

Section 1557 Anti-Discrimination Update: Not Gone, But Forgotten(?)

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AUGUST 28, 2025

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Presentation Outline

- History of Section 1557
- Which healthcare entities must comply
- Section 1557 Coordinator's responsibilities
- Section 1557 Policies and Procedures
- Anti-Discrimination Patient Notices
- Anti-Discrimination in use of AI and other technologies used in healthcare
- 2024 Final Rule
- Where we are today

Don't Forget About Other Discrimination Laws

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

– State laws may apply as well

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 *Bostock v. Clayton County, Georgia*
- May 2021: Biden Administration issued interpretation guidance in light of *Bostock*
- Mar. 2022: Biden Administration issues OCR guidance regarding gender-affirming care
- Apr. 2024: Biden Administration issued the new Section 1557 Rule
- Feb. 2025: Trump administration rescinds 2022 OCR Guidance on 1557 regarding gender identity and expression

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.”
(N.B. – distinct from HIPAA use of term but uses likely overlap!)

Which entities are “covered entities”?

Examples of 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?

- ❑ 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

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?

- ✓ 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” to ensure the covered entity complies with § 1557 and 45 CFR Part 92.
- Section 1557 Coordinator’s responsibilities on behalf of the covered entity:
 - Handles grievances according to its grievance procedures
 - Ensure compliance with Part 92’s recordkeeping requirements
 - Coordinates effective implementation of its language access procedures, effective communication procedures, 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
- ❑ Do not discriminate on the basis of race, color, national origin, sex, age, or disability and associated individuals or entities
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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, that the covered entity:
 - Does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex (including gender identity, sexual orientation, sex and intersex characteristics and traits, pregnancy or related conditions, and sex stereotypes), age, or disability;
 - Provides language assistance services and appropriate auxiliary aids and services free of charge;
 - Will provide reasonable modifications for individuals with disabilities; and
 - Provides the current contact information for the Section 1557 Coordinator (if applicable)

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

45 CFR 92.8(b)

Grievance Procedures

(Applies to covered entities with 15+ employees)

- Procedures must, at a minimum:
 - Provide for the prompt and equitable resolution of grievances alleging that any action would be prohibited by § 1557 or 45 CFR Part 92.
 - Require retention of records related to grievances filed according to the grievance procedures for no less than 3 calendar years from the date the covered entity resolves the grievance.
 - Records must include the:
 - Grievance;
 - Date the grievance was filed;
 - Name and contact information of complainant (if provided);
 - Alleged discriminatory action and basis (or bases) of discrimination;
 - Date the grievance was resolved;
 - Resolution; and
 - Any other pertinent information.
 - Require that the identity of the complainant stays confidential, except as required by law or as necessary to comply with Part 92, including the conduct of any investigation.

45 CFR 92.8(c).

Language Access Procedures

(Applies to all covered entities)

- Procedures must include, at a minimum:
 - Description of the process for providing language assistance services to individuals with limited English proficiency when required under 45 CFR 92.201.
 - Current contact information for the Section 1557 Coordinator (if applicable).
 - How an employee identifies whether an individual has limited English proficiency.
 - How an employee obtains the services of qualified interpreters and translators the covered entity uses to communicate with an individual with limited English proficiency.
 - The 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:
 - Description of the process for ensuring effective communication for individuals with disabilities when required under 45 CFR 92.202.
 - Current contact information for the Section 1557 Coordinator (if applicable).
 - How an employee obtains the services of qualified interpreters the covered entity uses to communicate with individuals with a disability.
 - The names of any 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:
 - Description of the process for making reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination on the basis of a disability as required under 45 CFR 92.205.
 - Current contact information for the Section 1557 Coordinator (if applicable).
 - Description of the process for responding to requests from individuals with disabilities for changes, exceptions, or adjustments to a rule, policy, or service of the covered entity.
 - Description of the process for determining whether making the modification would fundamentally alter the nature the health program or activity, including identifying an alternative modification that does not result in a fundamental alteration to ensure the individual with a disability receives the benefits or services in question.

How does a covered entity comply with § 1557?

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- ✓ 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
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Employee Training

- A covered entity must train all “relevant employees” on its tailored § 1557 policies and procedures, and document completion of the training and retain such training documentation for at least 3 calendar years. (Recommended to retain proof of attendance/completion!)
- “Relevant employees” include current and future permanent and temporary employees or contractors that:
 - Interact with patients and members of the public;
 - Make decisions that either directly or indirectly affect patients’ healthcare, including the executive leadership team 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 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.

