



**Allison (Ally) Kjellander**

Associate  
208.383.3930  
Boise  
aakjellander@hollandhart.com

# Are You Ready for It? Section 1557's Upcoming Deadlines

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The Department of Health and Human Services (“HHS”) Office of Civil Rights (“OCR”) published its final rules implementing the anti-discrimination provisions under Section 1557 of the Affordable Care Act (“Final Rule”) on May 6, 2024. The Final Rule applies to all health programs or activities that receive, directly or indirectly, federal financial assistance (“FFA”),<sup>1</sup> and to all health programs or activities administered by HHS or by a Title I entity. Entities falling within one of these three categories are called “covered entities.”<sup>2</sup> This Final Rule mimics many of the requirements from the Obama Administration's 2016 Section 1557 Rule (“2016 Rule”).<sup>3</sup> The Final Rule continues to prohibit discrimination on the basis of race, color, national origin, sex, age, or disability, but there are several new twists. And while many requirements under the Final Rule became effective on July 5, 2024, various provisions have staggered effectiveness dates. Specifically, covered entities need to be ready for the following upcoming deadlines:<sup>4</sup>

### November 2, 2024

- **For Covered Entities with 15 or More Employees, Appoint a Section 1557 Coordinator.**<sup>5</sup> The Section 1557 Coordinator will be responsible for handling grievances according to the covered entity's grievance procedures, ensuring compliance with the Final Rule's recordkeeping requirements, coordinating effective implementation of the policies and procedures required under 45 CFR § 92.8, and maintaining documentation of and coordinating training for relevant employees.<sup>6</sup>
- **Post and Provide the Notice of Nondiscrimination.**<sup>7</sup> This Notice of Nondiscrimination must be provided to patients, participants, beneficiaries, enrollees, and applicants of its health programs and activities, and to members of the public. This notice must be provided to those individuals on an annual basis at least or upon request. This notice must be posted on the covered entity's website in a conspicuous location<sup>8</sup> and in clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service from the health program or activity to read or hear the notice.<sup>9</sup> The Notice of Nondiscrimination must include the information listed in § 92.10(a)(1);<sup>10</sup> OCR provided a sample notice that a covered entity can tailor for its use. OCR also provided sample notices of nondiscrimination in 47 non-English languages.

**Within 30 Days of Implementing Required Policies and Procedures,**

### But No Later Than May 1, 2025

- **Train Relevant Employees on Policies and Procedures.**<sup>11</sup> All “relevant employees” must be trained on policies and procedures detailed in 45 CFR § 92.8. Covered entities must document completion of the training and retain such documentation for at least 3 years.<sup>12</sup> “Relevant employees” includes all current and future permanent and temporary employees or contractors that:
  - Interact with patients and members of the public;
  - Make decisions that either directly or indirectly affect patients' healthcare, including the executive leadership team and legal counsel; and
  - Perform tasks and make decisions that either directly or indirectly affect patients' financial obligations, including billing and collections.<sup>13</sup>

For new relevant employees or when the policies and procedures are revised, training must occur within a “reasonable period of time” after the relevant employee joins or after the policies and procedures are revised.<sup>14</sup>

### May 1, 2025

- **Ensure Patient Care Decision Support Tools Are Used Non-Discriminatorily.**<sup>15</sup> A covered entity must not discriminate on the basis for race, color, national origin, sex, age, or disability through its use of patient care decision support tools, including the use of artificial intelligence. A covered entity must use reasonable efforts to identify risks (including input based on prohibited factors) and mitigate risks resulting from the tools. While the effective date for identifying and mitigating risks is May 1, 2025, the Final Rule clarifies that covered entities have an ongoing duty to identify uses of these tools that employ input variables or factors that measure race, color, national origin, sex, age, or disability.<sup>16</sup>

### July 5, 2025

- **Post and Provide the Notice of Availability of Language Assistance Services and Auxiliary Aids and Services.**<sup>17</sup> This notice must be provided to patients, participants, beneficiaries, enrollees, and applicants of its health programs and activities, and to members of the public. This notice must be provided to those individuals at least on an annual basis, upon request, and with electronic and hard-copy notices and documents<sup>18</sup> (*g.*, Notice of Nondiscrimination, Notice of Privacy Practices, intake and discharge forms and papers, communications related to public health emergencies, explanations of benefits, etc.). This notice must be posted on the covered entity's website in a conspicuous location,<sup>19</sup> and in clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service from the health program or

activity to read or hear the notice.<sup>20</sup> The Notice of Availability of Language Assistance Services and Auxiliary Aids and Services must be provided in alternate formats for individuals with disabilities who require auxiliary aids and services to ensure effective communication. In addition, this notice must be provided in English *and* at least the 15 non-English languages most commonly spoken by individuals with limited English proficiency of the relevant State(s) in which the covered entity operates.<sup>21</sup> This notice must include the information detailed in 45 CFR § 92.11(a),<sup>22</sup> but OCR provided sample notices in English and 47 non-English languages that a covered entity can tailor for its use.

