



Arizona Hospital and Healthcare Association

BRIEFING

Dialogue with Director Jocelyn Samuels
of the Office of Civil Rights
on the Final Rule
Non-Discrimination in Health Programs and Activities

Tuesday, June 21, 2016
10:00 am – 11:30 pm (AZ time/PDT)

AzHHA Boardroom
2800 North Central Ave. Suite 1450
Phoenix, 85004

Overview:

The Office of Civil Rights (OCR) issued the final rule effective July 18, 2016 implementing the prohibition of discrimination under Section 1557 of the Affordable Care Act. The Final Rule, *Nondiscrimination in Health Programs and Activities*, aims to advance equity and reduce health disparities by protecting some of the populations that have been most vulnerable to discrimination in the healthcare context (including disability, language access, sex, pregnancy and gender identity discrimination). The Final Rule explains consumers' rights under the law and provides covered entities important guidance about their obligations. This 'Dialogue with the Director' provides a forum for interested parties to discuss the Final Rule and emerging civil rights and HIPAA issues.

Target Audience:

Hospital leadership/management, diversity and compliance officers; healthcare lawyers.

About the Speaker:

Jocelyn Samuels is the Director of the HHS Office for Civil Rights, where she leads that Office's work to enforce federal laws that help to ensure non-discrimination and equity in federally funded health and human services. She also spearheads enforcement of federal laws that protect the privacy and security of medical information and the rights of individuals to their health records.

Ms. Samuels was previously the Acting Assistant Attorney General for Civil Rights at the United States Department of Justice, where she managed the operations of the Civil Rights Division. Highlights of her tenure included leading the Division in landmark efforts to protect the right of citizens to access the franchise under the Voting Rights Act of 1965; advancing systemic reform of city police departments across the country; working to provide individuals with developmental disabilities the opportunity to live

and work in their communities; promoting student diversity; overseeing the prosecution of hate crimes under the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act; and preventing housing, lending, and employment discrimination.

Ms. Samuels also served as Principal Deputy Assistant Attorney General for Civil Rights from 2011 until 2013 and as Senior Counselor to the Assistant Attorney General from 2009 to 2011. Prior to her tenure at the Department of Justice, Ms. Samuels was the Vice President for Education and Employment at the National Women's Law Center in Washington, D.C. Her prior experience also includes work as a Labor Counsel to Senator Edward M. Kennedy, then Ranking Member and subsequently Chair of the Senate Committee on Health, Education, Labor and Pensions, and as a senior policy attorney at the Equal Employment Opportunity Commission. Ms. Samuels has additional experience in the private sector and as a law clerk to a federal judge on the U.S. Court of Appeals for the Ninth Circuit. She is an experienced litigator with an extensive knowledge of civil rights legislation and a passionate advocate for the rights of the underserved.

Ms. Samuels received her law degree from Columbia University, where she was a Notes Editor of the *Law Review*, and her bachelor's degree from Middlebury College, where she graduated magna cum laude and was elected to *Phi Beta Kappa*

Summary: Final Rule Implementing Section 1557 of the Affordable Care Act

The Department of Health and Human Services (HHS) issued the Final Rule implementing the prohibition of discrimination under Section 1557 of the Affordable Care Act (ACA) of 2010. The Final Rule, *Nondiscrimination in Health Programs and Activities*, will help to advance equity and reduce health disparities by protecting some of the populations that have been most vulnerable to discrimination in the health care context. The final rule explains consumers' rights under the law and provides covered entities important guidance about their obligations.

Section 1557 prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities.

Section 1557 builds on long-standing and familiar Federal civil rights laws: Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act of 1975 (Age Act). Most notably, Section 1557 is the first Federal civil rights law to prohibit discrimination on the basis of sex in all health programs and activities receiving Federal financial assistance.

Section 1557 has been in effect since enactment of the ACA in 2010 and the HHS Office for Civil Rights (OCR) has been enforcing the provision since it was enacted.

Coverage of the Rule

The rule covers:

- Any health program or activity, any part of which receives funding from HHS (such as hospitals that accept Medicare or doctors who accept Medicaid);
- Any health program that HHS itself administers;
- Health Insurance Marketplaces and issuers that participate in those Marketplaces.

Protections under the rule

Section 1557 builds on prior Federal civil rights laws to prohibit sex discrimination in health care. The final rule requires that women be treated equally with men in the health care they receive and also prohibits the denial of health care or health coverage based on an individual's sex, including discrimination based on pregnancy, gender identity, and sex stereotyping. The final rule also requires covered health programs and activities to treat individuals consistent with their gender identity.

For individuals with disabilities, the final rule requires covered entities to make all programs and activities provided through electronic and information technology accessible; to ensure the physical accessibility of newly constructed or altered facilities; and to provide appropriate auxiliary aids and services for individuals with disabilities. Covered entities are also prohibited from using marketing practices or benefit designs that discriminate on the basis of disability and other prohibited bases.

