

HHS' Revamped Sections 1557 & 504 Anti-Discrimination Rules: Effects on Healthcare Entities

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Presentation Outline

SECTION 1557

- What § 1557 is
- Which healthcare entities must comply with § 1557
- How does a healthcare entity comply with § 1557
- Expanded protections for LGBTQI+ individuals under § 1557
- Enforcement of § 1557

SECTION 504

- What § 504 is
- Which healthcare entities must comply with § 504
- How does a healthcare entity comply with § 504
- Service animals under § 504
- Enforcement of § 504

Don't Forget About Other Discrimination Laws

We will focus on the new ACA Section 1557 Nondiscrimination Rules, but other discrimination laws still apply in specific situations:

– Federal

- Titles VI and VII, Civil Rights Act of 1964, 42 USC § 2000d, 45 CFR 80.3
- Title IX, Education Amendments of 1972, 20 USC § 1681
- Section 504, Rehabilitation Act of 1973, 29 USC § 701; 45 CFR 84.3
- Age Discrimination Act of 1975, 42 USC § 6101
- Americans with Disabilities Act of 1990, Title III, 42 USC § 12101

– Idaho

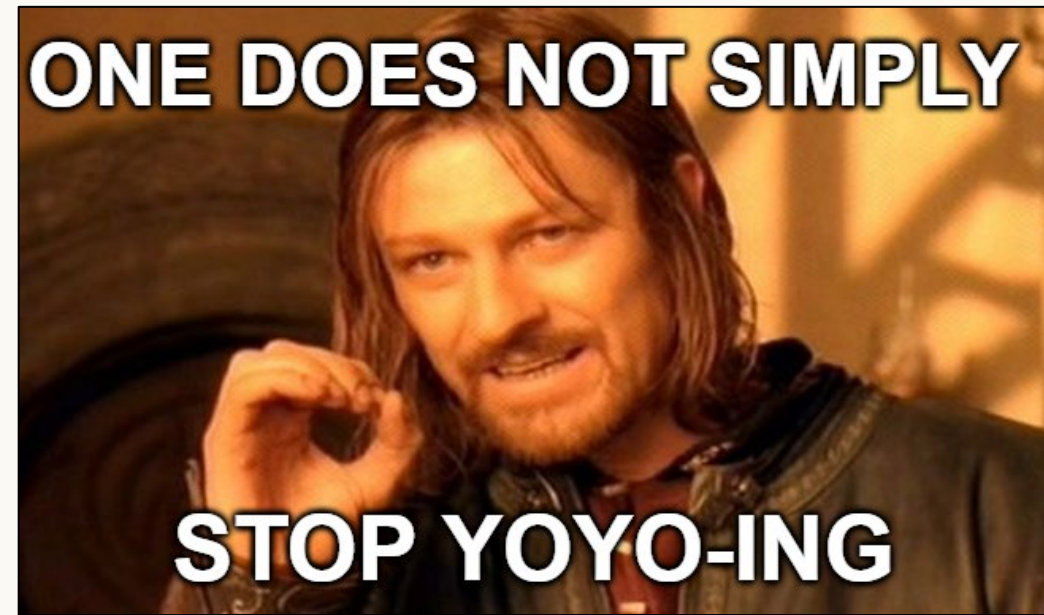
- Idaho Human Rights Act, IC § 67-5901

Affordable Care Act § 1557

“[A]n individual shall not, [on the basis of **race, color, national origin, sex, age, or disability**] be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under [the Affordable Care Act].” 42 USC § 18116.

Brief History of Section 1557

- 2010: Section 1557 of the ACA became law
- May 2016: Obama Administration issued the first Section 1557 Rule (“2016 Rule”)
- June 2020: Trump Administration issued the revised Section 1557 Rule (“2020 Rule”)
- Aug. 2020: SCOTUS issued its opinion in *Bostcock v. Clayton County, Georgia*
- May 2021: Biden Administration issued interpretation guidance in light of *Bostock*
- Apr. 2024: Biden Administration issued the new Section 1557 Rule



The Saga Continues...

- July 3, 2024: A Florida District Court in *Florida v. DHHS* stayed the effective date and enforcement of various provisions related to gender identity in Florida only.
- July 3, 2024: A Mississippi District Court in *Tennessee v. Becerra* stayed nationwide the effective date and enforcement of all provisions related to gender identity.
- July 3, 2024 & Aug. 30, 2024: A Texas District Court in *Texas v. Becerra* stayed nationwide the effective date and enforcement of all provisions related to gender identity.



Which entities must comply?

Section 1557 applies to all:

- Health programs or activities receiving Federal financial assistance (“FFA”), directly or indirectly;
- Health programs or activities administered by HHS; and
- Health insurance state and federally facilitated exchanges. 45 CFR § 92.2

Entities falling within one of these three categories are called “covered entities.”

What does this mean?

This means that Section 1557 applies to nearly the entire healthcare industry that receives FFA, directly or indirectly.



Which entities are “covered entities”?

Entities exchanging or receiving FFA, such as:

- Hospitals
- Health clinics
- Pharmacies
- Pharmacy benefit managers
- Physician practices
- Home health agencies
- Health insurers receiving FFA, including Medicare Parts A, C and D payments (but NOT to employers or other plan sponsor of a group health plan)
- Third-party administrators
- State administered programs, such as Medicaid, CHIP and Basic Health
- Entities exchanging or receiving Medicare Part B funds
- Potentially subcontractors of any of the above entities

How does a covered entity comply with § 1557?

Effective Date:
July 5, 2024, unless
stated otherwise

- Submit an assurance form to certify compliance with § 1557
- For covered entities with 15+ employees, appoint § 1557 Coordinator
- Establish the following policies and procedures:
 - Nondiscrimination policy
 - Grievance procedures
 - Language access procedures
 - Effective communication procedures
 - Reasonable modification procedures
- Train relevant employees on those policies and procedures
- Post notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services
- Do not discriminate on the basis of race, color, national origin, sex, age, or disability and associated individuals or entities
 - Provide meaningful access for individuals with limited English proficiency
 - Provide effective communication, information, and communication technology for individuals with disabilities
 - Ensure buildings and facilities are accessible to all
 - Provide equal program access on the basis of sex
 - Ensure patient care decision support tools and telehealth are used non-discriminatorily

How does a covered entity comply with § 1557?

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- ❑ Establish the following policies and procedures:
 - ❑ Nondiscrimination policy
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Assurance Form



When applying for FFA, an entity must promise that its health programs and activities will be operated in compliance with § 1557 and 45 CFR Part 92 by:

- Submitting the HHS assurance form
- After submitting the HHS assurance form, a covered entity may incorporate the promise in 45 CFR § 92.5 in subsequent FFA requests.

How does a covered entity comply with § 1557?

Effective Date:
No later than
November 2, 2024

- ✓ Submit an assurance form to certify compliance with § 1557
- ❑ **For covered entities with 15+ employees, appoint § 1557 Coordinator**
- ❑ Establish the following policies and procedures:
 - ❑ Nondiscrimination policy
 - ❑ Grievance procedures
 - ❑ Language access procedures
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For Covered Entities with 15+ employees, Section 1557 Coordinator

- Designate at least 1 employee as the “Section 1557 Coordinator”
- Section 1557 Coordinator’s responsibilities:
 - Handle grievances
 - Ensure compliance with recordkeeping requirements
 - Coordinate effective implementation of language access, communication, and reasonable modification procedures
 - Maintain documentation of and coordinates training of relevant employees

45 CFR 92.7



How does a covered entity comply with § 1557?

Effective Date:
No later than
July 5, 2025

- ✓ Submit an assurance form to certify compliance with § 1557
- ✓ For covered entities with 15+ employees, appoint § 1557 Coordinator
- ❑ **Establish the following policies and procedures:**
 - ❑ **Nondiscrimination policy**
 - ❑ **Grievance procedures**
 - ❑ **Language access procedures**
 - ❑ **Effective communication procedures**
 - ❑ **Reasonable modification procedures**
- ❑ Train relevant employees on those policies and procedures
- ❑ Post notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services
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Requirements for all policies and procedures

(Applies to all covered entities)

- Must be written
- Must include the effective date
- Must be “reasonably designed,” taking into account the covered entity’s health programs or activities
 - Size
 - Complexity
 - Type
- Must be implemented and complied with at all times

45 CFR 92.8(a)



Nondiscrimination Policy

(Applies to all covered entities)

Policy must state, at a minimum:

- CE does not discriminate on the basis of race, color, national origin, sex, age, or disability;
- CE provides language assistance and appropriate auxiliary aids services, free of charge;
- CE provides reasonable modifications for individuals with disabilities; and
- Section 1557 Coordinator's contact information (if applicable)

Note: if the CE was granted temporary exemption or granted an assurance of exemption under 45 CFR 92.302(b), HHS considers it a best practice to include language in this policy that the CE was granted an exemption.