- **Adopt and Implement Policies and Procedures.**<sup>23</sup> All policies and procedures required under the Final Rule must be written, include the effective date, and be “reasonably designed,” accounting for the size, complexity and type of the covered entity’s health programs or activities.<sup>24</sup> A covered entity must have the following policies and procedures:
  - **Nondiscrimination Policy.** This policy must state, at a minimum: (1) that the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability; (2) that the covered entity provides language assistance services and appropriate auxiliary aids and services for free; (3) that the covered entity will provide reasonable modifications for individuals with disabilities; and (4) the Section 1557 Coordinator’s contact information (if applicable).<sup>25</sup>
  - **If the Covered Entity Has 15 or More Employees, Grievance Procedures.** The procedures must state, at a minimum, that the covered entity: (1) promptly and equitably resolves grievances alleging that any action would be prohibited by Part 92 or § 1557; (2) retains filed grievances according to the Final Rule’s record retention requirements; and (3) requires that the identity of the complainant remain confidential, except as required by law or as necessary to comply with the Final Rule.<sup>26</sup>
  - **Language Access Procedures.** The procedures must state, at a minimum, a covered entity’s: (1) process for providing language assistance services to individuals with limited English proficiency; (2) Section 1557 Coordinator’s contact information (if applicable); (3) process for identifying an individual with limited English proficiency; (4) process for obtaining qualified interpreters and translators for an individual with limited English proficiency; (5) qualified bilingual staff members; and (6) list of any electronic and written translated materials that the covered entity has, the languages they are translated into, the issuance date, and how to access electronic translations.<sup>27</sup>

- **Effective Communication Procedures.** The procedures must state, at a minimum: (1) the covered entity's process for ensuring effective communication for individuals with a disability; (2) the covered entity's Section 1557 Coordinator's contact information (if applicable); (3) the covered entity's process for obtaining a qualified interpreter's services to communication with an individual with disabilities, free of charge; (4) the names of the covered entity's qualified bilingual staff members; and (5) how to access appropriate auxiliary aids and services for free.<sup>28</sup>
- **Reasonable Modification Procedures.** The procedures must state, at a minimum: (1) the process for making reasonable modifications to its policies, practices, or procedures when necessary to avoid discrimination based on a disability; (2) the Section 1557 Coordinator's contact information (if applicable); (3) the process for responding to requests from an individual with a disability for changes, exceptions, or adjustments to a rule, policy, or service of the covered entity; and (4) the process for determining whether a modification would fundamentally alter the nature of the health program or activity, including identifying an alternative modification that does not result in a fundamental alteration to ensure the individual with a disability receives the benefits or services.<sup>29</sup>

OCR provided sample policies and procedures that a covered entity can tailor for its use.

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<sup>1</sup> FFA means “any grant, loan, credit, subsidy, contract (other than a procurement contract but including a contract of insurance), or any other arrangement by which the federal government, directly or indirectly, provides assistance or otherwise makes assistance available in the form of:

1. Funds;
2. Services of federal personnel; or
3. Real or personal property or any interest in or use of such property, including: (a) transfers or leases of such property for less than fair market value or for reduced consideration; and (b) proceeds from a subsequent transfer or lease of such property if the federal share of its fair market value is not returned to the federal government.” 45 CFR § 92.4.

FFA also includes funds or services “that [HHS] plays a role in providing or administering, including advance payments of the premium tax credit and cost-sharing reduction payments under Title I of the ACA, as well as

payments, subsidies, or other funds extended by [HHS] to any entity providing health insurance coverage for payment to or on behalf of a person obtaining health insurance coverage from that entity or extended by [HHS] directly to such person for payment to any entity providing health insurance coverage.” 45 CFR § 92.4.

<sup>2</sup> Importantly, OCR clarified that the definition of FFA now includes Medicare Part B funds. This means that entities receiving, directly or indirectly, Medicare Part B funds are covered entities and thus must comply with the Final Rule. 89 Fed. Reg. 37665.

<sup>3</sup> The Trump Administration's 2020 Section 1557 Rule stripped many of the 2016 Rule's protections and requirements.

