

Health Care Providers and ACA Section 1557 Compliance

By Brooke M. Nixon



On May 18, 2016, the U.S. Department of Health and Human Services (“HHS”) published final regulations titled “Non-discrimination in Health Programs and Activities” implementing Section 1557 of the Affordable Care Act (“ACA”). Section 1557 generally prohibits “covered entities” from discriminating on the basis of race, color, national origin, sex, age, or disability. Health care providers need to determine whether they are subject to the rule, and if so, what steps must be taken to comply with Section 1557.

Who has to comply with ACA Section 1557?

For Section 1557 purposes “covered entities” are those that operate a “health program or activity,” any part of which receives federal financial assistance directly from HHS or through another recipient (funds under Medicare Parts A, C, and D are federal financial assistance, however funds under Medicare Part B are not federal financial assistance). Importantly, if an entity is subject to Section 1557, ALL of the covered entity’s programs and activities are subject to the rule’s non-discrimination requirements. Examples of covered entities include: hospitals, nursing homes,

skilled nursing facilities, home health agencies, retail pharmacies, laboratories, qualified Health Plan Insurers, private physicians receiving non-Medicare Part B federal assistance, community health centers participating in Medicare, Medicaid, or receiving other federal assistance, and rehabilitation facilities.

“Covered entities need to evaluate their current health plan design to determine whether changes should be made.”

What is Required?

If your company is a “covered entity,” then you are required to provide certain nondiscrimination notices, taglines regarding language assistance services, have language assistance services available, and if your company has more than 15 employees you must adopt a grievance procedure and designate a Section 1557 compliance coordinator.

Notice of Nondiscrimination

The required notice must be included in “significant publications and communications” (information targeted to beneficiaries or enrollees, patient handbooks, marketing materials, etc.) and be posted in “conspicuous physical locations” (such as locations where the entity interacts with the public, including the entity’s website). The notice must convey the following:

- Statement of nondiscrimination;
- Statement that entity provides appropriate auxiliary aids and services, free of charge and in a timely manner, to individuals with disabilities;
- Statement that the entity provides language assistance services, free of charge and in a timely manner, to individuals with LEP;
- How to obtain the aforementioned aids and services;
- Contact information for Section 1557 compliance officer (required for Covered Entities with 15 or more employees);
- Availability of compliant grievance procedure, and how to file a grievance (required for Covered Entities with 15 or more employees); and
- How to file a discrimination complaint with the HHS Office of Civil Rights (OCR).

HHS has issued a sample Notice.

Statement of Nondiscrimination

This is a shorter statement of the Notice of Discrimination which must be posted on small-sized significant publications that lack space to include the larger notice. HHS has also issued a sample statement of nondiscrimination.

Taglines

Taglines are short statements written in non-English languages indicating the availability of language assistance services. Taglines must be posted in the same locations as the Notice of Nondiscrimination. For large-sized publications taglines must be written in at least the top 15 languages spoken by individuals with limited English proficiency (“LEP”) in the state. For small-sized publications taglines must be written in the top 2 languages spoken by individuals with LEP in the state.

Timing

While the rule technically went into effect July 18, 2016, it had a delayed effective date in two circumstances:

- If the rule requires changes to a health plan design, the rule applies the first day of the first plan year beginning on or after January 1, 2017.
- The notice and tagline requirements discussed above went into effect on October 16, 2016. However, an exception was provided that allows for covered entities to exhaust their current stock of hard copy publications rather than printing entirely new publications.

Even though the October 16th deadline has passed, a covered entity should still be preparing the necessary communications and working towards making those

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available to affected individuals. Additionally, training must occur across all levels of a covered entity: upper and middle management need to be aware of the company’s responsibilities and non-manager employees who interact with the public need to be trained so that their work actions comply with Section 1557. Also, covered entities need to evaluate their current health plan design to determine whether changes should be made to bring such plans into compliance with Section 1557.

Compliance with Section 1557 can be challenging due to its wide scope and the vague nature of its requirements. If you have questions regarding the potential impact of Section 1557 on your business, please contact Brooke Nixon today.



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Brooke M. Nixon practices in the areas of labor and employment law and general business law. With her focus on these areas, Ms. Nixon provides counsel to a wide array of companies and clients to develop preventive measures to minimize risks and avoid the expense of litigation.



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