

**REGULATORY —
SECTION 1557 REINFORCES NONDISCRIMINATION LANGUAGE**

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This Inside Track provides an overview and clarification of the U.S. Department of Health & Human Services' final rule implementing §1557 of the Affordable Care Act — the ACA's nondiscrimination provision. The final rule was released for public inspection in the *Federal Register* on Friday, May 13, and was published on May 18. The effective date of the rule was July 18, 2016, and covered entities were required to comply with the notice and tagline requirements on Oct. 16. Regulations regarding plan terms will take effect for plan years beginning on or after Jan. 1, 2017.

Broadly, §1557 prohibits discrimination on the basis of race, color, national origin, sex, disability and age by:

- any health program or activity that receives federal funding
- any health program or activity that is administered by an executive agency
- any entity created under [Title I of the ACA](#)

Covered entities must take appropriate initial and continuing steps to inform beneficiaries, enrollees, applicants and members of the public by posting and publishing notices of nondiscrimination that include the following information.

- It does not discriminate on the basis of race, color, national origin, sex, age or disability in its health programs and activities.
- It provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities.
- It provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency.
- How to obtain the aids and services in bullets two and three above.
- The name of the employee responsible for compliance and how to contact that person.
- The availability of the grievance procedure and how to file a grievance.
- How to file a discrimination complaint with the HHS Office of Civil Rights.

This information must be posted in visible font size in:

- a conspicuous physical location where the entity serves the public
- a conspicuous location on the entity's website that is accessible from the home page
- Significant publications and communications targeted at members of the public unless the publications/communications are small-sized. Small-sized publications are subject to alternate requirements described below.

OCR has indicated that the phrase "significant communications and significant publications" will be interpreted broadly. Although the final rule does not provide a list of such communications, it confirmed they include: outreach, education and marketing materials; patient handbooks; notices requiring a response from individuals; written notices, such as those pertaining to rights or benefits, consent and complaint forms; written notices of eligibility criteria, rights, denial, loss or decreases in benefits or services; and applications to participate in services or programs. HHS published a [sample](#) Notice of Nondiscrimination in 45 C.F.R. Part 92, Appendix A. Covered entities, however, are not required to use the sample notice.

Along with the nondiscrimination notice, covered entities also must post a short statement, i.e., a tagline in at least the top 15 [languages](#) spoken by individuals with limited English proficiency in the relevant [state\(s\)](#) informing them about the availability of free language assistance services and how to access them. HHS provided a sample tagline:

ATTENTION: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).

For significant publications and communications that are small-sized (e.g., postcards, pamphlets and tri-fold brochures), the covered entity must post in a conspicuously visible font:

- a statement of nondiscrimination noting that the covered entity does not discriminate on the basis of race, color, national origin, sex, age or disability in its health programs and activities
- taglines in at least the top two languages spoken by individuals with limited English proficiency in the state

Sample taglines, translated into 64 languages (which covers the top 15 languages spoken by populations with limited English proficiency in all states) are [provided](#) by OCR. In addition, HHS has published FAQ documents on the [top 15 languages](#), an [aggregation for the timeline](#) and [general questions](#) to help providers better understand the rule. Contact Sarah Willson at 573/893-3700, ext. 1304, or Jane Drummond at 573/893-3700, ext. 1328 for more information.

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