

Report on Medicare Compliance Volume 28, Number 29. August 19, 2019 MSU Resolves First 1557 Sex Discrimination Case; #MeToo Requires Investigation Plans

By Nina Youngstrom

For the first time, a health care organization has entered a voluntary resolution agreement to end a compliance review of sex discrimination under Sec. 1557 of the Affordable Care Act (ACA).

The HHS Office for Civil Rights (OCR) said July 12 that the civil rights investigation of Michigan State University (MSU); the MSU HealthTeam, MSU's multispecialty medical practice; and MSU Health Care Inc. stemmed from osteopathic physician Larry Nassar's sexual abuse of gymnasts and others during his employment at MSU. The voluntary resolution agreement requires MSU to implement reforms, including the use of patient chaperones during "sensitive examinations."

OCR said it began compliance reviews of MSU under Sec. 1557, which prohibits discrimination on the basis of race, color, national origin, sex, age or disability at organizations that receive federal financial funds from HHS, and Title IX, which prohibits discrimination on the basis of sex in federally assisted education programs, after Nassar's sexual abuse of hundreds of girls and women came to light. Nassar pleaded guilty to felony criminal sexual conduct and was sentenced to 60 years in federal prison. OCR added that the former dean of MSU's College of Osteopathic Medicine, William Strampel, was convicted of felony misconduct in connection with the use of his office to sexually harass students and willfully neglecting to monitor Nassar.

"This is a first of its kind agreement that seeks to hold a health system accountable in a new way," says attorney Andrew Stevens, with Arnall Golden Gregory in Atlanta. "It's remarkable that it was only when the Affordable Care Act was passed that discrimination on the basis of sex in health care became unlawful. It is now much easier for individuals who are harassed or abused to make a claim for discrimination [against a health care organization that receives federal funds], much like they would make against an employer." Employees already have protection against discrimination on the basis of sex under Title 7 of the Civil Rights Act of 1974, but Sec. 1557 is specific to patients, he notes.

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