Covered entities must take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in their health programs

and activities. In addition, covered entities are encouraged to develop and implement a language access plan.

The final rule on Section 1557 does not include a religious exemption; however, the final rule does not displace existing protections for religious freedom and conscience.

Procedural Requirements

The final rule implementing Section 1557 requires covered entities with 15 or more employees to have a grievance procedure and a compliance coordinator. The final rule includes an Appendix that provides a model grievance procedure for covered entities. Entities with fewer than 15 employees are not required to have a grievance procedure or compliance coordinator.

The final rule requires that covered entities post notices of nondiscrimination and taglines that alert individuals with limited English proficiency to the availability of language assistance services. To reduce burden and costs, OCR has translated a sample notice and taglines for use by covered entities into 64 languages. For translated materials, visit www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html.

The final rule requires each covered entity to post taglines in at least the top 15 non-English languages spoken in the State in which the entity is located or does business. Those requirements are modified for small sized significant communications such as postcards; for these, the final rule requires entities to post a nondiscrimination statement and taglines in at least the top two non-English languages spoken by individuals with limited English proficiency in the State.

Enforcement

The existing enforcement mechanisms under Title VI, Title IX, Section 504 and the Age Act apply for redress of violations of Section 1557. These mechanisms include: requiring covered entities to keep records and submit compliance reports to OCR, conducting compliance reviews and complaint investigations, and providing technical assistance and guidance.

Where noncompliance or threatened noncompliance cannot be corrected by informal means, available enforcement mechanisms include suspension of, termination of, or refusal to grant or continue Federal financial assistance; referral to the Department of Justice with a recommendation to bring proceedings to enforce any rights of the United States; and any other means authorized by law. The final rule also recognizes that an individual may bring a civil action to challenge a Section 1557 violation.

Responses to Comments on the Proposed Rule Reflected in the Final Rule

- Sexual orientation discrimination: While the final rule does not resolve whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination under Section 1557, the rule makes clear that OCR will evaluate complaints that allege sex discrimination related to an individual's sexual orientation to determine if they involve the sorts of stereotyping that can be addressed under Section 1557. HHS supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor legal developments on this issue.
- No new religious exemption: The proposed rule sought comment on whether there should be an exemption for religious organizations in circumstances in which nondiscrimination obligations conflict with religious beliefs. As noted above, the final rule on Section 1557 does

not include a religious exemption; however, the final rule does not displace existing protections for religious freedom and conscience.

- Benefit design in health coverage plans: OCR received comments that issuers would need time to come into compliance with the requirement prohibiting discrimination in benefit design. The final rule establishes that to the extent the provisions of the rule require changes to health insurance or group health plan benefit design, such provisions have an applicability date of the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2017.
- Complaints against Third-Party Administrators (TPAs): The proposed rule noted that where an entity acts as a TPA for a health plan, OCR would engage in a case-by-case analysis to determine coverage under Section 1557. The final rule states that OCR will investigate the TPA when the alleged discrimination is in the administration of the plan; where the alleged discrimination is in benefit design, OCR will process the complaint against the employer/plan sponsor and typically will refer the matter to the Equal Employment Opportunity Commission (EEOC) if OCR lacks jurisdiction over the employer.
- Standards for single sex programs: The proposed rule sought comment on the standard for evaluating single sex health programs. The final rule allows these programs only where a covered entity has an exceedingly persuasive justification.
- Language access: Covered entities are encouraged to develop a language access plan.

For more information about Section 1557, including factsheets on key provisions and frequently asked questions, visit <http://www.hhs.gov/civil-rights/for-individuals/section-1557>.

Section 1557: Protecting Individuals Against Sex Discrimination

Section 1557 is the civil rights provision of the Affordable Care Act of 2010. Section 1557 prohibits discrimination on the grounds of race, color, national origin, sex, age, or disability in certain health programs and activities. The Section 1557 final rule applies to any health program or activity, any part of which receives funding from the Department of Health and Human Services (HHS), such as hospitals that accept Medicare or doctors who receive Medicaid payments; the Health Insurance Marketplaces and issuers that participate in those Marketplaces; and any health program that HHS itself administers.

The rule makes clear that sex discrimination prohibited under Section 1557 includes discrimination based on:

- An individual's sex
- Pregnancy, childbirth and related medical conditions
- Gender identity
- Sex stereotyping

Protections against Sex Discrimination

- Individuals cannot be denied health care or health coverage based on their sex, including their gender identity and sex stereotyping.
- Women must be treated equally with men in the health care they receive and the insurance they obtain.
- Categorical coverage exclusions or limitations for all health care services related to gender transition are discriminatory.
- Individuals must be treated consistent with their gender identity, including in access to facilities. However, providers may not deny or limit treatment for any health services that are ordinarily or exclusively available to individuals of one gender based on the fact that a person seeking such services identifies as belonging to another gender.
- Sex-specific health programs or activities are permissible only if the entity can demonstrate an exceedingly persuasive justification, that is, that the sex-specific health program or activity is substantially related to the achievement of an important health-related or scientific objective.
- While the final rule does not resolve whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination under Section 1557, the rule makes clear that OCR will evaluate complaints that allege sex discrimination related to an individual's sexual orientation to determine if they involve the sorts of stereotyping that can be addressed under Section 1557. HHS supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor legal developments on this issue.

