

## Report on Medicare Compliance Volume 28, Number 20. June 03, 2019 In Proposed 1557 Rule, HHS Drops LEP Taglines And Rolls Back Sex Discrimination Protection

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In a regulation proposed May 24, HHS scales back the 2016 Sec. 1557 regulation, which prohibits discrimination on the basis of race, color, national origin, sex, age or disability. HHS said it would continue to enforce prohibitions on discrimination, but dropped discrimination on the basis of gender identity and termination of pregnancy from the definition of sex discrimination. HHS also swept aside compliance requirements around patients with limited English proficiency (LEP) and disabilities, including notices and taglines that alert them to the availability of language assistance services and auxiliary aids, according to the proposed regulation, which reinterprets Sec. 1557 of the Affordable Care Act (ACA).

“They are pruning back 1557 in an attempt not to create any new nondiscrimination law in health care, but courts ultimately will decide whether 1557 created anything new,” says attorney Andrew Stevens, with Arnall Golden Gregory in Atlanta. “This is not the final word.” Because HHS asks for comment on many sections of the Sec. 1557 regulation, which is enforced by the HHS Office for Civil Rights (OCR), Stevens says the final version may look quite different, pulling back or taking things further.

HHS acknowledges the wholesale changes in the regulation and that higher courts will decide the sex discrimination definitions. “The Department proposes to substantially replace the Section 1557 Regulation, while retaining certain LEP, disability, and assurances of compliance provisions, in order to better comply with the mandates of Congress, relieve approximately \$3.6 billion in undue regulatory burdens, further substantive compliance, reduce confusion, and clarify the scope of Section 1557,” the regulation stated. “By substantially repealing most of the Section 1557 Regulation, the Department would revert to statutory interpretations more consistent with the law and with the United States Government’s official position on certain of the underlying civil rights statutes, and ultimately allow the Federal courts, in particular, the U.S. Supreme Court, to resolve any dispute about the proper legal interpretation of such statute and, thus, on Section 1557 of the Affordable Care Act.”

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