Grievance Procedures

(Applies to covered entities with 15+ employees)

Procedures must, at a minimum:

- Provide for the prompt and equitable resolution of grievances.
- Retain filed grievances for no less than 3 years from the resolution date. Records must include the:
 - Grievance and filing date;
 - Complainant's contact information (if provided);
 - Alleged discriminatory action and basis of discrimination;
 - Resolution and resolution date; and
 - Any other pertinent information.
- Require complainant's confidentiality, except as required by law or by Part 92.

45 CFR 92.8(c).



Language Access Procedures

(Applies to all covered entities)

Procedures must include, at a minimum:

- Process for providing language assistance services to individuals with limited English proficiency (“ILEP”).
- Section 1557 Coordinator’s contact information (if applicable).
- Process for identifying an ILEP.
- Process for obtaining qualified interpreters and translators for an ILEP.
- Names of any qualified bilingual staff members.
- A list of any electronic and written translated materials the:
 - Covered entity has;
 - Languages they are translated into;
 - Date of issuance; and
 - How to access electronic translations.

Effective Communication Procedures

(Applies to all covered entities)

Procedures must include, at a minimum:

- Process for ensuring effective communication for individuals with a disability (“IWD”) when required under 45 CFR 92.202.
- Section 1557 Coordinator’s contact information (if applicable).
- Process for obtaining qualified interpreters’ services to communicate with IWD.
- Names of qualified bilingual staff members.
- How to access appropriate auxiliary aids and services.

45 CFR 92.8(e)

Reasonable Modification Procedures

(Applies to all covered entities)

Procedures must include, at a minimum:

- Process for making reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination based on a disability.
- Section 1557 Coordinator's contact information (if applicable).
- Process for responding to requests from IWD for changes, exceptions, or adjustments to a rule, policy, or service of the CE.
- Process for determining whether a modification would fundamentally alter the nature of the health program or activity, including identifying an alternative modification that does not result in a fundamental alteration to ensure the IWD receives the benefits or services.

How does a covered entity comply with § 1557?

Effective Date:
No later than
July 5, 2025

- ✓ Submit an assurance form to certify compliance with § 1557
- ✓ For covered entities with 15+ employees, appoint § 1557 Coordinator
- ✓ Establish the following policies and procedures:
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 - ✓ Grievance procedures
 - ✓ Language access procedures
 - ✓ Effective communication procedures
 - ✓ Reasonable modification procedures
- ❑ **Train relevant employees on those policies and procedures**
- ❑ Post notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services
- ❑ Do not discriminate on the basis of race, color, national origin, sex, age, or disability and associated individuals or entities
 - ❑ Provide meaningful access for individuals with limited English proficiency
 - ❑ Provide effective communication, information, and communication technology for individuals with disabilities
 - ❑ Ensure buildings and facilities are accessible to all
 - ❑ Provide equal program access on the basis of sex
 - ❑ Ensure patient care decision support tools and telehealth are used non-discriminatorily

Employee Training

- All “relevant employees” must be trained on § 1557 policies and procedures, and document completion of the training and retain such documentation for at least 3 calendar years.
- “Relevant employees” includes all employees and contractors that:
 - Interact with patients and members of the public;
 - Make decisions that either directly or indirectly affect patients’ healthcare, including C-suite executives and legal counsel; and
 - Perform tasks and make decisions that either directly or indirectly affect patients’ financial obligations, including billing and collections.
- When in doubt on who qualifies as a “relevant employee,” the covered entity has discretion to train all its employees.

45 CFR 92.9; 89 FR at 37563-64.

Employee Training Timing and Frequency

TIMING

- For current relevant employees, training must occur no later than:
 - 30 days following implementation of the policies and procedures
- For new relevant employees or when the policies and procedures are revised, training must occur within a “reasonable period of time” after the relevant employee joins or after the policies and procedures are revised.

45 CFR 92.9(b)

FREQUENCY

- HHS recommends that training occur “frequently” because it has found that when dealing with HIPAA employee-related violations, violations are more limited where the required HIPAA training is routinely provided compared to where it is not.
- HHS infers that training should occur at least once per year.

89 FR 37564

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Notice of Nondiscrimination

Effective Date:
No later than
November 2, 2024

- The notice must be provided to participants, beneficiaries, enrollees, and applicants of its health programs and activities, and members of the public.
- The notice must be provided or posted:
 - On an annual basis;
 - Upon request;
 - At a conspicuous location on the covered entity’s website; and
 - In clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service from the health program or activity to read or hear the notice.

Notice of Nondiscrimination (cont.)

Effective Date:
No later than
November 2, 2024

The notice must include the following information:

- CE does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex, age, or disability;
- CE timely provides reasonable modifications for IWD, and appropriate auxiliary aids and services free of charge, including qualified interpreters for IWD and information in alternate formats;
- CE timely provides language assistance services to ILEP free of charge, including electronic and written translated documents and oral interpretation;
- How to obtain the reasonable modifications, appropriate auxiliary aids and services, and language assistance services;
- Section 1557 Coordinator's contact information (if applicable);
- Availability of the grievance procedure, including how to file a grievance (if applicable);
- How to file a discrimination complaint with HHS', Office of Civil Rights; and
- How to access the CE's website that provides the contents of this notice.

Notice of Availability of Language Assistance Services and Auxiliary Aids and Services

Effective Date:
No later than
July 5, 2025

The notice must be provided to participants, beneficiaries, enrollees, and applicants of its health program or activities, and members of the public. This notice must be provided or posted:

- In English and at least the 15 languages most commonly spoken by ILEP of the State(s) in which the CE operates;
- In alternative formats for IWD who require auxiliary aids and services;
- On an annual basis and upon request;
- At a conspicuous location on the covered entity's website;
- In clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service from the health program or activity to read or hear the notice; and
- In the following electronic and written communications:
 - Notice of nondiscrimination; notice of privacy practices required by HIPAA; notices of denial or termination of eligibility, benefits, or services, including EOBs; and notices of appeal and grievance rights
 - Forms and papers, such as: application and intake forms; discharge papers; complaint forms; and handbooks
 - Communications related to: an individual's rights, eligibility, benefits, or services that require a response; a public health emergency; and the cost and payment of care with respect to an individual, including medical billing and collections materials, and good faith estimates required by the NSBR

Notice of Availability of Language Assistance Services and Auxiliary Aids and Services—Opt Out Requirements

Effective Date:
No later than
July 5, 2025

A CE can comply with this notice requirement if it:

- Provides the individual with the option to opt out of this notice annually, BUT the option:
 - Must be in their primary language and through appropriate auxiliary aids and services
 - Cannot condition receipt of any aid or benefit on decision to option out
 - Informs the individual of their right to request the notice in their primary language and through appropriate auxiliary aids and services, and their right to receive language assistance services and appropriate auxiliary aids and services
 - Must be documented on an annual basis
 - Does not treat a non-response as a decision to opt out
- Documents the individual's primary language and any appropriate auxiliary aids and services, AND either:
 - Provides **all** materials and communications in that individual's primary language and through any appropriate auxiliary aids and services; OR
 - Provides this notice in the individuals primary language and through any appropriate auxiliary aids and services in all written and electronic communications identified in the previous slide.

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HHS' Interpretation of § 1557's Discrimination Prohibition: General

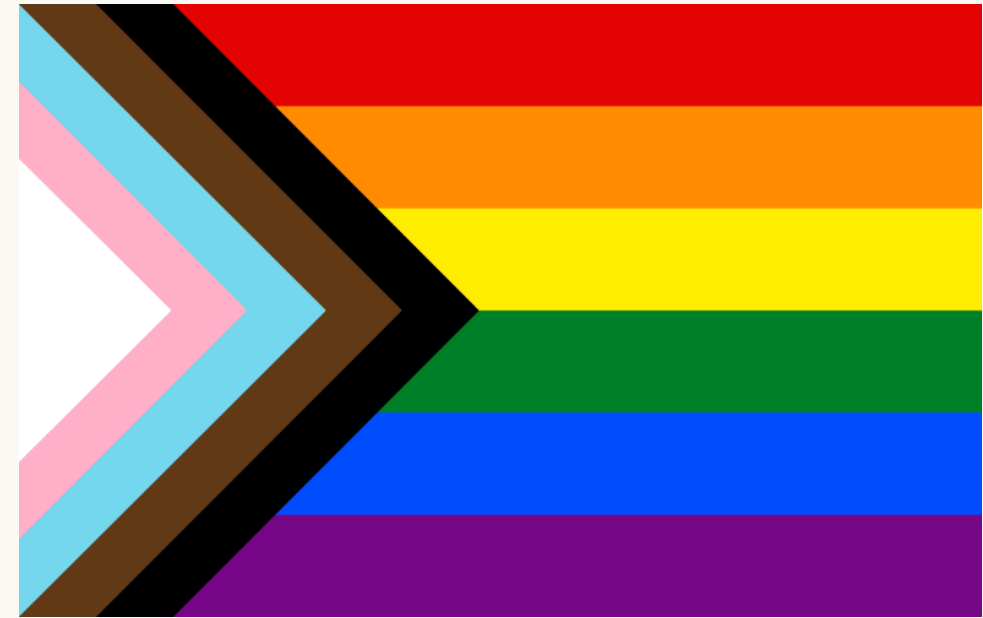
“Except as provided in title I of the ACA, an individual must not, on the basis of race, color, national origin, sex, age, disability, or any combination thereof, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any health program or activity operated by a covered entity.” 45 CFR 92.201(a)(1).

