

Key Items about Section 1557 of the Affordable Care Act – Nondiscrimination in Healthcare

- This is the first federal civil rights law exclusively focusing on nondiscrimination in healthcare. It went into effect on **October 17, 2016**.
- Section 1557 regulations apply to most healthcare-related activities by entities covered by the rules. It applies to **any provider receiving federal financial assistance** from the Department of Health and Human Services (“HHS”), such as **Medicaid and Medicare Parts A, C and D as well as grants and credits from HHS, such as meaningful use payments**. As a practical matter, **very few providers are NOT subject to the Section 1557 regulations**.
- For providers with **15 or more employees**, at least **one employee must be designated** to coordinate the entity’s Section 1557 compliance efforts and responsibilities, including investigations of any alleged grievance.
- A provider with **15 or more employees must also adopt grievance procedures**, affording due process and providing a prompt and equitable resolution. All Covered Entities **must post a nondiscrimination notice containing the 7 required elements** including how to obtain language interpretation services, how to file a grievance, and how to file a discrimination complaint with OCR.

7 Required Elements

- The Covered Entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities;
 - The Covered Entity will provide appropriate auxiliary aids and services free of charge, when needed;
 - The Covered Entity will provide language assistance services free of charge, when needed;
 - Information on how an individual can obtain the auxiliary aids and language assistance services;
 - Contact information for the person responsible for compliance with Section 1557, if applicable;
 - Information regarding the grievance procedure for any action prohibited by Section 1557, if applicable;
 - Information on how to file a discrimination complaint with the Office for Civil Rights.
- This notice **must be posted in conspicuous physical locations. A link to the notice, must be accessible from the entity’s website homepage, in a legible font**. The content of this notice may be combined with the content of other notices if the combined notice clearly informs individuals of their Section 1557 related rights.
 - In all “significant publications and communications,” providers must post the required nondiscrimination notice as well as specified taglines in at least the top 15 languages spoken by individuals with limited English proficiency in the provider’s state. The term “significant publications and communications,” is not defined, but examples include materials “targeted to beneficiaries, enrollees, applicants, or members of the public, which may include patient handbooks, outreach publications, or written notices pertaining to rights or benefits or requiring a response from an individual.” OCR intends to interpret the term broadly while providing entities flexibility to determine which of its communications and publications pertaining to its services are significant.
 - For small-sized significant publications, such as those printed **on postcards, pamphlets and trifold brochures**, providers **must also include a nondiscrimination statement**, however, only the first Required Element listed above is required.
 - Covered entities are required to provide access to healthcare for individuals with **limited English proficiency**. Providers are required to offer free, accurate and timely interpretation and translation services which protect the privacy and independence of the individual. Among other prohibitions, providers shall not require an individual with limited English proficiency to provide their own interpreter or rely on staff members, except those who are qualified to communicate directly with the individual. HIPAA compliance must also be a consideration in utilizing these services. **If your entity is not already offering such services, it is out of compliance.**
 - The rules also provide accessibility standards pertaining to a covered entity’s buildings and facilities as well as for activities provided electronically. Providers must make reasonable modifications to their policies, practices and procedures to avoid discrimination on the basis of disability. The regulations also require providers treat individuals consistent with their gender identity and, among other prohibitions, entities may not limit healthcare to transgender individuals based on the fact the individual’s assigned gender identity at birth differs from the one for which healthcare is sought.
 - Official information can be found here: <https://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>