

Section 1557 Nondiscrimination Training

1. Nondiscrimination

1.1 Section 1557 Nondiscrimination Training



1.2 Navigation Instructions

Navigation Instructions

- The "PREV" and "NEXT" buttons at the bottom of each page will take you backwards and forward through the course one page at a time.
 - Please note: Students are required to view each slide. Users can view the current slide and any slide they previously viewed but will be unable to skip and or jump ahead within the menu.
- Click the menu icon (☰) to expand and or collapse the table of contents.

AHIP©2021. All rights reserved.



1.3 Terms and Conditions

Terms and Conditions

This training program is protected under United States Copyright laws, 17 U.S.C.A. §101, et seq. and international treaties. Except as provided below, the training program may not be reproduced (in whole or in part) in hard paper copy, electronically, or posted on any web site or intranet without the prior written consent of AHIP. Any AHIP member company in good standing sponsoring a Medicare Advantage or Part D plan may reproduce the training program for the limited purpose of providing training and education to the company's own employees and contractors on the subject matter contained in the training program. Employees or contractors participating in such training may not further reproduce (in whole or in part) the training program. No changes of any kind may be made to the training program and any reproduction must include AHIP's copyright notice. This limited license is terminable at will by AHIP.

The training program is intended to provide guidance only in identifying factors for consideration in the basic rules and regulations governing coverage, eligibility, marketing, and enrollment for Medicare, Medicare supplement insurance, Medicare health plans, and Part D prescription drug plans and is not intended as legal advice. While all reasonable efforts have been made to ensure the accuracy of the information contained in this document, AHIP shall not be liable for reliance by any individual upon the contents of the training program.

AHIP©2021. All rights reserved.



1.4 Preface

Preface

On May 25, 2021, the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued a notice announcing it will interpret and enforce Section 1557 of the Affordable Care Act (ACA)'s nondiscrimination requirements to include sexual orientation and gender identity. This update was based on the June 2020 Supreme Court decision in *Bostock v. Clayton County* and subsequent court decisions. This declaration reverses Trump Administration policies that limited the definition of "sex" to mean gender assigned at birth.

Background: HHS OCR and the Centers for Medicare and Medicaid Services (CMS) under the Trump Administration finalized a rule in June 2020 (Final Rule 2020) to update an earlier final rule published in May 2016 under the Obama Administration to codify nondiscrimination requirements and set forth standards for implementing Section 1557 (Final Rule 2016).

This training reflects requirements in the 2020 Final Rule (which as of this writing still stands) as interpreted by May 2021 announcement. This training also provides background information on the 2016 Rule.

The Biden Administration is likely to revisit the Section 1557 rule in the coming months.

AHIP©2021. All rights reserved.



1.5 LEARNING OBJECTIVES

LEARNING OBJECTIVES



- | | | | |
|-----------|--|-----------|---|
| 01 | Identify the entities that must comply with the nondiscrimination protections of Section 1557 of the Affordable Care Act. | 04 | Summarize the steps that must be taken to serve persons with disabilities. |
| 02 | Name the forms of discrimination prohibited by Section 1557. | 05 | Understand the 2020 Rule changes made to the scope of the 1557 requirements and how the 2021 notice reverses these changes regarding the definition of sex. |
| 03 | Summarize the steps that must be taken under federal 1557 regulation as they currently stand as of this writing to serve individuals with limited English proficiency (LEP). | | |

AHIP©2021. All rights reserved.



1.6 ACA Section 1557

ACA Section 1557

Section 1557 is part of the Affordable Care Act (ACA).

Generally speaking, Section 1557 of the Affordable Care Act (ACA) and the Final Rule implementing it provide nondiscrimination protections for individuals seeking health care and health insurance coverage.

At the time of this writing, we await a decision from the Supreme Court on *California et al v. Texas*. No matter what the outcome, many provisions of Section 1557 will likely apply for the foreseeable future since it incorporates many long-standing pre-ACA protections

KNOW THE RULES!



