

**Section 1557 of the Affordable
Care Act: Regulatory Compliance
Strategies**

Health Care Compliance Association
Washington DC Regional Conference
March 9, 2018

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Today's Topics

1. Background: Section 1557 of the Affordable Care Act
2. Section 1557 Final Rule: Key Focus Areas
3. Strategies for Compliance
4. Current Section 1557 Enforcement Landscape

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<h2 style="text-align: center;">Background: Section 1557 of the Affordable Care Act</h2>		
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<h2 style="text-align: center;">Section 1557: An Overview</h2>		
<ul style="list-style-type: none">• Nondiscrimination provision of the Affordable Care Act of 2010• Prohibits discrimination on the basis of race, color, national origin, sex, age, disability in covered health programs or activities• Builds upon long-standing federal civil rights laws:<ul style="list-style-type: none">• Title VI of the Civil Rights Act of 1964 (national origin)• Section 504 of the Rehabilitation Act of 1973 (disability)• Title IX of the Education Amendments of 1972 (sex)• Age Discrimination Act of 1975 (age)		
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Section 1557: An Overview

- “Covered Entity” means:
 - Entity that operates a “health program or activity,” any part of which receives federal financial assistance (FFA) from the U.S. Dept. of Health and Human Services (HHS)
 - Entity established under Title I of the Affordable Care Act that administers a health program or activity (e.g., Health Insurance Marketplaces and their participants)
 - HHS
- “Health program or activity” means the provision or administration of health-related services, health-related insurance coverage, or other health related coverage, and the provision of assistance to individuals in obtaining such services or coverage
- FFA includes grants, loans, credits, subsidies, services, and property
 - Note that FFA includes Medicaid and Medicare Parts A, C, and D payments, Meaningful Use payments, etc.

Section 1557: An Overview

- Enforcement mechanism:
 - HHS Office for Civil Rights (OCR) may open an investigation or compliance review based on an individual’s complaint, news report, referral from another agency, etc.
 - Violation finding may result in loss of federal funding
- Private right of action:
 - Individuals may bring claims against covered entities in federal court
 - Remedy may include compensatory damages and attorney’s fees

Section 1557 Final Rule: Key Focus Areas		
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Section 1557 Final Rule: Key Focus Areas		
<ul style="list-style-type: none">• Compliance Coordinator• Grievance Procedure• Notice of nondiscrimination• Language access for limited English proficient (LEP) persons• Effective communication with persons with disabilities		
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Section 1557 Final Rule: Compliance Coordinator

- Requires covered entity to designate a Compliance Coordinator—i.e., employee to oversee Section 1557 compliance efforts (45 C.F.R. § 92.7)
- Compliance Coordinator is responsible for:
 - Investigating potential instances of non-compliance
 - Investigating grievances
 - Training, policies and procedures, compliance initiatives
- Requirement does not apply to covered entities with fewer than 15 employees

Section 1557 Final Rule: Grievance Procedures

- Requires covered entity to adopt grievance procedures—i.e., protocols for receiving and handling Section 1557 complaints (45 C.F.R. § 92.7)
- Grievance Procedures should:
 - Incorporate appropriate “due process” standards
 - Provide for prompt and equitable resolution
- Requirement does not apply to covered entities with fewer than 15 employees
- OCR published a sample Section 1557 grievance procedure (<https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/example-grievance-procedure/index.html>)

Section 1557 Final Rule: Notice of Nondiscrimination

- Requires covered entity to take “initial and continuing steps” to disseminate a notice of nondiscrimination (45 C.F.R. § 92.8)
- Notice should include:
 - Statement of nondiscrimination
 - Commitment to provide appropriate auxiliary aids and services and language assistance services for persons with disabilities and LEP persons, respectively, free of charge and in a timely manner
 - How to obtain such aids and services
 - How to file a grievance with covered entity and complaint with OCR
- OCR published a sample Section 1557 notice (<https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/technical-assistance/example-notice-nondiscrimination/index.html>)

Section 1557 Final Rule: Taglines


- Requires covered entity to post taglines in at least top 15 languages spoken statewide by LEP individuals (45 C.F.R. § 92.8)
 - “Taglines” are written statements in non-English languages that indicate availability of free language assistance services Qualified oral interpreter (in-person or video remote interpreter)
- Taglines should be posted:
 - Conspicuous physical locations within facility and on covered entity’s website
 - Significant publications and significant communications (note: different rules for small-sized documents)
- OCR has published sample taglines (<https://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>)


Section 1557 Final Rule: Language Access

- Requires covered entity to take “reasonable steps” to provide LEP individuals with “meaningful access” to its health programs and activities (45 C.F.R. § 92.201)
 - “LEP individuals” include not only current patients/clients, but also those “eligible to be served” and “likely to be encountered”
- Language access may include (when reasonable):
 - Qualified oral interpreter (in-person or video remote interpreter)
 - Qualified bilingual/multilingual staff
 - Translated documents (generated by a qualified translator)

