

## **Regulations under Section 1557 of the Patient Protection and Affordable Care Act (ACA) Frequently Asked Questions for Physicians**

***Q: Why did HHS issue the Regulations?***

A: HHS issued the Regulations to implement Section 1557 of the ACA, which generally prohibits discrimination on the basis of race, color, national origin, sex, age, or disability. The Regulations contain notice requirements, accessibility requirements, and more specific prohibitions.

***Q: To whom do the Regulations apply?***

A: The Regulations apply to “covered entities.” In general, a covered entity means someone who operates a health program or activity that receives federal funds through CHIP, Medicaid, Medicare Parts A, C, or D, or other funding from HHS. A “health program or activity” includes hospitals, health clinics, group health plans, health insurance issuers, physician practices, community health centers, nursing facilities, residential or community-based health treatment facilities, and other similar entities. Therefore, a physician or physician practice who accepts CHIP, Medicaid, Medicare Parts A, C, or D, or other HHS funding likely constitutes a covered entity. The Regulations also include some covered entities who receive funds indirectly.

***Q: Do the Regulations contain any required compliance steps for covered entities?***

A: Yes. First, all covered entities must post specific notices regarding nondiscrimination on the basis of race, color, national origin, sex, age or disability by October 16, 2016. Second, a covered entity that employs more than 15 individuals must designate a compliance coordinator and adopt grievance procedures by July 18, 2016. An appendix to the Regulations contains a sample grievance procedure. See [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title45/45cfr92\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title45/45cfr92_main_02.tpl)

***Q: What kind of notices must a covered entity post?***

A: The Regulations require a covered entity to post a longer notice (the “Full Notice”) in English, and shorter notices (“Taglines”) in other languages. The Full Notice must contain a nondiscrimination statement, state that the covered entity provides appropriate auxiliary aids and services to persons with disabilities, state that the covered entity provides language assistance services free of charge, explain how to obtain such services, identify the compliance coordinator (if any), explain how to obtain the entity’s grievance procedures (if any) and how to file a grievance, and explain how to contact HHS’s Office of Civil Rights.

A Tagline informs a speaker of another language how to obtain language assistance services, free of charge. Along with the Full Notice, a covered entity must include translated Taglines in at least the top 15 languages spoken by individuals with limited English proficiency in the state(s) the covered entity serves.

***Q: Where must a covered entity post the Full Notice and Taglines?***

A: A covered entity must post the Full Notice and Taglines in a conspicuously visible font size in three places. First, it must post in conspicuous physical locations where it interacts with the public. Second, it must post in a conspicuous location on the covered entity’s website (if any) that is accessible from the home page. Third, a covered entity must include the Notice and Taglines in significant publications and

communications targeted to beneficiaries, enrollees, applicants, and members of the public. HHS interprets “significant communications and publications” broadly, to include, at a minimum, documents intended for the public, written notices requiring a response from an individual, and written notices to an individual pertaining to rights and benefits.

For significant publications and communications that are small-sized, like postcards and tri-fold brochures, a covered entity meets the notification requirement by including a nondiscrimination statement in English and Taglines in the top two languages spoken by individuals with limited English proficiency in the relevant state(s).

***Q: How does a covered entity determine the top languages spoken by individuals with limited English proficiency?***

A: The Regulations do not require a covered entity to refer to a specific source for this information. However, in the Preamble that accompanies the Regulations, HHS explains that it will refer to census data in evaluating compliance. See <http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>

***Q: Has HHS provided any model notices or translations?***

A: Yes. On its website, HHS provides a sample Full Notice and Taglines in English and a few dozen languages. See <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>

***Q: What kind of language assistance must a covered entity provide?***

A: The Regulations require a covered entity to “take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities.” A covered entity providing language assistance must do so free of charge, in a timely and accurate manner, and in a way that protects the privacy and independence of the individual with limited English proficiency. The Regulations do not provide any bright line rules or safe harbors. Instead, whether a covered entity meets this standard depends on the facts of each particular situation. An entity that intends to rely on an interpreter, translator, or bilingual or multilingual staff member should confirm that the interpreter, translator, or staff member meets the qualification requirements under the Regulations. The Regulations also contain specific technical requirements that apply to video remote interpreting services. Covered entities should consider adopting a written plan outlining language assistance procedures. While not required, such a written plan can be a useful compliance tool.

***Q: What do the Regulations require with respect to individuals with disabilities?***

A: The Regulations contain three sets of requirements with respect to individuals with disabilities. First, a covered entity must take appropriate steps to ensure effective communications with individuals with disabilities. Specifically, a covered entity must furnish auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in health programs or activities. Auxiliary aids and services include interpreters, assistive listening devices, text telephones, qualified readers, and other means of making information available to individuals who are deaf or hard of hearing, or who are blind or have low vision. Second, in-progress and new construction must meet physical accessibility standards. Third, a covered entity’s telecommunications systems and provision of health programs and activities through electronic media or information technology must meet accessibility standards.

***Q: What do the Regulations require regarding sex discrimination?***

A: In general, a covered entity may not deny or limit health services, coverage, or claims on the basis of sex. For this purpose, sex includes pregnancy, gender identity, and sex stereotyping. Specifically, a covered entity may not deny or limit services based on the fact that an individual's sex assigned at birth, gender identity, or recorded gender differs from the one to which such services are ordinarily or exclusively available. For instance, if an individual identifies as male but possesses ovaries, a covered entity may not deny treatment for ovarian cancer (if medically indicated). The Regulations also contain specific requirements for employee health benefit programs sponsored by covered entities.

***Q: Where can covered entities obtain additional information regarding the Regulations?***

A: <http://www.hhs.gov/civil-rights/for-individuals/section-1557/>

<http://www.hhs.gov/civil-rights/for-individuals/section-1557/section-1557-proposed-rule-faqs/index.html>

**If you have questions about how the Regulations may impact your organization and for guidance on the Regulations' demands, you should consult with experienced legal counsel. This material is not intended to constitute a complete analysis of all legal considerations. It is of general nature and intended for informational purposes only, not legal advice.**