HHS' Interpretation of § 1557's Discrimination Prohibition on the Basis of Sex

HHS interprets “discrimination on the basis of sex” to include, **but is not limited to**, discrimination on the basis of:

- Sex characteristics, including intersex traits;
- Pregnancy or related conditions;
- Sexual orientation;
- Sex stereotypes; and
- Gender identity.

45 CFR 92.201(a)(2)



Injunction as to Gender Identity

[HHS](#) > [Civil Rights Home](#) > [For Individuals](#) > Section 1557 of the Patient Protection and Affordable Care Act

Civil Rights for Individuals
and Advocates



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In *Tennessee v. Becerra*, the court stayed nationwide the regulations to the extent they “extend discrimination on the basis of sex to include discrimination on the basis of gender identity” and enjoined HHS from enforcing the 2024 Final Rule “to the extent that the final rule provides that ‘sex’ discrimination encompasses gender identity.”

Section 1557 of the Patient Protection and Affordable Care Act

Pursuant to decisions by various district courts regarding the 2024 Final Rule implementing Section 1557, entitled Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) (“2024 Final Rule”), provisions are stayed or enjoined as indicated below:

1. In *Florida v. Department of Health and Human Services*, No. 8:24-cv-1080-WFJ-TGW (M.D. Fla.), the court stayed 45 C.F.R. 92.101(a)(2)(iv), 92.206(b), 92.207(b)(3)-(5), and 42 C.F.R. 438.3(d)(4), in Florida. OCR also may not enforce the interpretation of discrimination “on the basis of sex” in 45 C.F.R. 92.101(a)(2)(iv), 92.206(b), or 92.207(b)(3)-(5) in Florida.
2. In *Tennessee v. Becerra*, No. 1:24cv161-LG-BWR (S.D. Miss.), the court stayed nationwide the following regulations to the extent they “extend discrimination on the basis of sex to include discrimination on the basis of gender identity”: 42 C.F.R. 438.3, 438.206, 440.262, 460.98, 460.112; 45 C.F.R. 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206-211, 92.301, 92.303, 92.304; and enjoined HHS from enforcing the 2024 Final Rule “to the extent that the final rule provides that ‘sex’ discrimination encompasses gender identity.”
3. In *Texas v. Becerra*, the court stayed nationwide the following regulations: 42 C.F.R. 438.3(d)(4), 438.206(c)(2), 440.262, 460.98(b)(3), 460.112(a); 45 C.F.R. 92.101(a)(2) (and all references to this subsection), 92.206(b), 92.207(b)(3)-(5).

Notices of appeal have been filed in all three cases.

Nondiscrimination: Health Insurance Coverage

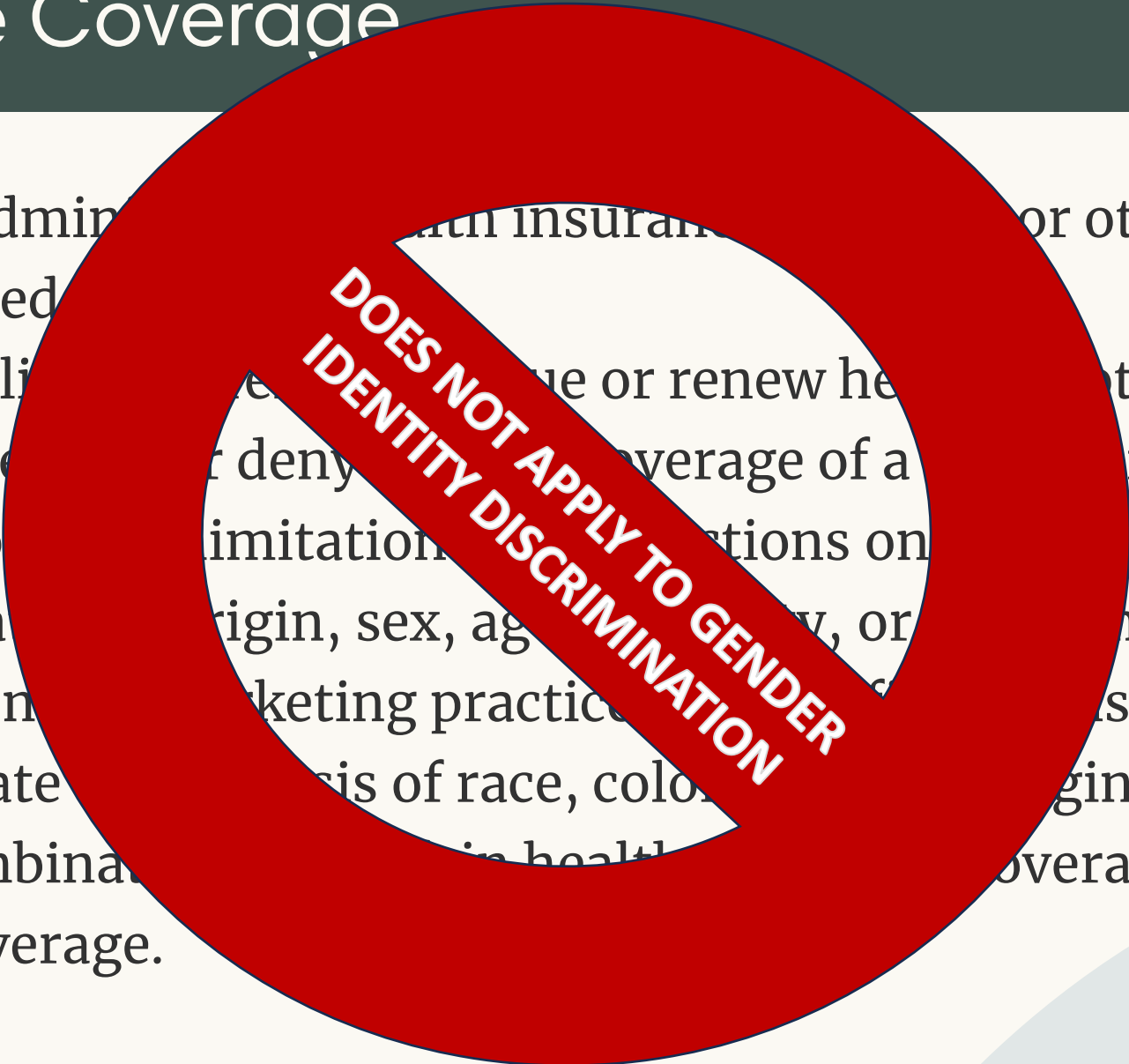
Effective Date:
By first day of plan year on
or after January 1, 2025 for
coverage not previously
subject to Section 1557

- In providing or administering health insurance coverage or other health-related coverage, a covered entity cannot:
 - Deny, cancel, limit, or refuse to issue or renew health or other health-related insurance coverage, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, age, disability, or any combination thereof.
 - Have or implement marketing practices or benefit designs that:
 - Discriminate on the basis of race, color, national origin, sex, age, disability, or any combination thereof, in health insurance coverage or other health-related coverage.

Nondiscrimination: Health Insurance Coverage

Effective Date:
By first day of plan year on or after January 1, 2025 for coverage not previously subject to Section 1557

- In providing or administering health insurance coverage or other health-related coverage, a covered individual may not:
 - Deny, cancel, limit, or refuse to issue or renew health insurance coverage or impose additional cost sharing or other limitations on coverage of a covered individual on the basis of race, color, national origin, sex, age, disability, or any combination thereof.
 - Have or implement marketing practices that:
 - Discriminate on the basis of race, color, national origin, sex, age, disability, or any combination thereof in health insurance coverage or other health-related coverage.



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Meaningful Access for Individuals with Limited English Proficiency

A covered entity must take reasonable steps to provide meaningful access to each individual (and their companion(s)) with limited English proficiency eligible to receive or likely to be directly affected by its health programs and activities. 45 CFR 92.201.

Meaningful Access for Individuals with Limited English Proficiency

A covered entity must take reasonable steps to provide meaningful access to each individual (and their **companion(s)**) with limited English proficiency eligible to receive or likely to be directly affected by its health programs and activities. 45 CFR 92.201.