For more information about Section 1557, visit www.hhs.gov/civil-rights/for-individuals/section-1557.

Section 1557: Ensuring Meaningful Access for Individuals with Limited English Proficiency

Section 1557 is the civil rights provision of the Affordable Care Act of 2010. Section 1557 prohibits discrimination on the grounds of race, color, national origin, sex, age, or disability in certain health programs and activities. The Section 1557 final rule applies to any health program or activity, any part of which receives funding from the Department of Health and Human Services (HHS), such as hospitals that accept Medicare or doctors who receive Medicaid payments; the Health Insurance Marketplaces and issuers that participate in those Marketplaces; and any health program that HHS itself administers.

Protections for Individuals with Limited English Proficiency

- Consistent with longstanding principles under civil rights laws, the final rule makes clear that the prohibition on national origin discrimination requires covered entities to take reasonable steps to provide meaningful access to each individual with limited English proficiency who is eligible to be served or likely to be encountered within the entities' health programs and activities.
 - o An individual with limited English proficiency is a person whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.
 - o Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translation.
 - o The standards in the final rule are flexible and context-specific, taking into account factors such as the nature and importance of the health program and the communication at issue, as well as other considerations, including whether an entity has developed and implemented an effective language access plan.

- Covered entities are required to post a notice of individuals' rights providing information about communication assistance for individuals with limited English proficiency, among other information.

- In each state, covered entities are required to post taglines in the top 15 languages spoken by individuals with limited English proficiency in that state that indicate the availability of language assistance.

- Covered entities are prohibited from using low-quality video remote interpreting services or relying on unqualified staff, translators when providing language assistance services.

- Covered entities are encouraged to develop and implement a language access plan to ensure they are prepared to take reasonable steps to provide meaningful access to each individual that may require assistance.

OCR has translated a sample notice of nondiscrimination and the taglines for use by covered entities into 64 languages. For translated materials, visit www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html.

For more information about Section 1557, visit www.hhs.gov/civil-rights/for-individuals/section-1557.

Section 1557: Ensuring Effective Communication with and Accessibility for Individuals with Disabilities

Section 1557 is the civil rights provision of the Affordable Care Act of 2010. Section 1557 prohibits discrimination on the ground of race, color, national origin, sex, age, or disability in certain health programs and activities. The Section 1557 final rule applies to any health program or activity, any part of which receives funding from the Department of Health and Human Services (HHS), such as hospitals that accept Medicare or doctors who receive Medicaid payments; the Health Insurance Marketplaces and issuers that participate in those Marketplaces; and any health program that HHS itself administers.

Protections for Individuals with Disabilities

- Consistent with existing requirements, Section 1557 requires covered entities to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communication with others. Section 1557 also requires covered entities to provide appropriate auxiliary aids and services, such as alternative formats and sign language interpreters, where necessary for effective communication.
- Covered entities must post a notice of individuals' rights, providing information about communication assistance among other information.
- Covered entities are required to make all programs and activities provided through electronic and information technology accessible to individuals with disabilities, unless doing so would impose undue financial or administrative burdens or would result in a fundamental alteration in the nature of the covered entity's health program or activity.
- Section 1557 incorporates the 2010 Americans with Disabilities Act Standards for Accessible Design as the standards for physical accessibility of new construction or alteration of buildings and facilities. Almost all covered entities are already required to comply with these standards.
- Covered entities cannot use marketing practices or benefits designs that discriminate on the basis of disability.
- Covered entities must make reasonable changes to policies, practices and procedures where necessary to provide equal access for individuals with disabilities unless the covered entity can demonstrate that making the changes would fundamentally alter the nature of the health program or activity.

For more information about Section 1557, visit <http://www.hhs.gov/civil-rights/for-individuals/section-1557>.

TO: ARIZONA ASSOCIATION OF HEALTH CARE LAWYERS
FROM: Jerry Gaffaney, President, Secretary/Treasurer
DATE: May 13, 2016

June 21, 2016 PROGRAM ANNOUNCEMENT

"2016 LEGISLATIVE UPDATE"

Date: June 21, 2016
Time: 12:00 noon to 1:00 pm
Place: **Lewis Roca Rothgerber Christie at Collier Center**
201 East Washington Street, 3rd Floor

Our speakers will be Barbara Fanning, Director of Government Affairs for the Arizona Hospital and Healthcare Association and Greg Harris of Lewis Roca Rothgerber Christie. Their bios are attached.