<sup>4</sup> The Final Rule provides deadlines with reference to the effective date (e.g., “within 120 days of July 5, 2024”). The dates listed in this article are the anticipated dates, but these are unofficial deadlines and could be impacted by holidays or subsequent HHS announcements.

<sup>5</sup> 45 CFR § 92.1(b).

<sup>6</sup> 45 CFR § 92.7.

<sup>7</sup> 45 CFR § 92.1(b).

<sup>8</sup> This requirement only applies if the covered entity has a website. 45 CFR § 92.10(a)(2)(iii).

<sup>9</sup> 45 CFR § 92.10(a)(2).

<sup>10</sup> The notice must include the following information: (a) the covered entity does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex, age, or disability; (b) the covered entity provides reasonable modifications for individuals with disabilities, and 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; (c) the covered entity provides language assistance services to individuals with limited English proficiency, including electronic and written translated documents and oral interpretation free of charge and in a timely manner; (d) how to obtain the reasonable modifications, appropriate auxiliary aids and services, and language assistance services; (e) the contact information for the Section 1557 Coordinator (if applicable); (f) the availability of the grievance procedure, including how to file a grievance (if applicable); (g) how to file a discrimination complaint with OCR; and (h) how to access the covered entity's website that provides the contents of this notice. 45 CFR § 92.10(a)(1).

<sup>11</sup> 45 CFR §§ 92.1(b), 92.9(b)(1). Curiously, the Final Rule does not require the written policies and procedures until July 5, 2025. But it does require that relevant employees be trained on those policies and procedures “as soon as possible, but no later than 30 days following a covered entity's implementation of the policies and procedures required by § 92.8, *and no*

*later than 300 days following July 5, 2024” (i.e., May 1, 2025). 45 CFR § 92.9(b)(1). To make matters more perplexing, while § 92.9 states that the training must be completed “no later than 300 days following July 5, 2024” (i.e., May 1, 2025), § 92.1(b) states that the training must be completed “no later than one year of July 5, 2024” (i.e., July 5, 2025). Even if OCR clarifies whether the training must be completed by May 1, 2025, or July 5, 2025, it will not change the fact that the July 5, 2025, deadline for implementing the policies and procedures required by the Final Rule will need to occur sooner than that to ensure that the relevant employee training deadlines are met. We hope OCR will clarify the deadlines for implementing the policies and procedures and the correlating training for relevant employees.*

<sup>12</sup> 45 CFR §§ 92.9(a), (c).

<sup>13</sup> 45 CFR § 92.9(b)(4); 89 Fed. Reg. 37564–65. When in doubt as to who qualifies as a relevant employee, OCR clarified that a covered entity has discretion to train all of its employees. 89 Fed. Reg. 37564.

<sup>14</sup> 45 CFR §§ 92.9(b)(2) – (3).

<sup>15</sup> 45 CFR § 92.1(b).

<sup>16</sup> 45 CFR § 92.210.

<sup>17</sup> 45 CFR § 92.1(b).

<sup>18</sup> The full list of electronic and written communications can be found at 45 CFR § 92.11(c)(5).

<sup>19</sup> This requirement only applies if the covered entity has a website. 45 CFR § 92.11(c)(3).

<sup>20</sup> 45 CFR § 92.11(c)(4).

<sup>21</sup> 45 CFR § 92.11(b). A key difference between the 2016 Rule and this Final Rule related to the 15 non-English language translation provision is that the Final Rule drops the “tagline” requirement for all “material” communications from the 2016 Rule. Instead, the full Notice of Availability of Language Assistance Services and Auxiliary Aids and Services must be provided and posted as described above.

<sup>22</sup> “A covered entity must provide a notice of availability of language assistance services and auxiliary aids and services that, at minimum, states that the covered entity, in its health programs or activities, provides language assistance services and appropriate auxiliary aids and services free of charge, when necessary for compliance with section 1557 or this part, to participants, beneficiaries, enrollees, and applicants of its health program or activities, and members of the public.” 45 CFR § 92.11(a).

<sup>23</sup> 45 CFR § 92.1(b). See *also* footnote 11 above.

<sup>24</sup> 45 CFR § 92.8(a).

<sup>25</sup> 45 CFR § 92.8(b).

<sup>26</sup> 45 CFR § 92.8(c).

<sup>27</sup> 45 CFR § 92.8(d).

<sup>28</sup> 45 CFR § 92.8(e).

<sup>29</sup> 45 CFR § 92.8(f).

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