“**Companion**” means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a covered entity, who along with such individual, is an appropriate person with whom a covered entity should communicate. 45 CFR 92.4.

Meaningful Access for Individuals with Limited English Proficiency

A covered entity must take reasonable steps to provide meaningful access to each **individual** (and their companion(s)) **with limited English proficiency** eligible to receive or likely to be directly affected by its health programs and activities. 45 CFR 92.201.

“**Individual with limited English proficiency**” or “**ILEP**” means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English. An ILEP may be competent in English for certain types of communication (e.g., speaking or understanding), but still be limited English proficient for other purposes (e.g., reading or writing). 45 CFR 92.4.

Meaningful Access for Individuals with Limited English Proficiency

A covered entity **must take reasonable steps to provide meaningful access** to each individual (and their companion(s)) with limited English proficiency eligible to receive or likely to be directly affected by its health programs and activities. 45 CFR 92.201(a).

- HHS declined to define “reasonable steps” or “meaningful access,” even though many commentators requested that HHS clarify this meaning. 89 FR 37579.
- Language assistant services must be free of charge, accurate, timely, and protect the privacy and the independent decision-making ability of the individual. 45 CFR 92.201(b).
 - Language assistance services can include:
 - In-person or remote oral language assistance by a qualified interpreter;
 - Paper or electronic translation performed by a qualified interpreter; and
 - Written notice of available language assistance services.

Meaningful Access for Individuals with Limited English Proficiency: Specific Requirements and Restrictions

There are specific requirements related to interpreter and translation services that a covered entity **MUST** comply with, such as:

- Offering a qualified interpreter when required.
- Using a qualified translator when required.
- Having a qualified human translator review AI translated information when:
 - The underlying text is critical to the rights, benefits, or meaningful access of an individual with limited English proficiency;
 - Accuracy is essential; or
 - The source documents or materials contain complex, non-literal or technical language. 45 CFR 92.201(c).

Language Assistance Services Requirements: Qualified Interpreter

A “qualified interpreter” generally means one who, via a remote interpreting service or in-person:

- Adheres to generally accepted interpreter ethics principles, including client confidentiality;
- Is able to interpret effectively, accurately, and impartially to and from such language(s) and English (or between two non-English languages for relay interpretation), using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and
- Has demonstrated proficiency in writing and understanding both written English and at least one other spoken non-English language (qualified interpreters for relay interpretation must demonstrate proficiency in two non-English spoken languages). 45 CFR 92.4.

Language Assistance Services Requirements: Relay Interpretation

“Relay interpretation” means interpreting from one language to another through an intermediate language.

- This mode of interpretation is often used for monolingual speakers of languages of limited diffusion, including select indigenous languages.
- In relay interpreting, the first interpreter listens to the speaker and renders the message into the intermediate language. The second interpreter receives the message in the intermediate language and interprets it into a third language for the speaker who speaks neither the first nor the second language. 45 CFR 92.4.

Language Assistance Services Requirements: Interpretation Restrictions

A covered entity *MUST NOT* do any of the following:

- 1) Require an individual to provide their own interpreter, or to pay the cost of their own interpreter.
- 2) Rely on a minor child to interpret or facilitate communication, except as a temporary measure while finding a qualified interpreter in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual immediately available and the qualified interpreter that arrives confirms or supplements the initial communications with the minor child.

Language Assistance Services Requirements: Interpretation Restrictions (cont.)

A covered entity **MUST NOT** do any of the following:

- 3) Rely on staff other than qualified interpreters, qualified translators, or qualified bilingual/multilingual staff to communicate with individuals with limited English proficiency.

Language Assistance Services Requirements: Interpretation Restrictions (cont.)

A covered entity **MUST NOT** do any of the following:

- 3) Rely on staff other than qualified interpreters, **qualified translators**, or qualified bilingual/multilingual staff to communicate with individuals with limited English proficiency.

A “**qualified translator**” means a translator who:

- Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language;
- Can translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original written statement; and
- Adheres to generally accepted interpreter ethics principles, including client confidentiality.

Language Assistance Services Requirements: Interpretation Restrictions (cont.)

A covered entity **MUST NOT** do any of the following:

- 3) Rely on staff other than qualified interpreters, qualified translators, or **qualified bilingual/multilingual staff** to communicate with individuals with limited English proficiency.

A “**qualified bilingual/multilingual staff**” means a member of the CE’s workforce who is designated by the CE to provide in-language oral language assistance as part of the person's current, assigned job responsibilities and who has demonstrated to the CE that they are:

- Proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology; and
- Able to effectively, accurately, and impartially communicate directly with ILEP in their primary languages.

Language Assistance Services Requirements: Interpretation Restrictions (cont.)

A covered entity **MUST NOT** do any of the following:

- 4) Rely on an adult, not qualified as an interpreter, to interpret or facilitate communication, except:
 - As a temporary measure, while finding a qualified interpreter in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the ILEP immediately available and the qualified interpreter that arrives confirms or supplements the initial communications with an initial adult interpreter; or
 - Where the ILEP specifically requests, in private with a qualified interpreter present and without an accompanying adult present, that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, the request and agreement by the accompanying adult is documented, and reliance on that adult for such assistance is appropriate under the circumstances. 45 CFR 92.201(e).
 - By including the clause “in private with a qualified interpreter present and without an accompanying adult present,” HHS is trying to tackle domestic violence and human trafficking concerns, as well as confidentiality and access concerns for sexual and reproductive health services. 89 FR 37582.

Language Assistance Services Requirements: Video Remote Interpreting Services

If a CE provides a qualified interpreter through video remote interpreting services, the CE must ensure the modality allows for meaningful access and provide:

- 1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high quality video images (no lags, choppy, blurry, or grainy images, or irregular pauses in communication);
- 2) A sharply delineated image that is large enough to display the interpreter and the participating person's face regardless of the person's body position;
- 3) A clear, audible transmission of voices; and
- 4) Adequate training to users of the technology and other involved persons so that they may quickly and efficiently set up and operate the remote interpreting services. 45 CFR 92.201(f).

Language Assistance Services Requirements: Audio Remote Interpreting Services

If a covered entity provides a qualified interpreter through audio remote interpreting services, the covered entity must ensure the modality allows for meaningful access and must provide:

- 1) Real-time audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection (no lags or irregular pauses in communication);
- 2) A clear, audible transmission of voices; and
- 3) Adequate training to users of the technology and other involved persons so that they may quickly and efficiently set up and operate the remote interpreting services. 45 CFR 92.201(g).

How does a covered entity comply with § 1557?

- ✓ Submit an assurance form to certify compliance with § 1557
- ✓ For covered entities with 15+ employees, appoint § 1557 Coordinator
- ✓ Establish the following policies and procedures:
 - ✓ Nondiscrimination policy
 - ✓ Grievance procedures
 - ✓ Language access procedures
 - ✓ Effective communication procedures
 - ✓ Reasonable modification procedures
- ✓ Train relevant employees on those policies and procedures
- ✓ Post notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services
- ✓ Do not discriminate on the basis of race, color, national origin, sex, age, or disability and associated individuals or entities
 - ✓ Provide meaningful access for individuals with limited English proficiency
 - ❑ Provide effective communication, information, and communication technology for individuals with disabilities
 - ❑ Ensure buildings and facilities are accessible to all
 - ❑ Provide equal program access on the basis of sex
 - ❑ Ensure patient care decision support tools and telehealth are used non-discriminatorily

What is a Disability?

“Disability” means:

- A physical or mental impairment that substantially limits one or more major life activities; and
- A record of such impairment; or
- Being regarded as having such an impairment, as defined and construed in the Rehabilitation Act, 29 USC § 705(9)(B).

45 CFR 92.4



Effective Communication for Individuals with Disabilities

- A covered entity must:
 - Take appropriate steps to ensure that communications with IWDs (including companions with disabilities) are as effective as communications with non-disabled persons, in accordance with 28 CFR 35.130, 35.160–35.164 (Subtitle A of Title II of the ADA).
 - Provide auxiliary aids and services where necessary to afford IWDs an equal opportunity to participate in, and enjoy the benefits of, the health program or activity in question.
 - The auxiliary aids and services must be provided free of charge, in accessible formats, in a timely manner, and in a way that protects the privacy and the independence of the IWD.

What Are Auxiliary Aids and Services?

Rather than clearly defining “auxiliary aids and services,” HHS provides examples, such as:

- Qualified interpreters on-site or through video remote interpreting services, as defined in 28 CFR 34.105; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; or equally effective telecommunications devices or effective methods of making aurally delivered information available to persons who are deaf or hard of hearing;
- Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software, magnification software; optical readers; secondary auditory programs; large print materials; accessible information and communication technology; or other effective methods of making visually delivered materials available to persons who are blind or have low vision;
- Acquisition or modification of equipment and devices;
- Other similar services and actions.