Section 1557 Final Rule: Effective Communication

- Requires covered entity to take “appropriate steps” to ensure that communications with persons with disabilities are as “effective” as communications with others (45 C.F.R. § 92.202)
- Appropriate auxiliary aids and services may include:
 - Qualified sign language interpreter (in-person or video remote interpreter)
 - Qualified staff who can communicate in sign language
 - Documents in Braille, large print, audio recordings, qualified readers
 - Other services, devices, and technologies

<h2 style="text-align: center;">Section 1557 : Strategies for Compliance</h2>		
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<h3 style="text-align: center;">1. Documentation</h3>		
<ul style="list-style-type: none">• Tailored, written policies and procedures regarding Section 1557 compliance• Evidence of implementation of policies and procedures<ul style="list-style-type: none">• Training materials and records of completed training• Logs of grievances and their resolutions• Logs of provision of language assistance services and auxiliary aids and services• Documentation of individual's refusal of aids or services• Business associate agreements with interpreter service providers (if required)• Documentation required by Section 1557 Final Rule		
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2. Language Access Plan

- OCR will favorably view creation of written language access plan
- Language access plan may include:
 - Analysis of frequently encountered non-English languages spoken by eligible LEP population
 - Identification of “vital documents” requiring translation (e.g., Notice of Privacy Practices, HIPAA authorization forms, consent forms, brochures)
 - Important note: “vital documents” is a **subset** of “significant publications”
 - Procedures for obtaining qualified interpreters and translators
 - Procedures for assessing language proficiency of multilingual staff
- Ensure consistency with HHS’ Title VI LEP Guidance (65 F.R. 52762 (2000))

3. Effective Communication Procedures

- OCR will favorably view creation of written procedures for ensuring effective communication with persons with disabilities
- Effective communication procedures may include:
 - Procedures for conducting needs assessment of person with a disability
 - Procedures for obtaining appropriate auxiliary aids and services for various types of disabilities
 - If applicable, procedures for obtaining qualified sign language interpreters
 - If applicable, procedures for assessing sign language proficiency of staff
 - Identification of written materials that need to be provided in alternative formats (e.g., large print, Braille)
- Ensure consistency with Section 504 of the Rehabilitation Act (45 C.F.R. Part 84)

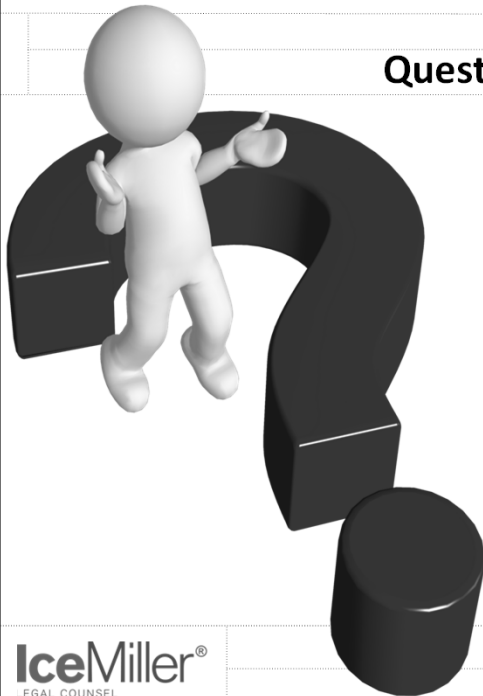
<h2 style="text-align: center;">Section 1557 : Current Enforcement Landscape</h2>		
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<h2 style="text-align: center;">Section 1557: OCR Settlements</h2>		
<ul style="list-style-type: none">• University of Vermont Medical Center (12/20/2017)<ul style="list-style-type: none">• Effective communication with persons with disabilities• Alabama Department of Human Resources (10/25/2017)<ul style="list-style-type: none">• Meaningful access for LEP persons• Oklahoma Nursing Home (9/8/2017)<ul style="list-style-type: none">• Discrimination on the basis of disability (HIV/AIDS)• All of OCR’s civil rights settlements are available here: https://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/agreements/index.html		
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Prohibition Against Sex Discrimination

- U.S. District Court for the Northern District of Texas enjoined Section 1557’s prohibition against discrimination on basis of gender identity and termination of pregnancy (*Franciscan Alliance, Inc. et al v. Burwell*, Dec. 2016)
 - Consequently, OCR cannot enforce these prohibitions at this time
- HHS requested court to (a) remand case to HHS and (b) stay litigation pending further rulemaking (May 2017)
- Court declined to remand case to HHS, but agreed to stay litigation pending further rulemaking (July 2017)

Questions?



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