AHIP©2021. All rights reserved.



1.7 Building on Earlier Legislation

Building on Earlier Legislation

Section 1557 incorporates earlier civil rights protections regarding race, color, national origin, disability, age, and sex.

More specifically, Section 1557 incorporates existing federal civil rights laws and applies them to federally funded health programs. The prohibited grounds for discrimination are specified in the following laws:

- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.
- Title IX of the Education Amendments Act of 1972 prohibits discrimination on the basis of sex.
- Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability.
- Age Discrimination Act of 1975 prohibits discrimination on the basis of age.



AHIP©2021. All rights reserved.



1.8 Changing Regulatory Approaches to Section 1557

Changing Regulatory Approaches to Section 1557

The Obama administration and Trump administration took different approaches to implementing this section of the law, and the Biden administration has already begun to further refine regulatory requirements.



AHIP©2021. All rights reserved.



1.9 Related State and Federal Requirements

Related State and Federal Requirements

- In some states, additional requirements protecting people from discrimination may apply. These requirements are ***in addition to*** federal Section 1557 requirements. The federal requirements do not supersede applicable state requirements.
- State requirements address categories including but not limited to: race, color, national origin, sex, gender identity, sexual orientation, age, or disability.
- There are also separate federal Medicare program requirements for providing information in another language to people with limited-English proficiency.



AHIP©2021. All rights reserved.



1.10 Who Must Comply?

Who Must Comply?

Who must comply with Section 1557 and its regulations?

All health programs and activities that are administered by the federal Department of Health and Human Services (HHS) or receive **federal financial assistance** from HHS. This includes any entity that operates a health program or activity, any part of which receives federal financial assistance. These are referred to as “covered entities.”

Federal financial assistance (for purposes of Section 1557) includes grants; property; Medicaid; Medicare Parts A, C, and D (not B) payments; and tax credits and cost-sharing subsidies under Title I of the ACA.



AHIP©2021. All rights reserved.



1.11 Covered Entities

Covered Entities

Section 1557 covered entities include, for example:

- An entity that offers a Medicare Advantage Plan or a Medicaid Managed Care Plan.
- An entity that offers a qualified health plan sold on an Exchange.
- A physician who accepts Medicaid payment of the Medicare cost-sharing for dual eligible individuals.
- A hospital or nursing home that accepts Medicare or Medicaid payment



Under Medicare Advantage, those engaged in the marketing and sales of MA products are subject to Section 1557.

Because the ACA Marketplaces operate under Title I of the ACA, Section 1557 protections extend to individuals who enroll in coverage through these Marketplaces.

AHIP©2021. All rights reserved.



1.12 The Scope of Operations Subject to Section 1557

The Scope of Operations Subject to Section 1557

Under the currently standing regulation (Final Rule 2020):

- Entities principally engaged in health care must comply with Section 1557 for all programs they offer.
- Health insurers are not considered to be principally engaged in delivering health care, and because of that, only programs that receive federal funding or are administered under Title I of the ACA, including health plans sold on the ACA Marketplaces, must comply with Section 1557, but other products sold by those same companies do not.

Example of Currently Standing 2020 Final Rule: An organization offers Medicare Advantage plans - the type of plans that receive federal funding. The organization is also engaged in the sale of other products, such as disability income, that do not receive federal funding. Only the Medicare Advantage plans would fall under the scope of the 2020 rule.

Background

Under the 2016 Obama Administration Final Rule, if a health insurer received federal funding, *ALL of the company's operations were subject to the scope of Section 1557*. The 2020 Final Rule cut back the scope of the 2016 Final Rule in this regard.



AHIP©2021. All rights reserved.



1.13 Forms of Discrimination

Forms of Discrimination

As a general rule, covered entities may not discriminate in providing or administering health-related insurance or other health-related coverage based on these characteristics:

- race
- color
- national origin
- sex
- age
- disability



AHIP©2021. All rights reserved.