Qualified Interpreter for Individuals with a Disability

A “qualified interpreter for an individual with a disability” is an interpreter who, via a video remote interpreting service or an on-site:

- Has demonstrated proficiency in communicating in, and understanding:
 - Both English and a non-English language (including American Sign Language, other sign languages), or
 - Another communication modality (such as cued-language translators or oral transliteration)
- Can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original statement; and
- Adheres to generally accepted interpreter ethics principles, including client confidentiality

Interpreter for Individuals with a Disability: Restrictions

A covered entity shall not:

- Require an IWD to bring another individual to interpret for him or her.
- Rely on an adult accompanying an IWD to interpret or facilitate communication except:
 - In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
 - When an IWD specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide the assistance, and reliance on that adult for the assistance is appropriate under the circumstances.
- Rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

Effective Communication for Individuals with Disabilities: Telecommunications

- If a CE communicates with patients by telephone, “text telephones (TTY) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.”
- If a CE uses an automated-attendant system, such as voicemail and messaging or an interactive voice response system, the “system must provide effective real-time communication with individuals using auxiliary aids and services, including TTY and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems.”
- A CE “shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.”

Effective Communication for Individuals with Disabilities: Information & Signage

- A CE must:
 - That interested persons can obtain information as to the existence and location of accessible services, activities, and facilities.
 - Post signage at all inaccessible entrances, directing users to an accessible entrance or location where they can obtain information about accessible facilities.
 - The international symbol for accessibility must be used at each accessible entrance.



Effective Communication for Individuals with Disabilities: IT Accessibility

A recipient or State Exchange shall ensure that its health programs and activities provided through websites and mobile applications comply with the requirements of section 504 of the Rehabilitation Act, as interpreted consistent with title II of the ADA.

Nondiscrimination on the Basis of Disability: Health Insurance Coverage

Effective Date:
By first day of plan
year on or after
January 1, 2025

- In providing or administering health insurance coverage to other health-related coverage, a covered entity cannot:
 - Have or implement benefit designs that do not provide or administer health insurance coverage or other health-related coverage in the most integrated setting appropriate to the needs of qualified IWD, including practices that result in the serious risk of institutionalization or segregation.

45 CFR 92.207(b)(6)

How does a covered entity comply with § 1557?

- ✓ Submit an assurance form to certify compliance with § 1557
- ✓ For covered entities with 15+ employees, appoint § 1557 Coordinator
- ✓ Establish the following policies and procedures:
 - ✓ Nondiscrimination policy
 - ✓ Grievance procedures
 - ✓ Language access procedures
 - ✓ Effective communication procedures
 - ✓ Reasonable modification procedures
- ✓ Train relevant employees on those policies and procedures
- ✓ Post notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services
- ✓ Do not discriminate on the basis of race, color, national origin, sex, age, or disability and associated individuals or entities
 - ✓ Provide meaningful access for individuals with limited English proficiency
 - ✓ Provide effective communication, information, and communication technology for individuals with disabilities
 - ❑ **Ensure buildings and facilities are accessible to all**
 - ❑ Provide equal program access on the basis of sex
 - ❑ Ensure patient care decision support tools and telehealth are used non-discriminatorily

Accessibility for Buildings and Facilities

- If a facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of an individual or Exchange, it:
 - Must comply with the 2010 ADA Standards for Accessible Design, 28 CFR 35.104 if the construction or alteration was commenced on or after July 18, 2016.
 - BUT if facility was not covered by 2010 Standards prior to July 18, 2016, facility shall comply with 2010 Standards if construction commenced after Jan. 18, 2018.
 - Is deemed to comply with 45 CFR 92.203 and 45 CFR 84.23(a) if the construction or alteration was done in conformance with the 1991 ADA Standards for Accessible Design or the 2010 Standards.

Accessibility for Buildings and Facilities (cont.)

- If a facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of an individual or Exchange, it:
 - Is deemed to comply with 45 CFR 92.203 and 45 CFR 84.23(a) and (b) if the construction or alteration:
 - Was done in conformance with the Uniform Federal Accessibility Standards as defined in 45 CFR 92.4;
 - Was commenced before July 18, 2016; and
 - The facility was not required to comply with a different accessibility standard under 28 CFR 35.151.

How does a covered entity comply with § 1557?

- ✓ Submit an assurance form to certify compliance with § 1557
- ✓ For covered entities with 15+ employees, appoint § 1557 Coordinator
- ✓ Establish the following policies and procedures:
 - ✓ Nondiscrimination policy
 - ✓ Grievance procedures
 - ✓ Language access procedures
 - ✓ Effective communication procedures
 - ✓ Reasonable modification procedures
- ✓ Train relevant employees on those policies and procedures
- ✓ Post notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services
- ✓ Do not discriminate on the basis of race, color, national origin, sex, age, or disability and associated individuals or entities
 - ✓ Provide meaningful access for individuals with limited English proficiency
 - ✓ Provide effective communication, information, and communication technology for individuals with disabilities
 - ✓ Ensure buildings and facilities are accessible to all
 - ❑ **Provide equal program access on the basis of sex**
 - ❑ Ensure patient care decision support tools and telehealth are used non-discriminatorily

LGBTQIA+ and Pregnancy-Related Protections

In providing access to its health programs and activities, a CE must not:

- Deny or limit health services based on an individual's sex assigned at birth or gender otherwise recorded.
- Deny or limit, based on an individual's sex assigned at birth or gender otherwise recorded, a health care provider's ability to provide services if such denial or limitation effectively excludes individuals from participation in, denying them the benefits of, or otherwise subjecting them to discrimination based on sex.
- Adopt any policy or practice of treating individuals differently or separating them based on sex in a manner that subjects them to more than de minimis harm.
- Deny or limit gender transition or other gender affirming care services that the covered entity offers if the denial or limitation is based on an individual's sex assigned at birth or gender otherwise recorded. 45 CFR 92.206.

LGBTQIA+ and Pregnancy-Related Protections

In providing access to its health services, a covered entity must not:

- Deny or limit health services to an individual's sex assigned at birth or gender otherwise recorded.
- Deny or limit, based on an individual's sex assigned at birth or gender otherwise recorded, a health care provider's ability to provide services, or a denial or limitation that effectively excludes individuals from participating in, denying or withholding benefits of, or otherwise subjecting them to discrimination based on sex.
- Adopt any policy or practice that treats individuals differently or subjecting them based on sex in a manner that subjects them to discrimination, except as necessary to provide services that the covered entity offers if the denial or limitation is based on sex assigned at birth or gender otherwise recorded. 45 CFR 92.206.



Nondiscrimination of the Basis of Sex: Health Insurance Coverage

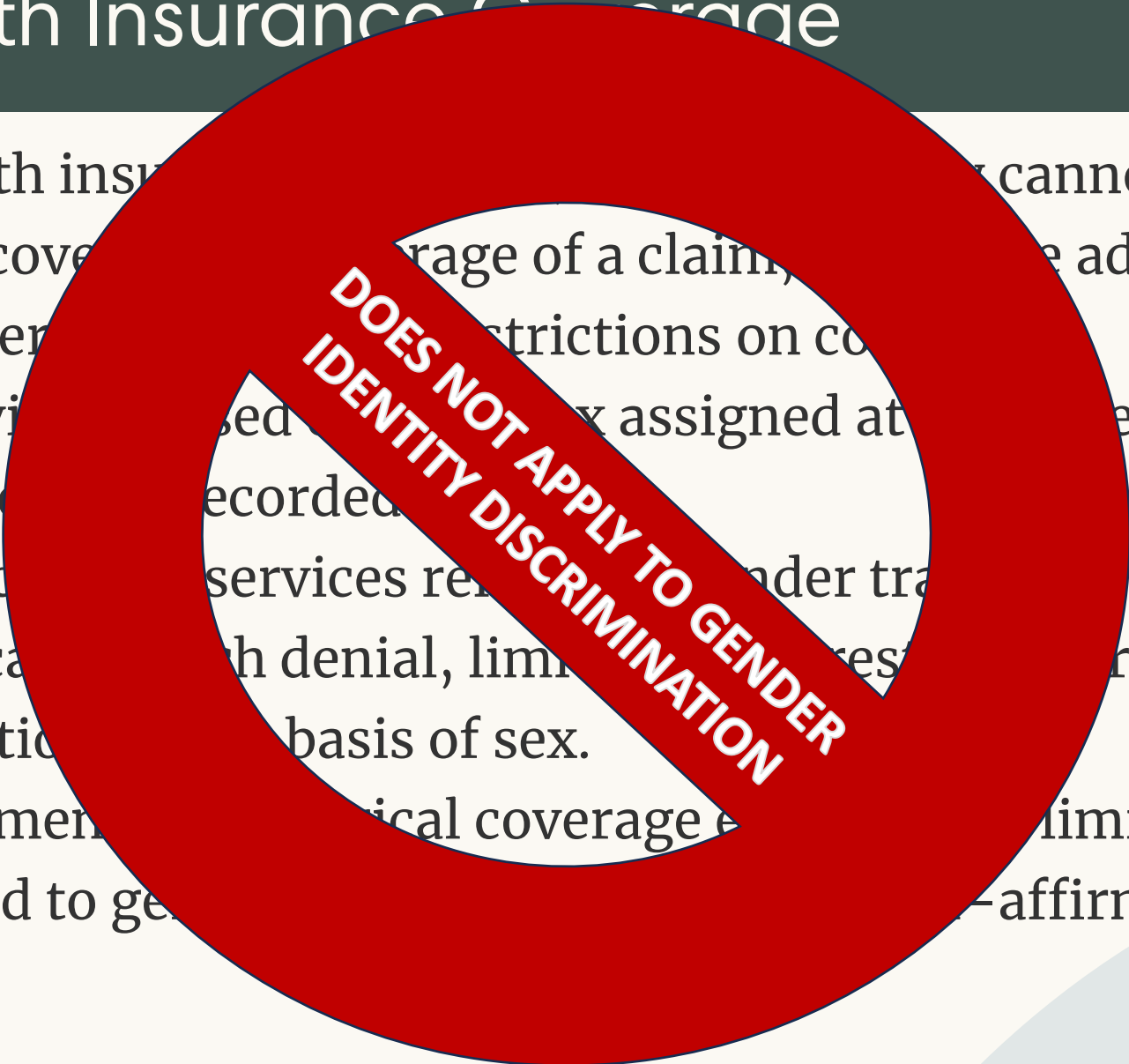
Effective Date:
By first day of plan year on or after January 1, 2025 for coverage not previously subject to Section 1557