This program will be held on June 21, 2016 at 12:00 noon at Lewis Roca Rothgerber Christie's office in Phoenix. Lunch will be served - \$10 for AAHCL members/\$15 for non-members.

Please RSVP in advance by e-mail to clovejoy@dickinsonwright.com. You may pay at the door or send your check in advance (payable to AAHCL) to Jerry Gaffaney, Dickinson Wright 1850 North Central Avenue, Suite 1400, Phoenix, Arizona 85004. Whether or not you pay in advance, you must RSVP prior to the program.

This program will count for one (1) credit hour of continuing legal education.

CALL IN INFORMATION: To access the teleconference, use any of these dial-in numbers: 1-866-496-2887, 602-262-5301 or 602-385-0230. Enter this Bridge number: 5218. Enter this Participant PIN number: 95218

For CLE credits and materials for this program, please contact Cyrie Lovejoy.

OFFICE DIRECTIONS – WWW.LRRCLAW.COM/PHOENIX

Take I-10W to Washington Street. Exit and turn left at Washington Street for 2 miles and follow it to Collier Center (Bank of America building), located on the south side of Washington Street. Turn left into the parking garage just before 2nd Street. Collier Center is on the southeast corner of 2nd Street and Washington.


Take the garage elevators up to the 2nd floor (Collier Center Lobby), then take the second bank of elevators to Lewis Roca Rothgerber Christie's 3rd floor for the AAHCL Meeting.

Barbara Fanning is the Director of Government Affairs for the Arizona Hospital and Healthcare Association (AzHHA) where she is the organization's full-time lobbyist. She is responsible for developing and advancing the advocacy agenda of Arizona hospitals and health systems at the state level. Ms. Fanning works on a variety of legislative and budgetary issues affecting Arizona hospitals, including those involving Arizona's Medicaid program, behavioral health services, trauma and emergency care and efforts to improve access to healthcare coverage for Arizona's uninsured. She also coordinates the association's elections strategy through independent expenditures and the political action committee.

Prior to joining AzHHA in October 2009, Ms. Fanning served as Legislative Liaison at the Arizona Department of Health Services (ADHS), acting as the contact between the Governor's Office and the Legislature for ADHS and working on legislation and state budget issues.

Ms. Fanning holds a B.A. in Political Science from Syracuse University.


Greg Harris practices administrative law, healthcare law, procurement law, and government relations at Lewis Roca Rothgerber Christie LLP. He frequently writes and presents on these and related issues. Before joining the firm, Mr. Harris served as the Executive Assistant Director at the Arizona Department of Insurance, as an Assistant Attorney General for the State of Arizona and as a Trial Attorney for the Commodity Futures Trading Commission.



**Section 1557
of the Affordable Care Act**


Overview of the Final Regulation
Arizona Hospital & Healthcare Association
June 21, 2016

Content provided by the U.S. Department of Health and Human Services, Office for Civil Rights




BACKGROUND

- Section 1557 of the Affordable Care Act (ACA) *prohibits discrimination based on race, color, national origin, sex, age or disability* in certain health programs and activities.
- Section 1557 has been in effect since the ACA was passed in 2010.
- In May 2016, the HHS Office for Civil Rights (OCR) issued a final regulation.
- Issuance of the final regulation aims to educate consumers about their rights and to help covered entities understand their obligations under the law.



**WHY WAS SECTION 1557 INCLUDED
IN THE ACA?**

- Section 1557 is integral to achieving the ACA's goals of expanding access to health coverage and health care, and reducing health disparities.
- It builds on long-standing and familiar Federal civil rights laws:
 - Title VI of the Civil Rights Act of 1964
 - Title IX of the Education Amendments of 1972
 - Section 504 of the Rehabilitation Act of 1973
 - Age Discrimination Act of 1975
- Section 1557 assists some of the populations that have been most vulnerable to discrimination in health care and health coverage, including:
 - Women
 - Members of the LGBT community
 - Individuals with disabilities
 - Individuals with limited English proficiency



**WHAT IS NEW ABOUT SECTION 1557 OF THE
AFFORDABLE CARE ACT AND THE REGULATION**

- First Federal civil rights law to prohibit sex discrimination in health programs and activities.
- The Marketplace expands Federal financial assistance to more insurance plans and triggers the requirement for non-discrimination obligations in all of the plans that they offer.
- The final Section 1557 regulation incorporates existing civil rights obligations, but mandates more specific requirements for accessibility by persons with limited English proficiency (LEP) and persons with disabilities and sets forth non-discrimination requirements on the basis of sex.



WHO MUST COMPLY WITH SECTION 1557?

- All health programs and activities that receive Federal financial assistance (FFA) from HHS
 - Examples include hospitals, health clinics, physicians' practices, community health centers, nursing homes, State Medicaid agencies, Medicare Parts A, C and D, health research, and payments, and tax credits and cost-sharing subsidies under Title I of the ACA.
- All health programs and activities administered by ACA Title I entities (State-based and Federally-facilitated Health Insurance Marketplaces).
- All health programs and activities administered by HHS (e.g., Centers for Medicare & Medicaid Services, National Institutes of Health, Health Resources and Services Administration).

