



# NONDISCRIMINATION REQUIREMENTS

What are the Section 1557 nondiscrimination requirements?

Under Section 1557 of the Affordable Care Act (ACA), individuals may not be denied, cancelled, limited or refused health coverage on the basis of race, color, national origin, sex, age or disability. The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) enforces this rule on nondiscrimination in health programs and activities.

The final rule is broad in scope and became effective July 18, 2016. Affected group health plans that required changes in benefits design were required to comply on the first day of the plan or policy year beginning on or after January 1, 2017.

Generally, the key requirements affecting health plans and services include:

- Expanded protection for transgender individuals
- Publicized “taglines” offering language assistance for people with limited English proficiency
- Prevalent “notices” offering communication assistance for individuals with disabilities
- Grievance procedures for individuals who believe they have been subjected to discrimination in their health care or health care coverage

The broad application of this final rule affects federal and state Marketplaces, all health care providers and health insurance issuers and any health program or activity that receives financial assistance from HHS, including employer sponsored health plans. Financial assistance from HHS includes Medicare Part A, student health plans, advanced premium tax credits and many other programs.

## **How are group health plans impacted by Section 1557 nondiscrimination requirements?**

**Insured health plans:** All insured health plans provided by insurance issuers that receive federal assistance must comply with Section 1557.

**Self-insured health plans:** Section 1557 does not apply to self-insured plans except when the plan sponsor’s purpose is to provide health care, health insurance, or other health services (including hospitals, clinics, hospices, nursing facilities, health insurance carriers and health insurance exchange subsidies), as well as companies who receive federal financial assistance via HHS, regardless of their type of business.

In addition, the Equal Employment Opportunity Commission (EEOC) requires all self-insured plans (regardless of whether they are covered by Section 1557) to comply with similar nondiscrimination requirements under Title VII of the Civil Rights Act of 1964.



**How are employer-sponsored health plans generally affected by the Section 1557 nondiscrimination requirements?**

For most employer plans, including COBRA plans, the primary impact will be eliminating categorical exclusions or limitations for health services related to gender reassignment surgery and ensuring that their plans do not limit access to services based on gender.

Employers are also affected in their interactions with their own employees and/or clients if they operate a health program or activity which, in any part, receives federal financial assistance or funding (e.g., Medicare Part A, student health plans, and advanced premium tax credits).

**Do self-funded plans need to cover transgender services?**

Self-funded plans should remove any limits or dollar maximums on transgender services and medications to comply with Section 1557 of the ACA as well as the Mental Health Parity and Addiction Equity Act (MHPAEA).

Under MHPAEA, the diagnosis of gender dysphoria is a behavioral condition for which limitations should not be applied. Limits on transgender benefits (e.g., transgender therapy) that are not also applied to similar medical conditions and benefits could potentially be in conflict with MHPAEA rules.