- As related to health insurance coverage, a CE cannot
 - Deny or limit coverage or coverage of a claim, or impose additional cost-sharing or other limitations or restrictions on coverage:
 - To an individual based on their sex assigned at birth or gender otherwise recorded.
 - For specific health services related to gender transition or other gender-affirming care if such denial, limitation, or restriction results in discrimination on the basis of sex.
 - Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition or other gender-affirming care.

Nondiscrimination of the Basis of Sex: Health Insurance Coverage

Effective Date:
By first day of plan year on
or after January 1, 2025 for
coverage not previously
subject to Section 1557

- As related to health insurance coverage, a plan cannot
 - Deny or limit coverage of a claim, or the additional cost-sharing or other financial restrictions on coverage, on the basis of sex, gender identity, or gender expression, including but not limited to:
 - To an individual based on sex assigned at birth, gender identity, or gender expression recorded on the individual's identification records.
 - For specific services related to gender transition or other gender-affirming care, such as denial, limitation, or restriction, that results in discrimination on the basis of sex.
 - Have or implement a financial coverage exception or limitation for all health services related to gender transition or gender-affirming care.



Nondiscrimination on the Basis of Sex

If a covered entity has a legitimate, nondiscriminatory reason for denying or limiting a service, including if the covered entity typically declines or reasonably determines that a health service is not clinically appropriate for an individual, § 1557 does not force the covered entity to provide such health service. 45 CFR 92.206.

Nondiscrimination on the Basis of Sex

If a covered entity provides a legitimate, nondiscriminatory reason for not providing a service, it is not liable if the covered entity's actions are based on reasons that determine that a health care service is not medically appropriate for an individual and the individual does not have the ability to provide such service. 45 C.F.R. § 92.33(a)(2)

**DOES NOT APPLY TO GENDER
IDENTITY DISCRIMINATION**

Sex Discrimination Related to Marital, Parental, or Family Status

In determining whether an individual satisfies any policy or criterion regarding access to its health programs or activities, a covered entity must not take an individual's sex, as defined in § 92.101(a)(2), into account in applying any rule concerning an individual's current, perceived, potential, or past marital, parental, or family status.

45 CFR 92.208

How does a covered entity comply with § 1557?

- ✓ Submit an assurance form to certify compliance with § 1557
- ✓ For covered entities with 15+ employees, appoint § 1557 Coordinator
- ✓ Establish the following policies and procedures:
 - ✓ Nondiscrimination policy
 - ✓ Grievance procedures
 - ✓ Language access procedures
 - ✓ Effective communication procedures
 - ✓ Reasonable modification procedures
- ✓ Train relevant employees on those policies and procedures
- ✓ Post notice of nondiscrimination and notice of availability of language assistance services and auxiliary aids and services
- ✓ Do not discriminate on the basis of race, color, national origin, sex, age, or disability and associated individuals or entities
 - ✓ Provide meaningful access for individuals with limited English proficiency
 - ✓ Provide effective communication, information, and communication technology for individuals with disabilities
 - ✓ Ensure buildings and facilities are accessible to all
 - ✓ Provide equal program access on the basis of sex
 - ❑ **Ensure patient care decision support tools and telehealth are used non-discriminatorily**

Nondiscrimination in the Use of Patient Care Decision Support Tools

A CE:

- Must not discriminate on the basis of race, color, national origin, sex, or disability through the use of patient care decision support tools.
- Has an ongoing duty to make reasonable efforts to identify uses of patient care decision support tools in its health programs or activities that employ input variables or factors that measure race, color, national origin, sex, age, or disability.
 - Effective date: May 1, 2025
- Must make reasonable efforts to mitigate the risk of discrimination resulting from the tool's use in its health programs or activities.
 - Effective date: May 1, 2025

45 CFR 92.210

Nondiscrimination in the Use of Telehealth

A CE must not, in delivery of its health programs and activities through telehealth services, discriminate on the basis of race, color, national origin, sex, age, or disability. 45 CFR 92.211.

- Telehealth is defined as the “use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.”
 - Audio-only and remote patient monitoring services are included in this definition.
 - Medical devices, tests, and equipment that are used as part of a health program or activity delivered through telehealth services must also be accessible.

45 CFR 92.211; 89 FR 37651.

Provider Resources

<https://www.hhs.gov/civil-rights/for-providers/resources-covered-entities/index.html>

Civil Rights

Information for Individuals

Filing a Complaint

Information for Providers

[HHS](#) > [Civil Rights Home](#) > [For Providers](#) > Resources for Covered Entities

Civil Rights for Providers of Health Care and Human Services

Provider Obligations

Civil Rights Clearance for Medicare Provider Applicants

Compliance & Enforcement

Training

Resources for Covered Entities

Pursuant to decisions by various district courts regarding the 2024 Final Rule implementing Section 1557, entitled Nondiscrimination in Health

Programs and Activities, 89 Fed. Reg. 27,522 (May 6, 2024) ("2024 Final Rule"), provisions are stayed or enjoined as indicated below.

- Sample policies and procedures
 - *Effective communication*
 - *Grievance*
 - *Language access*
 - *Nondiscrimination policy*
 - *Reasonable modification*
- Sample notices
 - *Availability of language assistance and auxiliary aids*
 - *Notice of nondiscrimination*

Rehab Act § 504 Rules



Anti-Discrimination Laws

LAWS

- Civil Rights Act Title VI
- Americans with Disability Act
- Age Discrimination Act
- Affordable Care Act § 1557
 - HHS issued new rules on 5/6/24.
 - Effective 7/5/24
(45 CFR part 92; 89 FR 37522)
- **Rehabilitation Act § 504**
 - **HHS issued new rules on 5/9/24.**
 - **Effective 7/8/24**
(45 CFR part 84; 89 FR 40066)
- State discrimination laws



Apply if receive federal
money, e.g., funds from
HHS, Medicare/Medicaid

RISKS

- Persons with disabilities
- Persons with limited English proficiency
- Sex discrimination
- Physical access
- Websites
- Facilities and equipment
- Service animals
 - Service animals and mini-horses
 - Not emotional support animals

Rehab Act Rule

- Must comply with all anti-discrimination statutes and regs.
 - They each have some differences.
 - New Rehab Act Rules designed to track ADA Rules.
- New Rehab Act Rules focus on:
 - Discrimination in medical treatment decisions, including allocation of resources of value assessments.
 - Care provided in most integrated setting.
 - Web content, apps and kiosks.
 - Accessible medical diagnostic equipment.
 - Mobility devices.
- Rehab Act Rule still includes other items, e.g.,
 - Facility accessibility.
 - Communication and telecommunication.
 - Service animals.

Rehab Act Rule: Application

- Applies to **recipients of federal financial assistance**, *i.e.*,
 - “any grant, cooperative agreement, loan, contract (other than a direct Federal procurement contract or a contract of insurance or guaranty), subgrant, contract under a grant or any other arrangement by which the Department provides or otherwise makes available assistance in the form of ... funds [or] any other thing of value by way of grant, loan, contract, or cooperative agreement.”