NOTE: Where an entity is principally engaged in health services or health coverage, under long standing civil rights laws, all of the entity's operations are considered part of the health program or activity, and must be in compliance with Section 1557.



PROCEDURAL REQUIREMENTS UNDER THE SECTION 1557 REGULATION (cont.)

Designated Employee/Grievance Procedures

- Covered entities with 15 or more employees must have a grievance procedure and designated employee to coordinate efforts to comply with the regulation and resolve grievances.
- The grievance procedure and designated employee's responsibilities must cover discrimination on the basis of race, color, national origin, sex, age, and disability.
- The final regulation includes a sample grievance procedure.



PROCEDURAL REQUIREMENTS UNDER THE SECTION 1557 REGULATION

Notice Requirements

- Covered entities must post in significant publications, areas of public interaction, and websites within 90 days of July 18, 2016:
 - A notice advising individuals of their rights and of covered entities' nondiscrimination obligations (for a nondiscrimination statement in small-sized documents).
 - Taglines in at least the top 15 languages spoken by individuals with limited English proficiency in the relevant state.
- OCR is translating the notice, nondiscrimination statement, and taglines into the languages triggered by the state threshold.



RACE, COLOR & NATIONAL ORIGIN DISCRIMINATION

Under Section 1557, a covered entity cannot:

- Segregate, delay or deny services or benefits based on an individual's race, color or national origin.
- Deny, cancel, limit, or refuse to issue or renew an insurance policy; deny or limit coverage of a claim; impose additional cost sharing or other limitations or restrictions; or employ marketing practices or benefit designs that discriminate on the basis of race, color or national origin.



RACE, COLOR & NATIONAL ORIGIN DISCRIMINATION (cont.)

Under Section 1557, a covered entity must:

- Take reasonable steps to provide meaningful access for individuals with limited English proficiency (LEP)
- Post a notice of individuals' rights providing information about communication assistance for individuals with LEP free of charge
- Post taglines in the top 15 languages spoken by individuals with LEP in the relevant state that indicate the availability of language assistance.
- While not a requirement under Section 1557, covered entities are encouraged to develop and implement a language access plan to ensure they are prepared to take reasonable steps to provide meaningful access to each individual with LEP who may require assistance.



DISABILITY DISCRIMINATION

Under Section 1557, covered entities cannot on the basis of a disability:

- Exclude, delay or deny services or benefits.
- Deny, cancel, limit or refuse to issue or renew an insurance policy.
- Deny or limit coverage of a claim or impose additional cost sharing or other limitations or restrictions.
- Employ marketing practices or benefit designs that discriminate against individuals with disabilities.



DISABILITY DISCRIMINATION (cont.)

Under Section 1557, covered entities must:


- Make reasonable changes to policies, practices and procedures where necessary to provide equal access for individuals with disabilities.
- Ensure newly constructed and altered facilities are physically accessible to individuals with disabilities.
- Provide appropriate auxiliary aids and services, including sign language interpreters (applies to entities with less than 15 employees).
- Make all health programs and activities provided through electronic and information technology accessible to individuals with disabilities.
- Post a notice of individuals' rights providing information about communication assistance for individuals with disabilities free of charge.



SEX DISCRIMINATION

Under Section 1557, covered entities cannot:


- Deny, cancel, limit or refuse to issue or renew an insurance policy; deny or limit coverage of a claim; impose additional cost sharing or other limitations or restrictions; or employ marketing practices or benefit designs that discriminate on the basis of sex.
- Include categorical exclusions or limitations in coverage for all health care services related to gender transition.
- Deny or limit necessary medical services because an individual who is seeking such services identifies as belonging to a different gender than the gender for which the services are ordinarily available.



SEX DISCRIMINATION (cont.)


Under Section 1557, covered entities must:

- Provide equal access to health care and insurance coverage regardless of an individual's sex, including gender identity and sex stereotypes.
- Treat individuals consistent with their gender identity, including record-keeping and access to facilities.



SPECIAL CONSIDERATIONS FOR HOSPITALS


- All operations are covered (from patient care to cafeteria and gift shop and employee health plans)
- Accessibility for persons with disabilities and LEP
- Sex-specific health programs are allowed only where the programs are substantially related to an important health-related or scientific objective.



SPECIAL CONSIDERATIONS FOR HOSPITALS (cont.)

