

HHS Issues Final Rule to Expand Discrimination Prohibition in Health Care Services



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The U.S. Department of Health and Human Services (“HHS”) Office for Civil Rights (“OCR”) and the Centers for Medicare & Medicaid Services (“CMS”) issued a [final rule](#) on May 6, 2024 (the “Final Rule”) under Section 1557 of the Affordable Care Act (“ACA”), a provision which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in a health program or activity that receives any federal financial assistance. The Final Rule, therefore, applies to any health care provider who receives federal financial assistance. The Final Rule will be effective on **July 5, 2024**.

The Final Rule, for the first time, expands the definition of federal financial assistance—and the reach of Section 1557—to include providers that receive payments under Medicare Part B. Historically, federal financial assistance included, among others, direct federal payments, as well as Medicare Part A payments, but did not extend to Medicare Part B payments. This, of course, limited the historical reach of the federal nondiscrimination laws in health care.

The Final Rule outlines prohibited forms of discrimination on the basis of race, color, national origin, sex, age, or disability. The Final Rule specifies that discrimination on the basis of sex includes sex characteristics, including intersex traits, pregnancy and related conditions, sexual orientation, gender identity, and sex stereotypes.

The Final Rule clarifies that the nondiscrimination prohibition continues to apply to the use of Artificial Intelligence (AI) and other patient care decision support tools in clinical care. Given this, the rule requires covered providers to take steps to identify and mitigate discrimination when they use AI and other forms of clinical decision-support tools.

The Final Rule, as part of its prohibition against discrimination on the basis of an individual's disability, requires covered providers to make accommodations for such individuals to have access to the providers' health programs and activities. Covered providers must also provide meaningful access to language assistance services to individuals with limited English proficiency at no cost.

The Final Rule further requires that all covered providers furnish a notice of nondiscrimination by November 2, 2024, and a notice of language assistance by July 5, 2025, that must be available in the 15 most common languages spoken in the state in which the providers are located or do business.

Additionally, the Final Rule requires covered providers with 15 or more employees to designate a "Section 1557 Coordinator" by November 2, 2024, and implement grievance procedures. The Section 1557 Coordinator is required to coordinate the provider's compliance with its responsibilities under Section 1557 in its health programs and activities, including the investigation of any grievances for noncompliance with Section 1557.

Lastly, the Final Rule requires all covered providers to develop and implement written policies and procedures designed to facilitate compliance with the requirements of the Rule.

For questions pertaining to the Final Rule and how it may affect you, please contact Frank Fanshawe (ffanshawe@lippes.com), Matthew Hosford (mhosford@lippes.com), Anoush Koroghlian-Scott (akoroghlianscott@lippes.com) or one of our other qualified Health Care Practice Team members.