1.14 Prohibited Actions

Prohibited Actions

Covered entities may not discriminate based on the characteristics discussed previously, in these areas:

- Denying, canceling, limiting, or refusing to issue or renew a health insurance plan or other health coverage.
- Denying or limiting coverage of a claim, or imposing additional cost-sharing or other limitations or restrictions on coverage.



Example: Blackheart Agency determines it will require all female members to pay an additional \$20 copay for any wellness visit.

Result: Prohibited.

AHIP©2021. All rights reserved.



1.15 Race, Color, and National Origin



1.16 Discrimination Based on Race, Color, or National Origin

Discrimination Based on Race, Color, or National Origin

Section 1557 prohibits covered entities from segregating, delaying, or denying services or benefits based on an individual's race, color, or **national origin**.

Examples:

Agent John Smith refuses to accept an application from an individual of a different race.

Result: Prohibited.

Broker Mary Jones has recruited a diverse workforce. Broker Jones encourages agents to prospect through community-based marketing and within their community of influence.

Result: Permissible.

Broker Charles Lee has also recruited a diverse workforce. However, Broker Lee requires agents to work only in areas populated by those of their ethnic backgrounds.

Result: Prohibited.

Mandy Blake is an administrative assistant at the ABC Agency. Her duties include handling walk-in clients. John Washington, an African-American male, arrives at ABC's offices seeking assistance with a Medicare Advantage application; he asks to speak to Agent Oliver Howard. Thirty minutes later, Leslie King, a Caucasian female, arrives without an appointment and also asks to speak to Agent Howard. She is admitted to Agent Howard's office while Mr. Washington is asked to continue to wait.

Result: Prohibited.

AHIP©2021. All rights reserved.



1.17 Individuals with Limited English Proficiency (LEP)

Individuals with Limited English Proficiency (LEP)

For programs subject to Section 1557, a health plan must take reasonable steps to provide meaningful access to each individual with **limited English proficiency (LEP)** eligible to be served by or likely to be encountered in its health programs and activities.

Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translations.

Such services must be provided free of charge and be accurate and timely. Such services must also protect the privacy of the individual with limited English proficiency (LEP).

AHIP©2021. All rights reserved.



1.18 The Meaning of LEP

The Meaning of LEP

The 2016 Final Rule provided a list of definitions. These definitions were either eliminated or incorporated elsewhere in the 2020 Final Rule. The 2016 Final Rule provided guidance as to the meaning of an individual with limited English proficiency.

An individual with **limited English proficiency (LEP)** means an individual whose primary language for communication is not English and who has limited ability to read, write, speak, or understand English.

AHIP©2021. All rights reserved.



1.19 When are LEP Services Appropriate?

When are LEP Services Appropriate?

In the 2020 rule which currently stands, OCR included a four-part test for entities to determine whether language services are required to provide meaningful access to services for individuals with limited English proficiency (LEP):

1. the number or proportion of eligible LEP individuals in the eligible service area
2. the frequency in which LEP come in contact with the entity's health program, activity, or service
3. the nature and importance of the entity's health program, activity, or service
4. the resources available to the entity and the costs associated with serving LEP individuals

AHIP©2021. All rights reserved.



1.20 The Quality of Language Services

The Quality of Language Services

A covered program must adhere to certain quality standards in delivering language assistance services. For instance, health plans subject to Section 1557 may NOT:

- require an individual to provide his or her own interpreter.
- rely on a minor child to interpret, except in a life-threatening emergency where there is no qualified interpreter immediately available.
- rely on staff other than qualified bilingual or multilingual staff.

In addition, a covered program may not rely on an adult accompanying an individual with limited English proficiency, except where such individual specifically requests that the accompanying adult interpret or facilitate communication and such accompanying adult agrees to provide such assistance

AHIP©2021. All rights reserved.



1.21 Communicating with LEP Individuals: Some Examples

Communicating with LEP Individuals: Some Examples

Here are some examples of how the antidiscrimination rules for LEP individuals might apply to agents and brokers.