Good models available on OCR website:


- Brooklyn Hospital Voluntary Resolution Agreement under Section 1557 to ensure non-discrimination on the basis of sex in:
 - admissions and intake
 - patient room assignment to ensure safe, ethical, appropriate and non-discriminatory assignment
 - zero tolerance policy for harassment
 - grievance procedure
 - staff training
- OCR Effective Communication Dear Colleague Letter with the Puerto Rico Hospital Association



SPECIAL CONSIDERATIONS FOR HEALTH INSURANCE PLANS


The Section 1557 regulation applies to:

- Issuers that receive Federal financial assistance (FFA), such as:
 - QHP issuers offering plans through the Marketplace
 - Issuers participating in Medicare or Medicaid
- All of the operations of a health insurance issuer receiving FFA principally engaged in providing or administering health insurance, including its off-Marketplace plans and third party administrator activities
- Benefit design and administration of health plans
 - Note that for benefit design changes, health plans must be in compliance for plans beginning on or after January 1, 2017



SPECIAL CONSIDERATIONS FOR HEALTH INSURANCE PLANS (cont.)


- The Section 1557 regulation does not affirmatively require issuers to cover any particular procedure or treatment for gender transition-related care.
- Issuers must have neutral standards and administer them in a nondiscriminatory manner.
- The regulation does not restrict an issuer from determining whether a particular health service is medically necessary or otherwise meets applicable coverage requirements in any individual case.




SPECIAL CONSIDERATIONS FOR EMPLOYERS WHO ARE PRINCIPALLY ENGAGED IN HEALTH PROGRAMS OR ACTIVITIES

Under the Section 1557 regulation, employers

- Principally engaged in a health program or activity must ensure non-discrimination in all operations, including employee health plans
- Those employers not principally engaged, but operating a health program or activity that receives Federal funding from HHS, are responsible for the employee health benefits for employees only in that health program or activity.
- Claims against third party administrators in self-insured employee health plans will be investigated by OCR if they involve administration of claims; if they involve benefit design and OCR does not have jurisdiction because the employee is not principally engaged, OCR will generally refer to EEOC.
- Note that employers are already subject to civil rights laws prohibiting discrimination on all covered grounds if they receive Federal funding.




VISIT OUR WEBSITE!
www.hhs.gov/ocr





On OCR's website

- Read about civil rights and HIPAA laws
- Download factsheets
- Access sample policies and resources in English and other languages
- File a complaint
- Contact us!



**U.S. Department of Health and Human Services
Office for Civil Rights**

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Toll Free: (800) 368-1019
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ROTHSCHILD CHRISTIE

2016 Legislative Session Update

Prepared by
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Albuquerque / Colorado Springs / Denver / Irvine / Las Vegas / Los Angeles / Phoenix / Reno / Silicon Valley / Tucson lrc.com

Compact Legislation

- H2362 NURSE LICENSURE COMPACT
 - Enacts the enhanced Nurse Licensure Compact (Compact) and repeals the current nurse compact.
- H2502 MEDICAL LICENSURE COMPACT
 - Enacts the Medical Licensure Compact (Compact).
- H2503 PSYCHOLOGISTS; LICENSURE COMPACT
 - Enacts the Psychologists Licensure Compact (Compact).
- H2504 PHYSICAL THERAPY LICENSURE
 - Enacts the Physical Therapy Licensure Compact (Compact).

Behavioral Health

- S1326 BEHAVIORAL HEALTH; DEPENDENT CHILDREN; REPORTING
 - updates statute to reflect the transfer of behavioral health services from Arizona Department of Health Services (ADHS) to the Arizona Health Care Cost Containment System Administration (AHCCCS) in 2015.
- H2442 BEHAVIORAL HEALTH; URGENT NEED; CHILDREN
 - outlines procedures for a foster or adoptive parent to obtain urgent behavioral health services for a child in need of such services.
- S1169 MENTAL HEALTH POWER OF ATTORNEY
 - makes changes to the provisions related to a mental health care power of attorney.

Behavioral Health

- S1442 MENTAL HEALTH SERVICES; INFO DISCLOSURE
 - rewrites the provisions related to the release of information or records relating to a patient examination, evaluation or behavioral or mental health treatment that may be released to specified persons.
- S1510 NONRESTORABLE DEFENDANTS; INCOMPETENT; INVOLUNTARY
 - provides notice to the court and prosecutor for persons subject to civil commitment and court-ordered treatment as the result of a finding that the person is incompetent to stand trial and provides an option to screen persons who are believed to be sexually violent persons (SVP) during the competency process.

Substance Abuse

- H2355 OPIOID ANTAGONISTS; PRESCRIPTION; DISPENSING; ADMINISTRATION
 - Allows any health professional who has prescribing authority to prescribe and allows a pharmacist to dispense naloxone hydrochloride without a prescription to a person at risk of experiencing an opioid-related overdose, a family member or community member in a position to assist that person.
- H2107 STRUCTURED SOBER LIVING HOMES
 - Permits a city, town or county to adopt ordinances regulating health and safety standards and enforcement mechanisms for a structured sober living home
- S1283 CONTROLLED SUBSTANCES PRESCRIPTION MONITORING PROGRAM
 - Requires a medical practitioner to obtain a patient utilization report from the Controlled Substances Prescription Monitoring Program's (CSPMP) central database tracking system before prescribing an opioid analgesic or benzodiazepine controlled substance listed in schedule, II, III or IV.

