



LEGAL ADVICE FOR HEALTH PLANS

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## ***HEALTH LAW ALERT***

***July 11, 2016***

### **ACA Non-Discrimination Rule Goes into Effect July 18 Health Plans Must Publish Notices & Taglines for 15 Languages Appoint Responsible Employee and Adopt Grievance Procedures**

Next week the Department of Health and Human Services' Rule for implementing the Affordable Care Act's (ACA's) non-discrimination provisions go into effect. Section 1557 broadly prohibits health plans that receive Federal financial assistance (including health plans participating in State or Federal Exchanges/Marketplaces) from discriminating against an individual on the basis of race, color, national origin, sex, age, or disability. In May, the Department of Health and Human Services (HHS) published a final Rule to implement the provision (the Section 1557 Rule). The Section 1557 Rule imposes a variety of specific requirements on health insurers and other health plans that receive Federal financial assistance or participate in ACA Exchanges/Marketplaces (Covered Health Plans). Generally, the Rule goes into effect on July 18; to the extent that the Rule requires changes to health benefit plans, the changes must be made effective on the first day of the first plan year beginning on or after January 1, 2017.

The Section 1557 Rule is found at Title 45 Code of Federal Regulations, Part 92. *See* 81 Fed. Reg. 31375 (May 18, 2016) ([click here](#)).

#### **General Requirements**

Covered Health Plans must comply with the Rule with respect to all lines of business—including wellness programs and the health plans' own employer-sponsored health plans. Plans will be required to provide assurances—presumably in the form of a certification or attestation—that they will comply with the Section 1557 Rule “as a condition of any application for Federal financial assistance.” A health plan must designate “at least one employee to coordinate [the plan’s] efforts to comply with and carry out its responsibilities under [the Section 1557 Rule], including the investigation of any grievance . . . alleging noncompliance with Section 1557.” A health plan must also adopt Section 1557 grievance procedures and provide notice of its nondiscrimination practices. The Section 1557 Rule provides a “sample” grievance procedure and a “sample” notice. The Notice of Nondiscrimination Practices must be included in:

- (1) All “significant publications and significant communications targeted to beneficiaries, enrollees, applicants, and members of the public”;
- (2) Physical locations where the health plan interacts with the public; and
- (3) The health plan’s web site.

“Significant publications and significant communications” is to be interpreted broadly, including “not only documents intended for the public, such as outreach, education, and marketing materials, but also written notices . . . to an individual.” The Rule permits health plans to use a shorter version of the notice for “significant publications and significant communications that are small-sized, such as post cards and tri-fold brochures.”

General Section 1557 Rule requirements therefore include:

- ✓ Assurances of Compliance with Section 1557 Rule; upon application for Federal financial assistance.
- ✓ Designation of Responsible Employee(s); by July 18, 2016.
- ✓ Adoption of Section 1557 Grievance Procedures; by July 18, 2016.
- ✓ Publication of Notice of Nondiscrimination Practices; within 90 days of July 18, 2016.

### **Requirements Related to Individuals with Limited English Proficiency**

Covered Health Plans must “provide meaningful access” to individuals with limited English proficiency, including oral interpretation and written translation. In order to make individuals aware of these services, health plans must post “taglines in at least the top 15 languages spoken by individuals with limited English proficiency of the relevant State or States.” These “taglines” must be posted in the same manner and locations as the Notice of Nondiscrimination Practices described above (including all “significant publications and significant communications”). Postcards and other “small-sized” communications may be limited to taglines in two languages. “Taglines” are “short statements written in non-English languages that indicate the availability of language assistance services free of charge.” The Rule provides a sample English-language version of a tagline.

Thus, requirements related to individuals with limited English proficiency include:

- ✓ Providing oral interpretation through a qualified interpreter; when doing so is “a reasonable step to provide meaningful access for the individual,” effective July 18, 2016;
- ✓ Providing written translation by a qualified translator; by July 18, 2016.
- ✓ Including taglines on significant publications and significant communications, as well as in physical locations where the health plan

interacts with the public and on the health plan’s web site; within 90 days of July 18, 2016.

## Other Requirements

The Section 1557 Rule requires Covered Health Plans to “ensure that communications with individuals with disabilities are as effective as communications with others,” including making available “appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.” The Rule specifically applies to electronic and information technology, which must be accessible to individuals with disabilities. The Rule also clarifies that prohibited sex discrimination generally includes treatment of individuals “consistent with their gender identity.”

Accordingly, the Section 1557 Rule includes requirements for:

- ✓ Appropriate auxiliary aids and services for individuals with disabilities; by July 18, 2016;
- ✓ Ensuring electronic and information technology is accessible to individuals with disabilities; by July 18, 2016; and
- ✓ Prohibiting sex discrimination, including discrimination based on gender identity; by July 18, 2016 (or the first day of the first plan year on or after January 1, 2017 with respect to any necessary change to benefit plans).

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