Example A: Agent Esther Milbank, whose primary language is English, is working in an area that is home to many individuals whose primary language is Mandarin Chinese. Esther is asked by these individuals for information on the plans she represents. Esther works with her plan to obtain language assistance services.

Result: The required steps have been taken.

Example B: Agent David Winters is working with a LEP (limited English proficiency) prospect. Rather than seeking out the language assistance services offered by the health plan he represents, David asks the prospect's 10-year-old grandson to help answer the application questions.

Result: Prohibited. The use of a minor is permitted only in a life-threatening emergency when a qualified interpreter is not available.

AHIP©2021. All rights reserved.



1.22 Sex Discrimination

Sex Discrimination



1.23 Sex Discrimination

Sex Discrimination

Covered entities (such as health plans) must provide equal access to health care, health insurance coverage, and other health programs without discrimination based on sex.

The Meaning of Sex

The 2020 Final Rule, issued by the Trump Administration, defined sex as biologic sex only, meaning whether a person was determined to be male or female at birth. In a May 2021 notice, the Department of Health and Human Services (HHS) said it would now more broadly define sex and interpret and enforce Section 1557 and Title IX's prohibitions on discrimination based on sex to include:

1. discrimination on the basis of sexual orientation.
2. discrimination on the basis of gender identity.

HHS's Office of Civil Rights (OCR) will use this interpretation as a guide when processing complaints and conducting investigations.

AHIP©2021. All rights reserved.



1.24 Background - OCR Decision Regarding Section 1557

Background - OCR Decision Regarding Section 1557

According to HHS's May 2021 notice, it's reasoning behind including sexual orientation and gender identity within the meaning of sex for Section 1557 interpretation and enforcement purposes is to be consistent with the Supreme Court's decision in *Bostock v. Clayton County*.

Bostock Decision - On June 15, 2020, the Supreme Court held that Title VII of the Civil Rights Act of 1964's prohibition on employment discrimination based on sex encompasses discrimination based on sexual orientation and gender.

The case plaintiff, Gerald Bostock, was fired after he expressed interest in a gay softball league at work. Mr. Bostock was an employee of Clayton County, within the Atlanta metropolitan area, as an official for its juvenile court system. He had been employed since 2003, with good performance records through the years until his firing in 2013.

The majority in a 6-3 decision, concluded that the plain language and meaning "because of sex" in Title VII necessarily included discrimination based on sexual orientation and gender identity. Since Bostock, two federal circuits have concluded that the plain language of Title IX's Education Amendments of 1972 prohibition on sex discrimination must be read similarly. In addition, on March 26, 2021, the Civil Rights Division of the US Department of Justice issued a memorandum to Federal Agency Civil Rights Directors and General Counsel concluding that the Supreme Court's reasoning in *Bostock* applies to Title IX of the Education Amendments of 1972.

As made clear by the Affordable Care Act, Section 1557 prohibits discrimination "on the grounds prohibited under Title IX."

AHIP©2021. All rights reserved.



1.25 Examples of Sex Discrimination

Examples of Sex Discrimination

Example 1: Agent Leslie Chen places a substantial amount of business with Health Plan A. She directs her male clients to Health Plan A. This plan offers generous benefits. At the same time, Agent Chen believes that women often have higher health care costs so she directs her female clients to Health Plan B, which offers less generous benefits, rather than risk her relationship with Health Plan A.

Result: Prohibited action (sex discrimination)

Example 2: Agent Wendell Morris is referred to a man who is considering enrolling in an MA-PD plan. On meeting with the prospect, Wendell suspects that he is gay, based on his attire. Wendell feels uncomfortable dealing with the prospect, so he suggests that participating in Original Medicare would be more appropriate for him and that enrollment is best handled online.

Result: Prohibited action (discrimination based on sexual orientation).

Example 3: Agent Louis Sanchez is a successful agent who has helped many clients secure health insurance both on and off the Affordable Care Marketplace(s). Evan, who was born male and currently self-identifies as female, visits Agent Sanchez's office seeking health insurance. Agent Sanchez makes disparaging comments about Evan's attire and demeanor. He refuses to assist and tells Evan to seek advice about health insurance elsewhere.