FREQUENCY

- HHS recommends that training occur “frequently” due to findings that HIPAA violations were less frequent in settings where training was routine, versus settings where it was not.
- HHS infers that training should occur at least once per year.

How does a covered entity comply with § 1557?

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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
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Notice of Nondiscrimination

- 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

- The notice must include the following information:
 - The covered entity does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex, age, or disability;
 - The covered entity provides reasonable modifications for individuals with disabilities, and appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats free of charge and in a timely manner;
 - The covered entity provides language assistance services to individuals with limited English proficiency, including electronic and written translated documents and oral interpretation free of charge and in a timely manner;
 - How to obtain the reasonable modifications, appropriate auxiliary aids and services, and language assistance services;
 - The contact information for the Section 1557 Coordinator (if applicable);
 - The 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 covered entity's website that provides the contents of this notice.

45 CFR 92.10(a)(1)

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

- 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 individuals with limited English proficiency of the State(s) in which the covered entity operates;
 - In alternative formats for individuals with disabilities 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 patient and member 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

- If a covered entity can comply with this notice requirement if it:
 - Provides the individual with the option to opt out of this notice on an annual basis, 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.

How does a covered entity comply with § 1557?

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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
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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 now 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;
- Gender identity; and
- Sex stereotypes.

45 CFR 92.201(a)(2)

Nondiscrimination: Health Insurance Coverage

- By January 1, 2025, 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.

How does a covered entity comply with § 1557?

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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

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**” 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 individual with limited English proficiency 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.
- But to fulfill this requirement in general, language assistant services must be provided free of charge, accurate and 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 written translation performed by a qualified interpreter; and
 - Written notice of availability of language assistance services.

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

There are specific requirements related 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;
- Is able to 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 a covered entity’s workforce who is designated by the covered entity to provide in-language oral language assistance as part of the person's current, assigned job responsibilities and who has demonstrated to the covered entity 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 individuals with limited English proficiency 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 individual with limited English proficiency immediately available and the qualified interpreter that arrives confirms or supplements the initial communications with an initial adult interpreter; or
 - Where the individual with limited English proficiency 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 covered entity provides a qualified interpreter through video remote interpreting services, the covered entity must ensure the modality allows for meaningful access and must 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).

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- ✓ 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 individuals with disabilities (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 individuals with disabilities 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 individual with a disability.

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 individual with a disability to bring another individual to interpret for him or her.
- Rely on an adult accompanying an individual with a disability 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
 - Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such 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 covered entity 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 covered entity 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 covered entity “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 covered entity 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

- 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 individuals with disabilities, 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 this 2010 Americans with Disabilities Act 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.

45 CFR 92.203

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 covered entity must not:

- Deny or limit health services based on an individual's sex assigned at birth, gender identity, or gender otherwise recorded.
- Deny or limit, based on an individual's sex assigned at birth, gender identity, 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, including by adopting a policy or preventing an individual from participating in its programs or activities consistent with the individual's gender identity.
- 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, gender identity, or gender otherwise recorded. 45 CFR 92.206.

Nondiscrimination of the Basis of Sex: Health Insurance Coverage

- As related to health insurance coverage, a covered entity 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, gender identity, 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 (caveat: for adults only).
- **Note: Executive Order (“EO”) 14187 directed HHS to rescind its March 2, 2022 guidance regarding gender-affirming care as it applies to gender-affirming care for minors.**
- **HHS issued its notice rescinding this 2022 guidance on February 20, 2025.**

45 CFR 92.207(b)

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.

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 45 C.F.R. § 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 covered entity:

- Must not discriminate on the basis of race, color, national origin, sex, or disability through the use of patient care decision support tools.
 - Note, however, that the scope of “sex” and its inclusion or exclusion of sexual orientation, gender identity, or gender expression has been and is a litigated issue in several states, predating the current administration.
- 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.
- Must make reasonable efforts to mitigate the risk of discrimination resulting from the tool’s use in its health programs or activities.

45 CFR 92.210

Nondiscrimination in the Use of Telehealth

A covered entity 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.

Additional Help?

- OCR website: <https://www.hhs.gov/civil-rights/index.html>
 - Guidance and education
 - Sample policies and procedures
 - Sample 15-language notice language
- ADA website, <http://www.ada.gov/>
 - Guidance and education
 - Technical guidance
- Be careful of generalized Internet guidance!

Questions?



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