

ALERTS

Healthcare Law Alert - New Rule, New Requirements For Healthcare Providers

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The U.S. Department of Health and Human Services (HHS) recently issued a rule describing precisely what covered providers must do in order to fully comply with Section 1557, which is the nondiscrimination provision of the Affordable Care Act (ACA). Section 1557 prohibits discrimination in certain health programs or activities on the basis of race, color, national origin, age, disability, or sex, including discrimination based on pregnancy, gender identity and sex stereotyping.

Section 1557 is the first federal civil rights law to prohibit discrimination on the basis of sex in covered health programs and activities. The Office of Civil Rights (OCR) is responsible for accepting and investigating complaints made by individuals seeking or receiving healthcare services.

Compliance with these new detailed obligations for covered healthcare providers will require thoughtful planning, development of new policies and procedures, employee education and training, and implementation of an ongoing compliance program. A list of requirements and other key information is included below.

EFFECTIVE DATE

The rule will be effective July 18, 2016, except for provisions affecting health insurance plan benefit design, which will not take effect until the first day of the first plan year beginning on or after Jan. 1, 2017.

WHO IS COVERED?

- Any health program or activity, any part of which receives federal financial assistance from HHS (such as hospitals and other entities that participate in Medicare (excluding Medicare Part B), , physicians and other providers who accept Medicaid);
- Any health program or activity administered by HHS (including CMS, HRSA, and IHS programs); and
- Health Insurance Marketplaces and issuers that participate in those marketplaces

NEW PROTECTIONS UNDER THE RULE

The new requirements provide specific protections to individuals with limited English proficiency, individuals with disabilities, and to individuals based on their sex.

Individuals With Limited English Proficiency

Entities covered by the rule are required to provide “meaningful access”

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to individuals with limited English proficiency. The OCR defines “an individual with limited English proficiency” as a person whose primary language for communication is not English and who has a limited ability to read, write, speak or understand English.

Under the rule, “meaningful access” requires an entity to offer an interpreter for use in oral communications between the entity and the individual and to utilize a translator for written, electronic or paper communications.

The rule places additional restrictions on those who may meet the requirements to act as an interpreter. Covered entities may not:

- Require an individual to provide his/her own interpreter;
- Rely on an adult accompanying the individual to interpret, except in cases of emergency where no other interpreter is immediately available, or when the individual specifically requests that the adult facilitate communication by interpreting, the adult agrees to provide such assistance, and it is otherwise appropriate under the circumstances;
- Rely on a minor child to interpret for the individual, except in cases of emergency; or
- Rely on staff members who are not otherwise qualified as bilingual or multilingual to interpret.

If the covered entity provides video or remote interpreting services, such services must be in real-time, full-motion video and audio over a dedicated high speed, wide-bandwidth video connection or wireless connection. The video services must be of high enough quality to produce clear, real-time images with clear audio transmission of voices. The covered entity must provide a large enough display to clearly show the interpreter and individual’s faces and be adaptable to provide such display regardless of the individual’s position.

Individuals with Disabilities

The new regulations require that covered entities must make reasonable modifications to policies, practices and procedures as necessary to avoid discrimination against individuals with disabilities. Modifications to communication and accessibility programs/services include:

Communication

Covered entities must ensure that its communications are equally effective with all individuals. In order to ensure effective communication between the entity and individuals with impaired sensory, manual, or speaking skills, the entity must provide auxiliary aids and services which provide individuals with equal opportunity to access the healthcare service or benefit provided by the entity.

Accessibility

Entities covered by the rule must comply with the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design standards for physical accessibility of new construction or modification of buildings and facilities.

Additionally, any programs or activities which are offered electronically by the covered entity must be accessible to individuals with disabilities. If the covered entity accepts federal monetary support then its website must also comply with Title II of the ADA.

Discrimination Based on Sex

Covered entities must provide equal access to healthcare programs for individuals of all sexes. Under the rule, covered entities may not deny an individual healthcare or health coverage based on their sex, including their gender identity and sex stereotyping. Specifically, covered entities cannot categorically deny or limit healthcare services for an individual based on the fact that the services are typically or exclusively available to individuals of a single or specific sex.

PROCEDURAL REQUIREMENTS

Grievance Policy

Covered entities employing 15 or more individuals must designate at least one employee as a compliance coordinator to ensure compliance, investigate any grievances made pursuant to Section 1557, and establish procedures providing for prompt and equitable resolution of grievances. Entities with fewer than 15 employees are not required to have a grievance procedure or a compliance coordinator.

Required Postings

Covered entities must post the following:

1. Notice including a statement of nondiscrimination and alerting readers to the availability of auxiliary aids and services and language assistance services and informing them how to obtain the aids and services. If applicable, the notice must also identify the entity's compliance coordinator and provide contact information, along with information regarding the availability of a grievance procedure and how to file a grievance. The notice must also contain information regarding how to file a discrimination complaint with the HHS Office of Civil Rights (OCR).
2. Taglines in at least the top 15 languages spoken by individuals with limited English proficiency in the relevant state.

The Notice and Taglines, in conspicuously-visible font size, must be posted in the following locations:

1. In significant publications and significant communications targeted to beneficiaries, enrollees, applicants, and members of the public, except for such publications and communications that are small-sized, e.g., postcards or tri-fold brochures (see below for requirements related to such small-sized publications and communications);
2. In conspicuous physical locations where the entity interacts with the public; and
3. In a conspicuous location on the entity's website, accessible from the home page.

With respect to small-sized significant publications and communications,

the entity must post, in a conspicuously visible font size:

1. A statement of nondiscrimination, i.e. that the entity does not discriminate on the basis of race, color, national origin, sex, age or disability in its health programs and activities.
2. Taglines in at least the top two languages spoken by individuals with limited English proficiency in the relevant state.

The OCR has posted a model notice and statement of non-discrimination, as well as translated notices and taglines for use by covered entities into 64 languages. For translated materials, [visit the HHS website](#).

For more information on Section 1557 of the ACA, visit the [OCR webpage](#). For full text of the new rule, [click here](#).

For more information, please contact the Barnes & Thornburg LLP attorney with whom you work or Laura Seng at 574-237-1129 or laura.seng@btlaw.com; or Anne Compton-Brown at 312-214-5636 or Anne.Compton-Brown@btlaw.com.

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