(45 CFR 84.10)

- Applies to “federally funded health and human services programs, such as hospitals, health care providers participating in CHIP and Medicaid programs, state and local human or social service agencies, and nursing homes.” (<https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973/part-84-final-rule-fact-sheet/index.html>)

Rehab Act Rule: Application

- Applies to **persons with disabilities**, *i.e.*,
 - A physical or mental impairment that substantially limits one or more of the major life activities of such individual
 - A record of such an impairment; or
 - Being regarded as having such an impairment.
 - NOT homosexuality or bisexuality.

(45 CFR 84.4)

- “The definition of ‘disability’ shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of section 504.”

(45 CFR 84.1(b), 84.4(a)(2)(i))

For example:

- *Deaf or blind*
- *Intellectual disability*
- *Missing limb*
- *Mobility impairment*
- *Disease, e.g., cancer, diabetes, epilepsy, HIV, long-COVID, etc.*
- *Major depressive disorder, bipolar, PTSD, TBI, OCD, etc.*
- *Obesity*
- *Others*

(45 CFR 84.4)

Rehab Act Rules: Discrimination

- May not discriminate against person on the basis of disability.
- Must generally accommodate persons with disability so as to ensure they can access and receive the benefits of program services and activities unless:
 - Person poses a direct threat. (45 CFR 84.75)
 - Action would fundamentally alter nature of services or impose unreasonable burden.
(See, e.g., 45 CFR 84.22, 84.68(b)(7), 84.78, 84.81, and 84.88)
 - Recipient has burden of proof.
 - Must consider all recipient's resources.
 - Must be accompanied by written statement explaining decision.
 - Must take other steps to maximize benefit to persons with disability.

(See 45 CFR 84.81 and 84.88)

Rehab Act Rule: Enforcement

- Same enforcement procedures as apply to Title VI of the Civil Rights Act of 1964
 - HHS (OCR) conducts complaint investigations and compliance reviews.
 - Agency may force corrective action through settlement agreements.
 - Possible loss of federal funding.
 - Possible civil or administrative penalties by DOJ.
 - Private lawsuits for injunctive relief and/or damages.

HHS Office for Civil Rights Issues Notice of Violation to Puerto Rico Psychiatric Hospital for Failure to Comply with Federal Civil Rights Laws on Disability

OCR takes enforcement action against San Juan Capestrano Hospital to strengthen access to health services and ensure effective communication for individuals who are deaf or hard of hearing

Today, the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR) announced the issuance of a Letter of Finding and Notice of Violation against the San Juan Capestrano Hospital, following a thorough investigation, for violating disability civil rights laws when it failed to provide a patient with a sign language interpreter, under the Americans with Disabilities Act (Section 1557).

“Effective communication for every patient.

ment for patients

On 9/12/24, HHS asserted claims against a hospital for failing to provide a sign language interpreter; handwritten notes, lip reading, or gestures were insufficient.

Rehab Act Rules

- If have 15+ employees, must:
 - Designate at least one person to coordinate efforts to comply.
 - Adopt a grievance procedure.

(45 CFR 84.7)

Rehab Act Rules: Notice and Signage

- Must make available info regarding requirements as necessary to apprise patients of protections against disability discrimination.
(45 CFR 84.8)
- Must implement procedures to ensure interested persons with impaired vision or hearing can obtain info as to existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.
(45 CFR 84.22(f))
- Must provide signage at all inaccessible entrances directing persons to accessible entrance or facilities.
(45 CFR 84.480(b))
- Recipients that provide notice concerning benefits, services, consents, etc., must take steps necessary to ensure persons with disabilities are not denied effective notice.
(45 CFR 84.52)

Rehab Act Rules: Medical Treatment

- No person with a disability shall be subject to discrimination in medical treatment under any program or activity that receives federal financial assistance, including allocation or withdrawal of any good, benefit or service.

(45 CFR 84.6)

- Cannot use any measure, assessment or tool that discounts the value of life extension on the basis of disability to deny or afford unequal opportunity to qualified individuals with disabilities.

(45 CFR 84.57)

- “[R]ecipients cannot deny or limit clinically appropriate treatment to a qualified individual with a disability when the denial is based on bias or stereotypes, a belief that the individual will be a burden on others, or a belief that the life of an individual with a disability has a lesser value than the life of a person without a disability.”
- Beware crisis standards of care, organ donor criteria, medical futility, withdrawal of life-sustaining treatment, “better off dead”, clinical research, etc.

(HHS Fact Sheet, <https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973>)

Rehab Act Rules: Communication

- Must take appropriate steps to ensure communications with persons and companions with disability are as effective as communications with others.
 - Furnish appropriate auxiliary aids and services if necessary.
 - Type of auxiliary aid will vary by circumstances.
 - Give **primary consideration** to request of patient or companion.
- “Companions” = a family member, friend, or associate of an individual seeking access to a program or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate.

(45 CFR 84.77)

Rehab Act Rules: Communication

- Auxiliary aids include:
 - Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
 - Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;
 - Acquisition or modification of equipment or devices; and
 - Other similar services and actions.

(45 CFR 84.10)

Rehab Act Rules: Communication

- May not:
 - Require person to bring another individual to interpret.
 - Rely on adult accompanying individual to interpret except:
 - In emergency involving imminent threat and no other interpreter available; or
 - Individual with disability specifically requests accompanying adult to interpret, person agrees to interpret, and reliance on such person is appropriate under circumstances.
 - Rely on a minor child except in emergency involving imminent threat and no other interpreter available.

(45 CFR 84.77)

Rehab Act Rules: Communication

- If rely on qualified interpreters via video remote interpreting services, ensure:
 - Real-time, full-motion video and audio over appropriate connection that provides high quality video images.
 - Sharply delineated image large enough to for both parties to see each other's face, arms, hands and fingers.
 - Clear, audible transmission of voices.
 - Adequate training to users of technology.

(45 CFR 84.77)

Rehab Act Rule: Telecommunications

- If use telephone with patients, must use text telephones (TTYs) or equally effective system to ensure communication with persons who are deaf or hard of hearing or have speech impediment.
- If use automated attendant system (e.g., voicemail and messaging), must provide real time communication with person using auxiliary aids.

(45 CFR 84.78)

Rehab Act Rule: Kiosks

- No qualified person individual with a disability shall, on the basis of disability, be denied benefits of or otherwise be subjected to discrimination under any program or activity of a recipient provided through a kiosk.

(45 CFR 84.83)

- “Recipients can [comply] by ensuring that the kiosks they use are accessible to people with disabilities or by implementing procedures that allow people with disabilities who cannot use kiosks because of inaccessible features to access their programs without using a kiosk. For example, a recipient with insufficiently accessible kiosks may be required to allow people with disabilities to go directly to the personnel at the main desk to register for necessary services.”

(HHS Fact Sheet)

Rehab Act Rule: Web and Mobile Accessibility

- Web content and mobile apps must be readily accessible by persons with disabilities.
 - **May 11, 2026:** If have 15+ employees, recipients must ensure web content and mobile apps comply with Level A and Level AA criteria specified in Web Content Accessibility Guidance (WCAG) 2.1.
 - **May 10, 2027:** All recipients must comply with Level A and Level A WCAG 2.1
- Exceptions
 - Doing so would result in a fundamental alteration of the program or undue financial and administrative burdens.
 - Archived web content that satisfies certain conditions.
 - Preexisting conventional electronic documents that are not currently used in the program.
 - Content posted by a third party unless due to a contract, or other arrangement to post.
 - Password protected content about an individual but must still accommodate persons with disabilities.
 - Social media posts that predate the deadlines specified above.
 - Noncompliance has minimal impact on access.

(45 CFR 84.85 and 84.89)

Rehab Act Rules: Accessibility

- May not exclude qualified individual with a disability because of inaccessible facilities.

(45 CFR 84.21)

- **Existing facilities as of 1977:**

- Not necessarily required to make existing facilities accessible.
- Not required to act if would fundamentally alter nature of program or result in undue burden.
- May need to acquire equipment, reassign services to accessible buildings, assign aids, arrange home visits, etc.
- If recipient has less than 15 employees, may confer with individual and, if unable to accommodate, refer to another provider.

(45 CFR 84.22)

- **Construction and alterations after 1977:**

- Ensure compliance with applicable accessibility standards.
- Specific requirements differ for public entities v. private entities.

(45 CFR 84.23)

Rehab Act Rules: Mobility Devices

- Must allow individuals with mobility disabilities to use:
 - Manually powered aids in areas open to pedestrian use.
 - E.g., wheelchairs, walkers, crutches, canes, braces, etc.,
 - Power-driven mobility devices unless demonstrate that class of device cannot be operated in accordance with legitimate safety requirements.
 - Consider type, size, weight, speed of device; facility's volume of pedestrian traffic; facility design and operations; safety measures; risk of harm to others.
- May not ask person using device about nature or extent of disability.
- May ask person using power-driven device credible assurance that device is required because of disability.

