

Section 1557 of the Affordable Care Act  
Nondiscrimination in Health Programs and Activities  
**Action required by 10/17/16**

The Department of Health and Human Services (HHS) has issued the [final rule](#) implementing the prohibition of discrimination under Section 1557 of the Affordable Care Act (ACA) of 2010. Section 1557 is the nondiscrimination provision of the ACA. The law prohibits discrimination on the basis of race, color, national origin, sex, age or disability in health programs or activities that receive Federal financial assistance or are administered by HHS. The final rule is consistent with existing Federal civil rights laws and builds on long-standing and familiar civil rights principles.

The American Medical Association (AMA) recently held a conference call with the Office of Civil Rights (OCR) to clarify what the rule means for physicians' practices. Following are some of the points identified during that call and in the department's [FAQ](#) document.

**Who does the final rule apply to?**

The final rule applies to every health program or activity that receives HHS funding, every health program or activity administered by HHS, such as the Medicare Part D program, and the Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces. Covered entities may include hospitals, health clinics, health insurance issuers, state Medicaid agencies, community health centers, physician's practices and home health care agencies.

**Note:** If the only Federal funding a physician's practice receives is from Medicare Part B (traditional Medicare) the final rule does not apply. However, if you receive payments from Medicare Parts A, or D, Medicaid, or if you are receiving a Meaningful Use incentive payment the rule does apply to you.

**What do I need to do (by 10/17/16)?**

1. [Ensure meaningful access for those with Limited English Proficiency \(LEP\)](#)
  - The final rule requires covered entities to take reasonable steps to provide meaningful access to individuals with limited English proficiency who are likely to be encountered within the practice.
  - Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translation.
    - Where language services are required, they must be provided free of charge.
    - You cannot require an individual to provide his or her own interpreter.
    - You cannot rely on a minor child to interpret, except in a life threatening emergency where there is no qualified interpreter immediately available.

*Note: Sometimes, a patient prefers and requests to have a family member or friend interpret for them. A covered entity may allow the patient's adult companion to interpret if the companion agrees, the*

*covered entity's reliance on the companion is appropriate under the circumstances, and there are no competency or confidentiality concerns.*

- The standards in the final rule are flexible and context-specific, taking into account factors such as the nature and importance of the health program and the communication at issue, as well as other considerations, including whether an entity has developed and implemented an effective language access plan.
- a. Covered entities are required to post a **notice** of individuals' rights providing information about communication assistance for individuals with limited English proficiency, among other information.  
In addition, covered entities are required to post **taglines** (which are short statements in non-English languages) in the top 15 languages spoken by individuals with limited English proficiency in that state indicating the availability of language assistance.
    - OCR has translated a sample notice of nondiscrimination and the taglines for use by covered entities into 64 languages. For translated materials, visit [www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html](http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html).
      - The list of the top 15 languages for Colorado can be found [here](#).
    - Notices must be posted in a sufficiently prominent and noticeable place in your office.
  - b. Any communication or publication of importance to the individual must include the notification and taglines.
    - For electronic communication this would include a link to the notice of non-discrimination with the 15 taglines at the bottom.
    - For paper communication or publications this would include a statement of nondiscrimination ([sample here](#)) and taglines.
  - c. Your website should also include a notice of nondiscrimination and with the top 15 taglines at the bottom. See the bottom of the page at [HHS.gov](http://HHS.gov) for an example.
  - d. Covered entities are encouraged to develop and implement a language access plan to ensure they are prepared to take reasonable steps to provide meaningful access to each individual that may require assistance.
  - e. Covered entities with 15 or more employees should designate a compliance coordinator and adopt [grievance procedures](#).
2. **Ensuring Effective Communication with and Accessibility for Individuals with Disabilities**
- Consistent with existing requirements of the ADA, Section 1557 requires covered entities to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communication with others.
  - Covered entities must post a notice of individuals' rights, providing information about communication assistance among other information.

- Practices are required to provide appropriate auxiliary aids and services, such as sign language interpreters, captioning, screen reader software or video remote interpreting services where necessary for effective communication.
- When auxiliary aids or services are required, they must be provided free of charge.
- You cannot require an individual to provide his or her own interpreter.
- You cannot rely on a minor child to interpret, except in a life threatening emergency where there is no qualified interpreter immediately available.
- Practices are required to make all programs and activities provided through electronic and information technology accessible to individuals with disabilities, unless doing so would impose undue financial or administrative burdens.

### 3. Protecting Individuals against Sex Discrimination

- The rule makes clear that sex discrimination prohibited under Section 1557 includes discrimination based on: an individual's sex, pregnancy, childbirth and related medical conditions, gender identity, or sex stereotyping.
- Individuals must be treated consistent with their gender identity, including in access to facilities. However, providers may not deny or limit treatment for any health services that are ordinarily or exclusively available to individuals of one gender based on the fact that a person seeking such services identifies as belonging to another gender.