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Sec. 1557 Rule Drops Taglines, Narrows Definition of 'Sex'; Court Decision Opens It Up

By Nina Youngstrom

HHS has scrapped some of the compliance requirements in its final rule on Sec. 1557,^[1] which prohibits discrimination on the basis of race, color, national origin, sex, age or disability. When it takes effect, hospitals, clinics and other covered entities won't have to post nondiscrimination notices or send taglines to patients with limited English proficiency (LEP), alerting them to the availability of free language assistance services, according to the rule, which was published in the *Federal Register* on June 19. Whether hospitals drop everything is another story. They may keep some notices or taglines, depending on the cost.

The final rule also removed gender identity and termination of pregnancy from the definition of sex discrimination in Sec. 1557. The future of that reversal is in doubt, however, because of a landmark June 15 ruling from the U.S. Supreme Court in *Bostock v. Clayton County*,^[2] attorneys said. The court ruled that the Civil Rights Act of 1964,^[3] which bans sex discrimination, applies to discrimination against gay and transgender people in the workplace.

“Overall, they stripped Sec. 1557 down to its bare bones,” said Toby Morgan, director of compliance, Section 1557 & Section 504, at Emory Healthcare in Atlanta. Sec. 1557 had created a new private right of action for patients to enforce discriminatory practices in a health care setting on the basis of these protected classes, but it's gone from the final rule, she said. HHS has effectively conveyed that if patients want to sue, they have to rely on the codified statutes themselves, including the Americans with Disabilities Act, Age Discrimination in Employment Act and Civil Rights Act, rather than on Section 1557 alone. “That has removed a lot of the teeth from the regulation,” she said.

Sec. 1557, which comes from the Affordable Care Act, is enforced by the HHS Office for Civil Rights.

Although there are other civil rights laws with similar protections, Sec. 1557 was the first to specifically address discrimination in the health care industry. The first round of regulations under the Obama administration, finalized in 2016, included many compliance requirements that were eliminated by the Trump administration in the 2020 final regulation, which takes effect in 60 days.

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