

**SECTION 1557 OF THE AFFORDABLE CARE ACT :
NONDISCRIMINATION IN HEALTH
PROGRAMS
AND ACTIVITES**



September 21, 2016

Presentation for Vermont Medical Society

Vermont Medical Society Resources

- Section 1557 Resources
 - Summary of requirements:
<http://www.vtmd.org/section-1557-summary>
 - Editable Word document with Notice & 15 Taglines required for VT:
<http://www.vtmd.org/sites/default/files/files/Section1557SampleNoticeand15VTTaglines.docx>
- Interpreter Issues and Resources
 - Summary of legal requirements, list of translation/interpretation services available in Vermont, information on billing/reimbursement:
<http://www.vtmd.org/interpreter-issues-and-resources>
- Contact: Jessa Barnard, Esq.
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 - 802-223-7898 x 17

BACKGROUND

Section 1557 prohibits discrimination based on race, color, national origin, sex, age, or disability in certain health programs and activities.

- This provision went into effect upon the signing of the Affordable Care Act (March 2010).
- The final rule was posted on May 13, 2016 and was published in the Federal Register on May 18, 2016.

Importance of Section 1557

- Integral to achieving ACA goals of expanding access to health coverage and health care, and reducing health disparities.
- Applies to the Health Insurance Marketplaces, issuers participating in the Marketplaces, and, under the final rule, health programs conducted by HHS.
- First Federal civil rights law to prohibit sex discrimination in health care outside the context of education institutions.

Scope of Section 1557 Final Rule

The Final Rule applies to:

- All health programs and activities, any part of which receives Federal financial assistance (FFA) from HHS;
- All health programs and activities administered by HHS
- Health programs and activities administered by Title I entities

SCOPE OF SECTION 1557

(Cont.)

Definition of Federal financial assistance (FFA)

- Includes grants, tax credits and cost-sharing subsidies under Title I of the ACA, Medicare Part D payments, and other forms of FFA.
- Excludes Medicare Part B payments, consistent with meaning of FFA under other Federal civil rights laws.

SCOPE OF SECTION 1557

(Cont.)

Definition of health program or activity

- Includes provision or administration of health-related services, health-related insurance coverage, or other health-related coverage.
- Includes all of the operations of an entity principally engaged in providing or administering health services, health insurance coverage, or other health coverage, such as a hospital or insurance company.



PROCEDURAL REQUIREMENTS: GRIEVANCE PROCEDURES

- **Effective July 18, 2016:**
 - Designate an employee to serve as the compliance coordinator - § 92.7(a)
 - Responsible for coordinating compliance
 - Responsible for investigating complaints
 - Adopt a grievance procedure - § 92.7(b)
 - Must afford due process and prompt and equitable resolution of grievances
 - Appendix C to the final regulation is a sample



PROCEDURAL REQUIREMENTS: NOTICE

- Effective **October 17, 2016:**
- Post a nondiscrimination notice - § 92.8(a), (b)(1)
 - Seven elements required in the notice - § 92.8(a)(1)-(7)
 - Covered entity may combine content of notice with other notices - § 92.8(h)
- Post taglines in at least the top 15 languages in the relevant State or States - § 92.8(d)(1)
 - Taglines are a gateway to language assistance services
 - A language in the top 15 must be posted, regardless of the percentage of individuals with LEP who speak the language
 - This obligation should not be confused with translating documents



NOTICE (CONTINUED)

- Posting requirements for notice and taglines - § 92.8(f)(1)(i)-(iii)
 - In significant publications and significant communications (except those that are small-size)
 - In conspicuous physical locations where the covered entity interacts with the public
 - On the covered entity's website, accessible from the home page
- In **small-size** significant publications and significant communications, must post:
 - A nondiscrimination statement - § 92.8(b)(2), (g)(1)
 - At least 2 taglines - § 92.8(d)(2), (g)(2)
- Appendices to the final regulation include sample notice of nondiscrimination, nondiscrimination statement, and taglines that covered entities can use.



MORE INFORMATION ON THE NOTICE REQUIREMENT

- Preamble discussion on § 92.8 (not binding but explanatory for covered entities)
 - Flexibility to implement requirements as long as the actions do not compromise intent to clearly inform individuals of their Section 1557 rights
 - Provision of notice and taglines is effective if the content is sufficiently conspicuous and visible that an individual could reasonably be expected to see and be able to read the information



REASONABLE STEPS TO PROVIDE LEP INDIVIDUALS MEANINGFUL ACCESS

- A covered entity must take reasonable steps to provide meaningful access for individuals with LEP. Evaluation of compliance is a flexible, fact-dependent standard. § 92.201(a)-(b)
- OCR will evaluate, and give substantial weight to, the nature and importance of the health program or activity (including the communication at issue) - § 92.201(b)(1)
- Development and implementation of a language access plan is encouraged - § 92.201(b)(2)
 - Plans help covered entities to be prepared to take reasonable steps to provide meaningful access to each individual with LEP who may require assistance.
 - A plan is one factor, among other relevant factors, that OCR will consider in determining compliance.



HIGHLIGHTS OF MEANINGFUL ACCESS PROVISION AND RELATED DEFINITIONS

- Individuals providing oral language assistance or written translation must be qualified. §§ 92.4, 92.201(d)-(e)
 - Includes bilingual/multilingual staff
 - Oral interpreters
 - Translators
- Regulation codifies restrictions on the use of family members, friends, and children to interpret or facilitate communication. § 92.201(d)-(e)
- If video remote interpreting is used, the services must meet certain quality standards. § 92.201(f)



DISABILITY REQUIREMENTS UNDER SECTION 1557 REGULATION

- Covered entities must make reasonable changes to policies, practices and procedures where necessary to provide equal access for individuals with disabilities. § 92.205
- Covered entities must ensure effective communication with persons with disabilities. § 92.202
- Codifies application of appropriate auxiliary aids and services, including sign language interpreters, to entities with fewer than 15 employees. § 92.202(b)
- Requires entities to give “primary consideration” to individual’s choice of auxiliary aids and services. § 92.202(a)
- An individual providing qualified interpretation for an individual with a disability, e.g. sign language interpreter, must be qualified. § 92.4



SPECIFIC RESOURCES AVAILABLE ON OCR'S WEBSITE

- Sample grievance procedure
 - <http://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/example-grievance-procedure/>
- Sample notice and nondiscrimination statement translated into 64 languages as a resource
 - **Note:** translations are not required to be posted
 - <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>
- Sample tagline translated into 64 languages
 - <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>

SPECIFIC RESOURCES AVAILABLE ON OCR'S WEBSITE (cont.)

- Staff training materials
- Summary and fact sheets about Section 1557 translated into multiple languages
- FAQs specifically regarding the Top 15 Language requirements
 - <http://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/top15-languages/index.html>
- Suggested top 15 languages by state released by OCR
 - Vermont's languages according to this resources are:
 - French, Spanish, Chinese, Vietnamese, Nepali, Serbo-Croatian, German, Cushite, Italian, Arabic, Russian, Tagalog, Portuguese, Japanese & Thai

Case example

- We are a medical sub-specialty practice with two MDs, several PAs and other office staff. We do not accept Medicaid but do accept Medicare Part B and have participated in the EHR Incentive Program/Meaningful Use. We have had only one patient contact us in the past several years with Limited English Proficiency. She requested an in-person interpreter accompany her to her appointments and the interpreter charges \$100 per hour with a two-hour minimum.
- Does Section 1557 apply to me? What services are we obligated to provide/what are our options? Who needs to pay for them?

Thank you!

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