



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

Health Care Compliance Association  
Washington DC Regional Conference  
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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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**Background:  
Section 1557 of the Affordable Care Act**


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**Section 1557: An Overview**

- 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:
  - 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.

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**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

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**Section 1557 Final Rule:  
Key Focus Areas**

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**Section 1557 Final Rule: Key Focus Areas**

- 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

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**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>)

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**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>)

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**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>)

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**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)

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**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

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**Section 1557 :  
Strategies for Compliance**

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**1. Documentation**

- Tailored, written policies and procedures regarding Section 1557 compliance
- Evidence of implementation of policies and procedures
  - 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))

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**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)

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**Section 1557 :**  
**Current Enforcement Landscape**

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**Section 1557: OCR Settlements**

- University of Vermont Medical Center (12/20/2017)
  - Effective communication with persons with disabilities
- Alabama Department of Human Resources (10/25/2017)
  - Meaningful access for LEP persons
- Oklahoma Nursing Home (9/8/2017)
  - 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)

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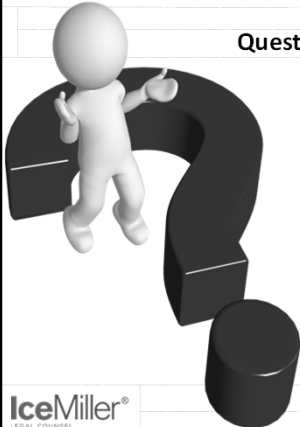
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**Questions?**



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