



Fact Sheet: HHS Finalizes ACA Section 1557 Rule

The U.S. Department of Health and Human Services (HHS) completed its final rule implementing Section 1557 of the Affordable Care Act (ACA). Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities.

PURPOSE OF THE FINAL RULE

The final rule restores the rule of law by conforming the Section 1557 regulations to the text of the laws. It ensures that HHS's Office for Civil Rights (OCR) will continue its commitment to vigorous enforcement of civil rights protections in health programs and activities—a commitment OCR has continued to demonstrate during the COVID-19 pandemic. And it relieves massive and unnecessary regulatory burdens that had been eventually passed on to patients and consumers.

The final rule makes clear that the substantive protections prohibiting discrimination on the basis of race, color, national origin, disability, age, and sex remain in effect. The final rule returns HHS's enforcement of civil rights protections to the mechanisms provided for, and available under, longstanding civil rights statutes and their implementing regulations. The rule complies with applicable court orders that had vacated certain provisions of the previous administration's Section 1557 rule (2016 Rule) as being inconsistent with laws passed by Congress.

The final rule will relieve the American people of approximately \$2.9 billion in undue regulatory burdens over five years from eliminating the mandate for entities to send patients and customers excessive "notice and taglines" inserts in 15 or more foreign languages in almost every health care and insurance mailing. These expensive notices have not proven effective at accomplishing their purpose.

BACKGROUND

Section 1557 is a civil rights provision in the ACA that prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. In Section 1557, Congress prohibited covered health programs or activities from discriminating on any of the grounds protected by four longstanding federal civil rights statutes:

1. Title VI of the Civil Rights Act of 1964 (Title VI) (prohibiting discrimination on the basis of race, color, or national origin).
2. Title IX of the Education Amendments of 1972 (Title IX) (prohibiting discrimination on the basis of sex).
3. Section 504 of the Rehabilitation Act of 1973 (Section 504) (prohibiting discrimination on the basis of disability).
4. Age Discrimination Act of 1975 (Age Act) (prohibiting discrimination on the basis of age).

Section 1557 has been in effect since its enactment in 2010, and the Secretary of HHS has directed OCR to enforce the provision.

Section 1557 did not create new protected categories under civil rights law. It simply applied existing civil rights protections to certain areas of healthcare where they may not have previously applied. But the 2016 Rule redefined discrimination “on the basis of sex” to include gender identity and termination of pregnancy, with gender identity defined as “one’s internal sense of gender, which may be male, female, neither, or a combination of male and female.” The 2016 Rule explicitly stated that it was not including “sexual orientation” as a protected category under Section 1557.

On December 31, 2016, the U.S. District Court for the Northern District of Texas in *Franciscan Alliance Inc. et al. v. Burwell*, preliminarily enjoined, on a nationwide basis, HHS’s attempt to prohibit discrimination on the basis of gender identity and termination of pregnancy as sex discrimination in the 2016 Rule. This federal court concluded the provisions were likely contrary to applicable civil rights law, the Religious Freedom Restoration Act, and the Administrative Procedure Act. A separate federal court in North Dakota agreed with the reasoning of the *Franciscan Alliance* decision, and blocked the rule’s effect on the plaintiffs before it. On October 15, 2019, the U.S. District Court for the Northern District of Texas issued a final judgment, in which it vacated and remanded the provisions it deemed unlawful. This final ruling is binding on the Department, despite the appellate proceedings that were brought by intervenors.

Consequently, as a matter of law, HHS has not had the ability to implement or enforce the provisions on gender identity and termination of pregnancy in the 2016 Rule since December 2016, and such provisions have been vacated since October 2019.

During the period of this rulemaking, the Department of Justice (DOJ) has taken the position before the Supreme Court in *Bostock v. Clayton County Board of Commissioners*, *Altitude Express Inc. v. Zarda*, and *R.G. & G.R. Harris Funeral Homes v. EEOC* that the prohibition of sex discrimination under Title VII of the Civil Rights Act of 1964 does not include gender identity or sexual orientation. DOJ also filed a brief in a federal district court in Connecticut, *Soule v. Connecticut Association of Schools*, stating that gender identity is not a protected category under Title IX.

SUMMARY OF THE FINAL RULE

Under the final rule, HHS will continue to enforce all applicable laws and regulations that prohibit discrimination on the basis of race, color, national origin, disability, age, and sex, according to the meaning of the federal laws, and based on HHS’s longstanding underlying civil rights regulations. The final rule:

- **Protects Individuals with Disabilities:** The final rule retains protections from the 2016 Rule that ensure physical access for individuals with disabilities to healthcare facilities and appropriate communication technology to assist persons who are visually or hearing impaired.
- **Protects Individuals with Limited English Proficiency:** The final rule retains the 2016 Rule’s qualifications for foreign language translators and interpreters for non-English speakers, and its limitations on the use of minors and family members as translators or interpreters. HHS adds to the regulation the “four-factor analysis” from its longstanding LEP guidance in order to ensure meaningful access for LEP individuals, while also securing flexibility to providers in meeting such obligation.

