

Publications

# HHS Issues Final Rule on ACA Nondiscrimination Provisions (Section 1557)

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On May 18, 2016, the Office of Civil Rights (“OCR”) at the U.S. Department of Health and Human Services (“HHS”) published a final rule implementing section 1557 of the Patient Protection and Affordable Care Act (“ACA”). 81 Fed. Reg. 31376. This rule prohibits discrimination on the basis of race, color, national origin, sex, age, or disability, for any health program or activity, any part of which receives federal funding or assistance, or under any program or activity that is administered by an executive agency or any program or activity administered by an entity established by title I of the ACA.

The final rule is of critical importance to health insurance issuers, health care providers (including pharmacies and health clinics), and some group health plans.

As was the case with the proposed rule, the scope of the final rule is quite expansive. For an entity principally engaged in providing or administering health services or health insurance coverage or other health coverage, all of its operations are considered part of the health program or activity (with limited exceptions, as noted below) and are subject to the final rule’s requirements if any part of the health program or activity receives federal financial assistance. Further, as discussed in greater detail in the attached memo, while HHS limited the scope of the final rule as it relates to employer liability for self-funded plans that are not receiving federal financial assistance, self-funded plans that utilize health insurance issuers as third-party administrators (“TPAs”) may nonetheless be affected.

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