(45 CFR 84.74)

Rehab Act Rule: Accessible Medical Equipment

- May not discriminate against persons with disabilities in use of medical diagnostic equipment (MDE), *e.g.*, exam tables, exam chairs, weight scales, mammography equipment, X-ray machines and other radiological equipment, etc.)

(45 CFR 84.92 and 84.93)

- All MDE purchased, leased or lease renewed after **7/8/24** must satisfy Standards for Accessible MDE unless and until scoping standards set forth below are satisfied:
 - **General:** if use MDE, at least 10% but no fewer than 1 of each type of MDE must meet Standards.
 - *E.g.*, physician offices, clinics, hospitals, ERs, outpatient facilities, etc.
 - **Programs that specialize in treating mobility:** at least 20% but no fewer than 1 of each type of MDE must meet the standards.

(45 CFR 84.92).

- Consider reassignment of services to alternate accessible locations, home visits, delivery of services at alternate accessible sites, or the purchase, lease, or other acquisition of accessible MDE.

Rehab Act Rule: Exam Tables

- By **7/8/2026**:
 - If use an exam table, must have at least 1 exam table that meets MDE Standards.
 - If use a weight scale, must have at least 1 weight scale that meets MDE standards.

(45 CFR 84.92(c))

Rehab Act Rules: Service Animals



Rehab Act Rules: Service Animals

- Service animal =
 - A Service animal that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, which works or tasks must be directly related to the disability.
 - Miniature horse that has been individually trained to work or perform tasks for individual with disability.
- NOT other animals
- NOT animals that provide emotional support, comfort or companionship.

(45 CFR 84.10 and 84.73(i))

Rehab Act Rules: Service Animals

- Must permit person with disability to use service animal unless:
 - Service animal is out of control and handler does not take effective action to control it; or
 - Service animal is not housebroken.
- Must allow service animal to accompany individual with disability in all areas where members of public, participants in programs, or invitees are allowed to go.

(45 CFR 84.73)

- Service animal usually allowed in areas such as admissions and discharge offices, emergency room, inpatient and outpatient rooms, examining and diagnostic rooms, clinics, rehab therapy areas, cafeteria and vending areas, pharmacy, restrooms, and all other areas of the facility where health care personnel, patients, and visitors are permitted without added precaution.
- May generally exclude a service animal from limited-access areas that employ general infection-control measures, such as operating rooms and burn units.

(89 FR 40114)

- Tracks ADA rules.

Rehab Act Rules: Service Animals

- May not ask about nature or extent of person's disability that requires service animal.
- May only ask following 2 questions:
 1. Is animal required because of a disability?; and
 2. What work or task the animal is trained to perform?
- May not ask for documentation or proof that service animal has been certified, trained or licensed as a service animal.
- May not require payment of surcharge but may require payment for damage if other persons with pets are required to pay for damage.

(45 CFR 84.73)

Rehab Act Rules: Service Animals

- Service animal must be under control of handler.
 - Have a harness, leash or other tether unless disability prevents handler from using same or doing so interferes with Service animal's work or task, or
 - Voice controls, signals or other effective means of control.
- Recipient is not responsible for care or supervision of service animal.
(45 CFR 84.73(d)-(e))
- May allow family or friend come in and care for the animal while at the facility.

<https://www.ada.gov/topics/service-animals/>



ADA.gov

U.S. Department of Justice
Civil Rights Division



[ADA Information Line](#)

Talk to us at 800-514-0301 | 1-833-610-1264 (TTY)

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Service Animals

The ADA explains what businesses and state/local governments must do to make sure that they do not discriminate against a member of the public with a disability who uses a service animal.

Generally, businesses and non-profits that are open to the public as well as state/local governments must allow service animals to go most places where the public can go. This is true even if they have a “no

Anti-Discrimination Laws

LAWS

- Civil Rights Act Title VI
- Americans with Disability Act
- Age Discrimination Act
- **Affordable Care Act § 1557**
 - HHS issued new rules on 5/6/24.
 - Effective 7/5/24(45 CFR part 92; 89 FR 37522)
- **Rehabilitation Act § 504**
 - HHS issued new rules on 5/9/24.
 - Effective 7/8/24(45 CFR part 84; 89 FR 40066)
- State discrimination laws

RISKS

- Persons with disabilities
- Persons with limited English proficiency
- Sex discrimination
- Physical access
- Websites
- Facilities and equipment
- Service animals
 - Service animals and mini-horses
 - Not emotional support animals

Rehabilitation Act § 504

- Prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance.

(45 CFR 84.1(a))

- Disability =

“(i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) A record of such an impairment;

or

(iii) Being regarded as having such an impairment...”

(45 CFR 84.4)

- “Construed broadly in favor of expansive coverage...”

(45 CFR 84.1(b))

Additional Resources



<https://www.hhs.gov/civil-rights/for-individuals/disability/section-504-rehabilitation-act-of-1973/index.html>

Section 1557 +

Hill-Burton

Section 1553

Special Topics +

HHS Nondiscrimination Notice

- Final Rule
- Fact Sheet
- Detailed Fact Sheet
- YouTube video
- Webinar

OCR Finalizes Section 504 Rule to Strengthen Protections Against Disability Discrimination

On May 1st 2024, OCR finalized a rule that prohibits discrimination on the basis of disability. This rule, titled *Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance*, advances equity and bolsters protections for people with disabilities under Section 504. Reflecting over 50 years of advocacy by the disability community, the Section 504 Final Rule clarifies and strengthens civil rights protections for people with disabilities, addresses discrimination in medical treatment, adds enforceable standards for accessible medical diagnostic equipment, and ensures accessible web content and mobile apps. The rule advances the promise of the Rehabilitation Act and helps protect people with disabilities from experiencing discrimination in any program or activity receiving funding from HHS because of their disability. To learn more, follow the links below:

- Read the [Final Rule](#)
- Read the [Fact Sheet \(en español\)](#)
 - Read the [Detailed Fact Sheet](#)
- Read the [Press Release](#)
- Director's YouTube video in [English](#) [↗](#) | [Spanish](#) [↗](#)
- [Social Media Toolkit: Section 504 - Disability Rights are Civil Rights - PDF](#)

Enforcement Scenarios

Enforcement Scenario #1

- Facts: A deaf patient fluent in ASL goes to an ENT office for treatment. The receptionist provides the patient with its 15-language notice of nondiscrimination, and one of listed languages is ASL. The deaf patient writes on a piece of paper that she would like an ASL interpreter for her visit with the doctor and shows it to the receptionist. The receptionist says that the office does not provide interpreting services.
- Violation(s) of Sections 1557 and/or 504?
- Basis for discrimination?
- What was the ENT office supposed to do?

Enforcement Scenario #2

- Facts: An elderly patient presented to a skilled nursing facility seeking chronic kidney disease management services. While going over pre-admission paperwork, the facility saw that the elderly patient took suboxone (Schedule 3 controlled substance) to treat their opioid use disorder, which resolved 15 years ago. The facility does not treat individuals with opioid use disorders for liability purposes and denies to admit the elderly patient.
- Violation(s) of Sections 1557 and/or 504?
- Basis for Discrimination?
- What was the facility supposed to do?

Enforcement Scenario #3

- Facts: Two patients with no relation are admitted to the ER for acute onset of lower abdominal pain. One patient is Hispanic and the other is black. The Hispanic patient's medical chart reveals that she has a prescription for Xanax to treat panic syndrome that significantly impairs her daily life. While waiting for lab results, the ER providers administer morphine to both patients. After two hours of waiting, both patients request another dose of morphine. The black patient receives another dose of morphine, and the Hispanic patient receives Tylenol. The Hispanic patient files a grievance according to the ER's procedures and the grievance is never acknowledged.
- Violation(s) of Sections 1557 and/or 504?
- Basis for Discrimination?
- What was the ER supposed to do?

Enforcement Scenario #4

- Facts: A patient with a hammer lodged in his head presents to the ER with his son and his son's service dog that assists him with daily tasks because of a spinal disability. The service dog has a leash and red harness with the words "Service Animal" on them. The patient, his son, and his son's service dog are escorted to a standard ER patient room. While walking to the ER room, an employee asks if the service dog is a certified service animal. The son replies that the service dog is certified but does not have the certification on him. The employee tells the son that his dog is not allowed in the ER and escorts the son and his dog to the parking lot.
- Violation(s) of Sections 1557 and/or 504?
- Basis for Discrimination?
- What was the ER supposed to do?

Additional Help?

- OCR website: [§ 1557](#) and [§ 504](#)
 - Guidance and education
 - Sample policies and procedures
 - Sample 15-language notice language
- ADA website, <http://www.ada.gov/>
 - Guidance and education
 - Technical guidance
- Lots of stuff on internet but be careful.

[HTTPS://WWW.HOLLAND
HART.COM/HEALTHCARE](https://www.hollandhart.com/healthcare)

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our healthcare clients face that we

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