

FINAL RULE IMPLEMENTING SECTION 1557 OF THE AFFORDABLE CARE ACT IS EFFECTIVE

On May 6, 2024, the Centers for Medicare and Medicaid Services ("CMS") and the Office for Civil Rights of Health and Human Services ("HHS") issued a **final rule** implementing Section 1557 of the Affordable Care Act ("Section 1557") (the "Final Rule"). **The Final Rule went into effect on July 5, 2024.** However, in *Texas v. Becerra*, the court stayed the effective date of the 2024 Final Rule in its entirety as to the states of Texas and Montana and all covered entities in those states. Therefore, the Final Rule did not go into effect in Texas or Montana.*

Pursuant to the [HHS Frequently Asked Questions document](#), the Final Rule is intended to restore and strengthen civil rights protections for individuals.

*Article last updated on July 17, 2024.

BACKGROUND

Section 1557 is the non-discrimination provision of the Affordable Care Act. The Final Rule, which applies to health programs or activities that receive certain federal funds, health programs or activities administered by HHS and the health insurance Marketplace (and plans offered by insurers that participate in those Marketplaces that receive federal financial assistance), prohibits covered entities from discriminating on the basis of race, color, national origin, sex, age or disability. Section 1557 is enforced by the Office for Civil Rights ("OCR"). Although Section 1557 took effect immediately upon the signing of the Affordable Care Act ("ACA"), a **final rule** was not promulgated until 2016 (the "2016 Rule").

In June 2020, HHS issued a **final rule** (the "2020 Rule") that – among other things – significantly narrowed the 2016 Rule's interpretation of what it means to discriminate "on the basis of sex." The 2020 Rule also eliminated several other requirements that had been included in the 2016 Rule and narrowed the scope of Section 1557 coverage. Additional information about the 2020 Rule can be found [here](#). Both the 2020 Rule and the 2016 Rule were subjects of substantial litigation, some of which is still ongoing. The 2024 Final Rule also faces legal challenges.

THE 2024 FINAL RULE

In large part, the 2024 Final Rule will reinstate portions of the 2016 Rule and reverse certain provisions of the 2020 Rule. However, the Final Rule also goes further in some ways and expands the coverage of Section 1557 as well as addresses new topics that were not previously addressed, such as telehealth and the use of artificial intelligence.

Specifically, the Final Rule:

- Broadens the scope of Section 1557 coverage.
- Expands the definition of discrimination on the basis of sex. However, a nationwide injunction was issued on July 3, 2024, staying the effective date of the Final Rule "in so far as this final rule is intended to extend discrimination on the basis of sex to include discrimination on the basis of gender identity...". A separate injunction was also issued prohibiting OCR from enforcing the interpretation of "on the basis of sex" in certain provisions of the Final Rule against covered entities within Florida.
- Requires covered entities that employ 15 or more individuals to designate and authorize at least one employee, the "Section 1557 Coordinator," to coordinate the covered entity's compliance with its responsibilities under Section 1557 and the Final Rule.
- Requires covered entities to implement written policies and procedures that are designed to comply with the requirements of the Final Rule.
- Requires entities to give staff training on the provision of language assistance services for limited English proficiency ("LEP") individuals and effective communication and reasonable modifications to policies and procedures for people with disabilities.
- Requires covered entities to provide a notice of nondiscrimination along with a notice of the availability of language assistance services

and auxiliary aids and services.

- Reinstates specific requirements for interpreter and translation services.
- Explicitly prohibits discrimination in the use of clinical algorithms to support decision-making in covered health programs and activities.
- Clarifies that nondiscrimination requirements applicable to health programs and activities include those services offered via telehealth, which must be accessible to LEP individuals and individuals with disabilities.
- Provides specific guidance on application of federal religious freedom and conscience laws.

Note that this is not an exhaustive list. Covered entities are encouraged to review the Final Rule in its entirety to ensure compliance.

EFFECTIVE DATE

The Final Rule becomes effective 60 days after publication in the Federal Register, or **July 5, 2024** (the "Effective Date"). However, certain provisions of the Final Rule have delayed compliance dates. Specifically:

Requirement	Compliance Date
Section 1557 Coordinator (§ 92.7)	Within 120 days of the Effective Date
Policies and Procedures (§ 92.8)	Within one year of the Effective Date. However, given the training requirements under § 92.9, policies and procedures should be completed in advance of the one-year deadline.
Training (§ 92.9)	Within 30 days following implementation of the required policies and procedures, but no later than 300 days following the Effective Date.
Notice of Nondiscrimination (§ 92.10)	Within 120 days of the Effective Date.
Notice of Availability of Language Assistance Services and Auxiliary Aids and Services (§ 92.11)	Within one year of the Effective Date.

<p>Nondiscrimination in health insurance coverage and other health-related coverage (§ 92.207(b)(1)-(5))</p>	<p>For health insurance coverage or other health-related coverage that was not subject to this part as of May 6, 2024 (that is, for coverage not subject to the 2020 Rule only) by the first day of the first plan year beginning on or after January 1, 2025. For health insurance coverage or other health-related coverage that was subject to this part as of May 6, 2024 (such as Medicare Advantage plans, Medicare Part D plans, Medicaid managed care plans and qualified health plans), the compliance date is the Effective Date.</p>
<p>Nondiscrimination in health insurance coverage and other health-related coverage (§ 92.207(b)(6))</p>	<p>By the first day of the first plan year beginning on or after January 1, 2025.</p>
<p>Use of patient care decision support tools (§ 92.210(b) and (c))</p>	<p>Within 300 days of the Effective Date.</p>

PRACTICAL TAKEAWAYS

Any entity or individual provider potentially impacted by this Final Rule should first evaluate whether it is covered by these new requirements, given the expanded scope of coverage.

- Covered entities should review current policies, procedures, notices and publications to identify necessary steps to ensure compliance prior to the applicable deadlines.
- Once necessary policies and procedures are updated or put into place, as applicable, covered entities should ensure that training is provided in a manner that is compliant with the Final Rule.
- The interplay between state and federal law can be nuanced. Covered entities are encouraged to discuss this nuance with their legal counsel.
- The Final Rule is facing several legal challenges. Covered entities should monitor the status of the Final Rule, as well as pending litigation and related challenges.

Hall Render attorneys are further analyzing the Final Rule and will issue additional content as it develops. Hall Render can provide assistance to clients in preparing policies, notices and **trainings**, as well as advising on Section 1557 compliance. If you have questions about this topic or would like assistance in compliance with the new requirements under Section 1557, please contact:

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