Anatomical Gifts

- H2307 ANATOMICAL GIFTS; PROCUREMENT ORGANIZATIONS; LICENSURE
 - requires procurement organizations to be licensed by the Arizona Department of Health Services (ADHS).
- H2475 FUNERAL ESTABLISHMENTS; PROCUREMENT ORGANIZATIONS
 - makes it unlawful for an Arizona Board of Funeral Directors and Embalmers funeral establishment or licensee to have a financial interest in a statutorily defined procurement organization, including tissue bank, eye bank or other organ storage or harvesting business.

Medical Examiner

- S1104 MEDICAL EXAMINER; JURISDICTION; DEATH REPORTING
 - modifies the circumstances in which the death of a person must be reported to a peace officer.

Regulation of professions

- S1444 BOARD OF NURSING; LICENSURE; COMPLAINTS
 - revises the Arizona Board of Nursing (Board) statutes relating to licensees and applicants who have one or more felony convictions.
 - Despite title, has provisions that apply to health boards other than the nursing board
- S1445 HEALTH CARE SERVICES; PATIENT EDUCATION
 - Prohibits punishment for making a patient aware of or providing lawful health care services for which there is a reasonable basis including the off-label use of health care services or health care-related research or data allowed under state law.

Regulatory Reform

- H2634 AGENCIES; ENROLLMENT; EDUCATIONAL PROGRAMS
 - Emergency measure - prohibits an agency from limiting enrollment in any educational program of an institution of higher education.
- H2450 EXPEDITED RULEMAKING; OUTDATED RULES
 - Expands permissible expedited rulemaking authority
- S1388 RULEMAKING EXEMPTION; ONE-YEAR REVIEW.
 - Agency granted a rule exemption must file a report with GRRC within one year to determine if the rules should be revised.
 - Not expressly prospective
- H2341 POTLUCKS; REGULATIONS EXEMPTION
 - Expands the food and drink rule exemption to include potlucks not conducted at a workplace.

Health Insurance

- S1363 INSURANCE COVERAGE; TELEMEDICINE
 - Expands existing insurance coverage requirements for health care services provided through telemedicine to apply to services received in this state, rather than services received in a rural region of this state only.
- H2692 INSURANCE; PHARMACY BENEFITS; AUDITS
 - Establishes procedures and reporting requirements for pharmacy audits.
- H2264 INSURANCE; PRESCRIPTION EYE DROPS; REFILLS
 - Prohibits the denial of insurance coverage for prescription eye drops under certain circumstances.

Health Insurance

- S1494 INSURANCE; PROHIBITED INDUCEMENTS; EXCEPTIONS
 - Permits insurance companies to offer reasonable incentives to policyholders who participate in feedback efforts through an independent third party.
- H2306 HEALTHCARE PROVIDERS; FAMILY MEMBERS; COVERAGE
 - Requires coverage for health care services to be provided regardless of a subscriber, enrollee or insured's familial relationship with the health care provider.

Regulation of professions

- S1105 ACUPUNCTURE BOARD; LICENSURE; QUALIFICATIONS
 - Removes the term *relicensure* from a statute related to acupuncture.
- H2035 COSMETOLOGY; OMNIBUS
 - Modifies the statutes that regulate the cosmetology profession.
 - Creates a cosmetic laser study committee
 - framework to allow for enhanced opportunities to do business while maintaining safe and prudent practices.
 - framework for laser certification
 - monitoring process in the use of cosmetic lasers.
- H2359 PHYSICIAN ASSISTANTS; CONTINUING MEDICAL EDUCATION
 - Permits physician assistants to use credit obtained from certification programs to fulfill the continuing medical education (CME) requirement for license renewal.

Regulation of professions

- H2144 GENETIC TESTING; INFORMED CONSENT
 - Permits a person who is authorized to consent for a genetic test to release the results of said test.
- S1096 MEDICAL RADIOLOGIC TECHNOLOGY
 - Updates the statutes related to the Arizona Radiation Regulatory Authority (ARRA) and the Medical Radiologic Technology Board (Board) and continues the ARRA and the Board for two years.
- H2265 EPINEPHRINE AUTO-INJECTORS
 - Permits an authorized entity to acquire and stock a supply of epinephrine auto-injectors that have been prescribed by a medical practitioner.
- S1327 HOSPITALS; DIETICIANS; PRESCRIPTIONS; DIET ORDERS
 - Permits a licensed hospital to allow a registered dietician or other qualified nutrition professional to issue diet orders, enteral feeding, nutritional supplementation or parenteral nutrition.