Result: Prohibited action (discrimination based on gender identity)

AHIP©2021. All rights reserved.



1.26 Discrimination Based on Sex

Discrimination Based on Sex

Sex-specific programs are allowed only if a covered entity can show an exceedingly persuasive justification for the program. This means that the sex-specific nature of the program must be substantially related to an important health-related or scientific objective.

A breast cancer program cannot refuse to treat men with breast cancer solely because its female patients would feel uncomfortable.



AHIP©2021. All rights reserved.



1.27 Age and Disability



1.28 Age Discrimination

Age Discrimination

As a general rule, Section 1557 prohibits a covered entity (such as a health plan) from excluding, denying, or limiting benefits and services based on an individual's age.

Example: Agent Vanessa Martinez consistently steers younger retirees to a Medicare Advantage plan she represents, even when a Medicare Supplement policy might better suit their needs, because they are healthier and will cost the plan less money. Agent Martinez also consistently steers older retirees to Medicare Supplement policies, even when a Medicare Advantage plan might better suit their needs.

Result: Prohibited-discrimination based on age.

AHIP©2021. All rights reserved.



1.29 Permissible Age Distinctions

Permissible Age Distinctions

A covered entity (such as a health plan) may take actions based on age when it is a factor necessary to the normal operation of a program or to the achievement of a statutory objective of a program.

Therefore, the general rule does NOT apply to any age distinction authorized under federal, state, or local law. For instance, the Affordable Care Act permits health plans to consider age in setting premiums (within permissible ratios), and this does not violate Section 1557.

[Click here](#) for Examples.

Different treatment options may be based on age when such variances are justified by scientific or medical evidence, or based on a specialty.

For example, pediatricians are not required to treat adults, and gerontologists are not required to treat children.

AHIP©2021. All rights reserved.



Examples (Slide Layer)



Example: Agent Marissa Matthews refuses to sell a Medicare Advantage-Prescription Drug (MA-PD) plan to Solomon, age 55, who does not have ESRD or another disability qualifying him for Medicare.

Result: Permissible. This is not discriminatory since Solomon is not Medicare eligible.

Example: Well-You Health Plan charges Kevin a premium for an ACA regulated plan that is twice that of a younger applicant, Josh.

Result: Permissible. The ACA permits regulated health plans to charge up to three times more based on age, and this does not violate Section 1557.

AHIP®2021. All rights reserved.



1.30 Disability

Disability

Under Section 1557, an individual may not be excluded or denied benefits or services because of a **disability**.

The 2016 Final Rule provided a definition of disability that still remains valid.

Disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual, having a record of such an impairment, or being regarded as having such an impairment.



AHIP©2021. All rights reserved.



1.31 Reasonable Accommodations for Disabled Persons

Reasonable Accommodations for Disabled Persons

Under Section 1557, covered entities **must** take the following steps, unless doing so would result in an undue financial burden or would fundamentally alter the program:

- Make reasonable changes in policies, procedures, and practices where necessary to provide equal access to individuals with disabilities.
- Make all programs and activities provided electronically accessible to individuals with disabilities.
- Ensure newly constructed and altered facilities are physically accessible to individuals with disabilities.
- Provide effective communication with individuals with disabilities, including patients and their companions.

AHIP©2021. All rights reserved.



1.32 Disability: Permissible and Impermissible Actions

Disability: Permissible and Impermissible Actions

Here are some examples of actions to be taken when dealing with individuals with disabilities in order to be in compliance with Section 1557.

Example A: Equal Access - ABC Brokerage has a no pets policy. This policy must be modified to allow a prospect with impaired vision to be accompanied by her service (“seeing eye”) dog.

Example B: Visual Impairment - Agent Jones is reviewing plan information with Lena, a client. Lena is visually impaired, and the standard materials are in a font size too small for her to read. Agent Jones should contact the plan to obtain large print materials for Lena.

