

July 2020

Legal Update: Final Rule on Section 1557 Nondiscrimination

Section 1557 has been in effect since the ACA's enactment in 2010. However, a federal court issued an injunction temporarily blocking enforcement of its provisions related to discrimination based on gender identity or termination of pregnancy. Following this injunction, the U.S. Department of Health and Human Services (HHS) issued a proposed rule on May 24, 2019, to revise the Section 1557 nondiscrimination provisions related to gender identity and language access protections. Consistent with that proposal, the [final rule](#) issued on June 12, 2020:

- Removes gender identity and termination of pregnancy from being included as sex discrimination; and
- Eliminates the requirement that covered health programs and activities distribute nondiscrimination notices and tagline translation notices in at least 15 languages to patients and customers

HHS estimates a savings of **\$2.6 billion**, over five years, by the elimination of “unnecessary regulatory burdens”.

Nondiscrimination Protections Remain in Effect

The final rule does not affect the substantive Section 1557 provisions related to nondiscrimination on the basis of disability, race, color, age, national origin or sex. In addition, under the final rule regulated entities will still be required to submit to HHS a binding assurance of compliance with Section 1557.

Important Dates

- **May 24, 2019** - HHS issued a proposed rule rolling back protections related to gender identity and language access.
- **Oct. 15, 2019** - A federal court vacated Section 1557 provisions related to gender identity and termination of pregnancy.
- **Aug. 18, 2020** – The final rule becomes effective

Resources

[HHS Press Release - Section 1557](#)

[HHS Final Rule Fact Sheet](#)

Contact a Bolton Consultant for more information on the final rule.