to individuals of one gender based on the fact that person seeking such services identifies as belonging to another gender.
 - b. Examples:
 - i. A transgender woman who still biologically has a prostate, must be eligible for and receive a prostate exam.
 - ii. A transgender man who still has biologically female anatomy must be eligible for and receive a pap smear or any other service eligible to cisgender women.



- c. Providers cannot deny healthcare to a patient based on a patient's sex, gender identity or sex stereotyping. You cannot deny a patient care solely because they are transgender.

What should practices do now:

1. *LEP and language access plan:*
 - a. Practices should not wait until an LEP patient comes into the office to develop a plan to address LEP patient needs.
 - b. Practices should create a language access plan that includes the top 15 languages in the state as well as any additional languages frequently used in the practice.
 - c. Practices should consider signing up with a language assistance call center to help with the translation of documents as well as telephonic or in-person interpretation when needed.
 - d. Practices should consider having commonly used documents translated for frequently used languages.

How is it Sec. 1557 enforced?

Sec. 1557 has been in effect since the enactment of the ACA in 2010. OCR is responsible for receiving and investigating discrimination complaints under Sec.1557. OCR will use a flexible, context-specific analysis to determine any violations on a case-by-case basis. For example, with LEP, they will consider the frequency of the languages used and the resources of the entity when looking at the obligations.

Additional HHS Resources:

[HHS Summary and Fact Sheets](#)
[Training materials for your staff](#)

Disclaimer:

This rule incorporates existing civil rights laws and enforcement is reviewed on a case by case basis. This document does not constitute legal advice and should not be consider a substitute for such advice. If you need specific questions answered, please contact a knowledgeable health care attorney in your area.