

Compliance deadline approaching for Section 1557 nondiscrimination requirements

October 3, 2016

Health care providers and payers must achieve compliance with the Affordable Care Act (ACA) posted nondiscrimination notice requirement by October 16, 2016. However, the notice requirement is just one key provision in the Final Rule implementing Section 1557 of the ACA, and covered entities must ensure they are in compliance with all applicable requirements of the Final Rule.

The Final Rule affects both providers and payers by prohibiting discrimination on the basis of race, color, national origin, sex, age or disability (protected categories), with a focus on language and gender identity, in certain health programs and activities. One of the notable changes is that covered entities may not discriminate based on gender, gender identity or sex stereotypes.

The Final Rule applies to “covered entities,” which include: a) hospitals, health clinics, nursing homes and physicians; and b) health insurance issuers that are recipients of federal financial assistance, including those that offer plans in the ACA Marketplaces, through Medicare Advantage or through Medicaid.

While most of the Final Rule requirements went into effect in July, covered entities must achieve compliance with the posted notice requirement by October 16, 2016. Covered entities must post a notice of consumer civil rights including the nondiscrimination policy and the availability of language and disability assistance services in physical locations where the entity interacts with the public. This notice must be printed in a conspicuously-visible font.

The posted notice of consumer civil rights must include information regarding:

- The covered entity's nondiscrimination policy;
- The availability of, and how to obtain, appropriate auxiliary aids and services, including qualified interpreters;
- The availability of, and how to obtain, translation and language assistance services;
- Contact information for the compliance coordinator (if entity has 15 or more employees);
- The availability of grievance procedures; and
- How to file a complaint with the Office for Civil Rights.

The U.S. Department of Health and Human Services (HHS) has posted an example notice and nondiscrimination policy [here](#).

Covered entities must also post short statements in languages other than English, known as “taglines,” indicating the availability of language services free of charge, in conspicuous physical places where the entity interacts with the public and on the entity's website on the front page. (See HHS's example [here](#), which includes many different languages.)

Covered entities should also ensure they are in compliance with the other requirements of the Final Rule, including:

- Submitting an assurance of compliance with the Final Rule as a part of any application for federal financial assistance or request for certification to participate in a Marketplace;
- Providing for the accessibility of information, services and facilities to individuals with limited English proficiency or disabilities;

- Making reasonable modifications to policies, practices or procedures when necessary to avoid discrimination;
- Designating one employee to coordinate compliance efforts (if entity has 15 or more employees); and
- Adopting grievance procedures that incorporate due process and provide for prompt and equitable resolution.

Note that most physician practices must comply with these provisions. While hospitals have long been required to have policies and procedures addressing access for persons with limited English speaking and disabilities, many physicians and physician practices have not been required to have these policies and procedures in place.

What should hospitals do?

- Make appropriate changes to hospital policies and procedures to add language for nondiscrimination based on gender, gender identity and sex stereotypes.
- Assess and make appropriate changes to hospital grievance procedures for the public and ensure that it covers discrimination based on gender.
- Identify an employee to be the civil rights coordinator for purposes of assuring compliance with these policies, procedures and grievance procedures.
- Train employees to act in accordance with these nondiscrimination policies and procedures.

What should hospitals do for hospital-owned physician practices?

- Assess whether hospital-owned physician practices have the correct policies and procedures in place to comply with Section 1557 of ACA.
- Develop or revise existing nondiscrimination and access policies and procedures in accordance with Section 1557 of ACA.
- Develop a grievance policy and procedure for patients who believe their civil rights have been violated.
- Appoint a civil rights coordinator who can coordinate civil rights compliance efforts and can evaluate grievances.
- Train physicians and physician office staff on compliant admission policies and nondiscrimination practices in accordance with Section 1557 as well as how to handle a civil rights grievance.

What should health plans do?

Covered health insurance issuers must ensure they are not denying, canceling, limiting, or refusing to issue or renew a health-related insurance plan or policy on the basis of one of the protected categories. In particular, they may not deny or limit coverage on the basis of gender identity or for transgender individuals, including an individual going through gender transition.

Compliance with the provisions of the Final Rule applying to health insurance and group health plan benefit designs must occur by the first day of the first plan year beginning on or after January 1, 2017.

Authors