- **Requires Assurances of Compliance:** Under the final rule, regulated entities would still be required to submit to HHS a binding assurance of compliance with Section 1557.
- **Omits Overbroad Provisions Related to Sex and Gender Identity:** Under the final rule, HHS applies Congress’s words using their plain meaning as written, instead of attempting to use regulations to override Congress’s determinations. The final rule does not provide a new definition of sex discrimination, and the 2016 Rule’s definition of “on the basis of sex” is not included in this final rule because it exceeded the Department’s statutory authority. HHS will enforce Section 1557 by returning to the government’s longstanding interpretation and ordinary meaning of the word “sex” in the statute. Neither the Section 1557 statute nor Title IX includes prohibitions on discrimination on the basis of sexual orientation or gender identity, or define “discrimination on the basis of sex” to include such categories. In the final rule, HHS also makes conforming amendments to other regulations, issued by the Centers for Medicare & Medicaid Services, to ensure that HHS takes a more consistent approach to its enforcement of nondiscrimination on the basis of sex in health programs and activities.
- **Removes Costly and Unnecessary Regulatory Burdens:** The final rule eliminates burdens imposed by the 2016 Rule’s mandate that required health companies to distribute non-discrimination notices and “taglines” translation notices in at least fifteen languages within all “significant communications” to patients and customers. These notices have cost the healthcare industry billions of dollars (a cost which is ultimately passed on to consumers and patients), and data generally do not show that the notices have yielded the intended benefit for individuals with limited English proficiency. The final rule estimates it will reduce notice and tagline costs by \$2.9 billion over the next five years, and will yield an overall cost savings of \$2.6 billion in those years.
- **Revises an Enforcement Structure That Created Legal Confusion:** Section 1557 applies multiple civil rights statutes to healthcare settings: Title VI, Title IX, Section 504, and the Age Act. As Congress explicitly recognized in Section 1557, HHS has regulations in place for each of those statutes. HHS enforces all those pre-existing statutes and regulations. The 2016 Rule, however, imposed a new single enforcement structure across different types of discrimination claims, which blended different legal theories and enforcement regimes and risked confusion or inappropriate application of standards from one civil rights law to another. In this final rule, HHS returns to the longstanding enforcement structure for each civil rights statute identified in Section 1557, and it removes portions of the 2016 Rule that are duplicative of, or inconsistent with, its longstanding civil rights regulations.
- **Revises the Scope of HHS’s Enforcement of Section 1557:** The 2016 Rule interpreted Section 1557 as applying to all operations of an entity under the rule’s health program or activity definition, even if it is not principally engaged in healthcare. The final rule interprets Section 1557 as applying to entities principally engaged in healthcare, as well as to the healthcare activities of other entities to the extent those activities are funded by HHS. For example, the final rule would generally not apply to short-term limited duration insurance (STLDI): providers of STLDI plans typically are not principally engaged in the business of healthcare, and STLDI typically does not receive federal financial assistance.

- **Complies with All Applicable Federal Civil Rights Laws, Including Conscience and Religious Freedom Protections:** The final rule adds a regulatory provision stating that Section 1557 shall be enforced in a manner consistent with other statutes, since laws enacted by Congress always govern regulations promulgated by an agency. These other statutes include the Religious Freedom Restoration Act; federal conscience-protection laws, including provisions in the ACA as well as the Church, Coats-Snowe, Weldon, Hyde, and Helms Amendments; and the First Amendment to the Constitution.

COST-SAVINGS OF FINAL RULE

The final rule estimates a total cost-savings of approximately \$2.9 billion in the first five years from its removal of the ineffective “notice and taglines” requirements imposed by the 2016 Rule. The 2016 Rule required that every significant publication in healthcare larger than a postcard sent to a member of the public include a notice of non-discrimination and tagline notice translated into at least 15 foreign languages. Covered entities report that they send billions of these notices by mail each year. The data did not show that this requirement had meaningfully increased language access since 2016.

At the time the 2016 Rule was adopted, the burdens of these notice and taglines requirements on healthcare providers and other covered entities were substantially underestimated at only about \$7.2 million in the first five years. In contrast, this final rule estimates:

- **Savings in the Final Rule’s Elimination of “Notice and Taglines” Requirements:**
\$ 2.9 Billion (over the next 5 years)
- **Net Savings of the Final Rule Considering All Costs and Savings:**
\$ 2.6 Billion (over the next 5 years)
- **Covered Entities Will Have Increased Flexibility to Meet Individual Language Access Needs.**

Click to read the [Final Rule on Section 1557](#).