Regulation of professions

- S1112 PHARMACISTS; SCOPE OF PRACTICE
 - expands the immunizations or vaccines that a licensed pharmacist may administer.
- H2109 PHARMACISTS; LICENSURE
 - eliminates the requirement that a pharmacist seeking a reciprocal license must be licensed for at least one year in another jurisdiction.
- S1460 PHARMACY BOARD; MANUFACTURERS; DIETARY SUPPLEMENTS
 - permits the Arizona State Board of Pharmacy (Board) to issue a certificate of free sale to any person licensed by the Board as a manufacturer that wants to sell food supplements or dietary supplements domestically or internationally.
- H2310 BIOLOGICAL PRODUCTS; PRESCRIPTION ORDERS
 - Permits a pharmacist to substitute a biological product for a prescribed biological product when certain conditions are met.

Medical Marijuana

- H2061 MEDICAL MARIJUANA; PREGNANCY; SIGNAGE
 - Mandates the Arizona Department of Health Services (ADHS) to adopt rules requiring all non-profit medical marijuana dispensaries to display signs warning women about the dangers of smoking or ingesting marijuana during pregnancy or to infants while breastfeeding.

AHCCCS Provider regulation

- H2599 AHCCCS; PROVIDER PARTICIPATION; EXCLUSIONS
 - Provides grounds for excluding an individual or entity from participation in the Arizona Health Care Cost Containment System (AHCCCS).

CPR training

- S1137 SCHOOLS; CPR INSTRUCTION
 - Requires public schools to provide cardiopulmonary resuscitation (CPR) training to high school students by July 1, 2019.

Abortion

- S1474 HUMAN FETUS; EMBRYO; PROHIBITED ACTIONS
 - rewrites current statute relating to prohibitions on the use of a human fetus or embryo.
- S1324 ABORTION CLINICS; MEDICATION ABORTIONS
 - requires abortion procedure rules to include that any medication, drug or other substance used to induce or cause a medication abortion be administered in compliance with the Mifeprex final printing label protocol approved by the U.S. Food and Drug Administration (FDA) and in effect as of December 31, 2015.
- S1485 PAYROLL DEDUCTIONS; CHARITABLE CONTRIBUTIONS; PROHIBITION
 - prohibits state employee payroll deductions for contributions to charitable organizations that provide or facilitate nonfederally qualified abortions.

KidsCare

- S1457 KIDSCARE ENROLLMENT; EMPOWERMENT SCHOLARSHIPS; DISABILITIES
 - Establishes a process for students with a disability in the Empowerment Scholarship Account (ESA) program to continue to receive ESA monies after their 12th grade cohort year and requires the Arizona Health Care Cost Containment System (AHCCCS) to submit a state plan amendment to the Centers for Medicare and Medicaid Services (CMS) to resume enrollment in the Children's Health Insurance Program (CHIP).

Board Governance

- H2613 REGULATORY BOARDS; LICENSING; REVISIONS
 - Eliminates several occupational licenses and the related statutes. Requires a cost benefit analysis and feasibility report concerning the transfer of all nonhealth regulatory boards and occupational licenses to a new division within the Arizona Department of Administration (ADOA).
- H2666 GOVERNOR'S ECONOMIC OPPORTUNITY OFFICE; CONSOLIDATION
 - Establishes the Office of Economic Opportunity (OEO). Modifies existing agency programs, policies and funds for OEO to monitor Arizona's tax structure, assess monetary incentives and serve as the workforce, employment, economic development, data and labor market information office.
- S1109 ARIZONA HEALTH FACILITIES AUTHORITY; CONTINUATION
 - Continues the Arizona Health Facilities Authority and its Governing Board for eight years.

Regulatory Board Governance

- S1421 BOARDS; COMMISSIONS; COMPENSATION; EXPENSES
 - Requires all financial and performance audits performed by the Office of Auditor General (OAG) to evaluate use of administrative funds, per diem compensation and reimbursement of expenses for each employee of a state agency or member of a board, commission, council or advisory committee.

Agency "Consolidation"

- H2501 HEALTH REGULATORY BOARDS; TRANSFER; DHS
 - Establishes both a timeframe by which health profession regulatory boards (Boards) are required to move to space under the operation and control of the Department of Health Services (Department) and a process by which the Director of the Department (Director) is to review Board proposed rules. Outlines evaluative requirements for Boards transferring in FY 2016-2017.
 - Did not pass
- S1443 HEALTH PROFESSION REGULATORY BOARDS
 - Requires, beginning January 1, 2017, certain information to be made available on a health profession regulatory board's website, modifies requirements relating to membership of health profession regulatory boards (board), and allows each board to establish a confidential monitoring program for certain licensees. Transfers, beginning September 1, 2016, the licensure and regulation of behavior analysts to the Arizona Board of Behavioral Health Examiners.
 - Vetoed

HIPAA

- H2363 PERSONAL INFORMATION; BREACH RECORDS; EXCEPTION
 - Extends exemptions for Health Insurance Portability and Accountability Act (HIPAA) covered entities to business associates, as defined by HIPAA.
