



# ACA COMPLIANCE BULLETIN

## HIGHLIGHTS

- A federal court vacated the gender identity and abortion provisions in HHS' final rule implementing Section 1557.
- Section 1557 applies to all health programs and activities that are administered or federally funded by HHS, including all Exchanges.
- Section 1557 has been in effect and enforced by HHS since the ACA's enactment in 2010.

## IMPORTANT DATES

### May 24, 2019

HHS issued a proposed rule rolling back protections related to gender identity and language access.

### October 15, 2019

A federal court vacated Section 1557 provisions related to gender identity and termination of pregnancy.

## FEDERAL COURT VACATES SOME ACA SECTION 1557 NONDISCRIMINATION RULES

### OVERVIEW

On Oct. 15, 2019, the U.S. District Court for the Northern District of Texas issued a [ruling](#) vacating parts of the [Section 1557 nondiscrimination rules](#) under the Affordable Care Act (ACA). Specifically, the court's ruling eliminates the Section 1557 provisions prohibiting discrimination based on **gender identity** or **termination of pregnancy**.

This ruling follows a 2016 preliminary injunction blocking the Department of Health and Human Services (HHS) from enforcing these provisions. Following this injunction, HHS issued a [proposed rule](#) on May 24, 2019, to revise the Section 1557 nondiscrimination provisions related to gender identity and language access protections.

### ACTION STEPS

The remaining Section 1557 provisions are not affected by the court's ruling, and will continue to be enforced by HHS' Office for Civil Rights (OCR). Most of these provisions took effect beginning on Jan. 1, 2017.

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## Overview of the Section 1557 Final Rule

ACA Section 1557 is the first federal civil rights law to broadly prohibit discrimination on the basis of sex in federally funded health programs. Previously, civil rights laws enforced by the Office of Civil Rights (OCR) broadly barred discrimination based only on race, color, national origin, disability or age. The Section 1557 nondiscrimination protections apply to all health programs and activities that receive federal funding from HHS or that are administered by HHS, including both federally facilitated and state-based Exchanges.

On May 13, 2016, HHS issued a [final rule](#) implementing ACA Section 1557 regarding nondiscrimination in federally funded health programs. The final rule:

- ✓ Prohibits discrimination in health care on the basis of race, color, national origin, age, disability and sex (including discrimination based on termination of pregnancy, gender identity and sex stereotyping);
- ✓ Enhances language assistance for people with limited English proficiency; and
- ✓ Helps to ensure effective communication for individuals with disabilities.

In August 2016, five states and three Christian-affiliated health care groups filed a lawsuit challenging the Section 1557 final rule, arguing that the rule forces them to perform and provide insurance coverage for gender transition services and abortions against their religious beliefs and medical judgment, and violates the federal Administrative Procedures Act (APA), the Religious Freedom Restoration Act (RFRA) and certain protections in the U.S. Constitution.

On Dec. 31, 2016, the U.S. District Court for the Northern District of Texas issued an [injunction blocking enforcement of the Section 1557 nondiscrimination provisions related to gender identity or abortion](#). Although these provisions remained in place, the injunction prevented HHS from enforcing them.

However, the court's injunction does not affect the Section 1557 provisions related to:

- ✓ Nondiscrimination on the basis of disability, race, color, age, national origin or sex (other than gender identity); and
- ✓ Enhanced language assistance for people with limited English proficiency.

These provisions have continued to be enforced by OCR. On July 10, 2017, the court placed this lawsuit on hold to allow HHS to reconsider the challenged provisions of the regulation. On May 24, 2019, HHS issued a revised [proposed rule](#) to amend Section 1557 provisions related to gender identity and language access protections by:

- ✓ Eliminating the “definitions” section, effectively removing gender identity and termination of pregnancy from being included as “sex discrimination”; and
- ✓ Eliminating the requirement that regulated health companies distribute nondiscrimination notices and tagline translation notices in at least 15 languages to patients and customers.

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Despite the proposed rule, the provisions subject to the injunction remained in place, and the proposed revisions have not been finalized or taken effect.

## The Court's Ruling

Because the Section 1557 provisions related to gender identity and abortion remained in place despite the injunction, the court ultimately decided to vacate those portions of the final rule, and remand them back to HHS for reconsideration. As a result, HHS is now expected to finalize its proposed revisions to the final rule, taking into account the court's ruling. **Until those proposed revisions are finalized, the Section 1557 provisions related to gender identity and abortion will continue to be unenforced.**