Example C: Physical Accessibility - Agent Menendez is scheduling a sales seminar to present plan benefits for the upcoming year. Agent Menendez must ensure that the location of the seminar is accessible to individuals with disabilities. For example, he must review prospective locations to see that they have ramps in place of or in addition to stairs in entryways.

Example D: Effective Communication - Agent De Rosa was referred to Wilbur, a deaf prospect. Agent De Rosa learns that Wilbur can speak American sign language (ALS) and arranges with her manager to have an ASL interpreter available during the appointment.

AHIP©2021. All rights reserved.



1.33 Auxiliary Aids and Services

Auxiliary Aids and Services

Auxiliary aids and services must be provided to individuals with disabilities, such as those suffering from vision or hearing impairments, free of charge and promptly.

Auxiliary aids and services include, but are not limited to:

- Qualified sign language interpreters
- Large print materials
- Text telephones (TTYs)
- Captioning
- Braille materials and displays
- Large print materials
- Screen reader software
- Video remote interpreting services



AHIP©2021. All rights reserved.



1.34 Exceptions and Enforcement



1.35 Exceptions

Exceptions

Medical Necessity Standard

The antidiscrimination provisions of Section 1557 do not prohibit covered entities from determining whether a particular health service is medically necessary or otherwise meets applicable coverage requirements in any individual case.

Permissible Medical Underwriting

If an entity that receives Federal Financial Participation (for example, an issuer offering a Medicare Advantage plan) also offers Medicare Supplement plans, the entity may use medical underwriting to determine coverage when an individual does not have a guaranteed issue period under state or Federal law.

1.36 Enforcement

Enforcement

The Office for Civil Rights (OCR) of HHS enforces Section 1557 for programs that receive funding from or are administered by HHS.

OCR is a fact-finding agency that receives, investigates, and resolves thousands of complaints from the public alleging discrimination in health services and health coverage.



AHIP©2021. All rights reserved.



1.37 Consequence of Violations

Consequence of Violations

OCR actions and investigations should not be taken lightly and violations of Section 1557 are serious. They can result in:

- a health plan's decision to terminate an agent's or broker's appointment with the health plan.
- termination of a health plan's ability to conduct federally funded lines of business (such as those related to Medicare).
- the payment of compensatory damages.



AHIP©2021. All rights reserved.



1.38 OCR Actions

OCR Actions

When OCR finds violations, it requires the covered entity to take **corrective actions**. This may include revising policies and procedures and/or implementing training and monitoring programs.

If a covered entity refuses to take corrective actions, OCR may undertake proceedings to suspend or terminate federal financial assistance from HHS.

OCR may also refer the matter to the U.S. Department of Justice for possible enforcement proceedings. The Department of Justice has a variety of tools at its disposal in redressing violations of Section 1557 under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

Further information about OCR, its work, and how to contact its offices can be found at www.hhs.gov/ocr.

Corrective action - sometimes also called corrective and preventive action are improvements to an organization's processes taken to identify and eliminate causes of non-conformities or other undesirable situations.

AHIP©2021. All rights reserved.



1.39 Summary

Summary

Section 1557 of the Affordable Care Act includes nondiscrimination protections for individuals seeking health care and health insurance coverage.

It applies to all entities that operate a health program or activity, which receives federal financial assistance and programs created under Title I of the ACA. Federal financial assistance includes amounts paid by Medicaid and Medicare Parts A, C, and D (but not B). ACA Health Insurance Marketplaces are included because they were created under Title I of the ACA.

Programs subject to Section 1557 may not discriminate based on race, color, national origin, sex, age, or disability. They must take certain steps to meet the needs of persons with limited English proficiency or disabilities.

AHIP©2021. All rights reserved.



1.40 THANK YOU

THANK YOU

You have reach the end of the Nondiscrimination Module. You may restart the module or take the final quick review to test your knowledge by clicking on the tabs below.

**RESTART
COURSE**

**START FINAL
QUICK REVIEW**

AHIP©2021. All rights reserved.

