

LEGAL UPDATE

Federal Courts Block Enforcement of Certain Section 1557 Nondiscrimination Provisions

On April 26, 2024, the U.S. Department of Health and Human Services' (HHS) Office of Civil Rights (OCR) issued a [final rule](#) under Section 1557 of the Affordable Care Act, which prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities. **The final rule was to become effective July 5, 2024, with varied applicability dates for certain provisions, but federal courts have blocked portions of the rule from going into effect.**



SECTION 1557 APPLICABILITY

- While most employer health plans will not be considered covered entities, to the extent a group health plan receives Federal financial assistance, it would be subject to Section 1557.
- A third-party administrator for a self-funded group health plan may be considered a covered entity where it is affiliated with a health insurance issuer that receives funding.
- Whether Section 1557 applies to a particular entity is a fact-specific analysis.

Regulatory Background

Prior rules and guidance that the OCR has published to implement Section 1557 have been the subject of numerous lawsuits, dating back to when initial regulations were issued in 2016. The litigation has primarily focused on:

- Which health programs and activities are subject to Section 1557's nondiscrimination requirements; and
- Whether sex discrimination includes discrimination based on gender identity, sexual orientation and termination of pregnancy.

2024 Final Rule

The latest final rule expands the scope of prior 2020 regulations by providing, among other things, that sex discrimination includes discrimination on the basis of sexual orientation and gender identity, as well as sex stereotypes, sex characteristics, and pregnancy or related conditions.

Legal Challenges

On July 3, 2024, three federal district court judges blocked enforcement of certain provisions of the final rule, as follows:

- A federal district court judge in [Mississippi](#) issued a **nationwide injunction**, preventing enforcement of the rule "in so far as [it is] intended to extend discrimination on the basis of sex to include discrimination on the basis of gender identity[.]"
- A Florida federal district court judge blocked enforcement of OCR's interpretation of discrimination "on the basis of sex" as it relates to gender identity and postponed the effective date of the rule regarding certain other provisions, **but within Florida only**.
- A Texas federal district court judge postponed the effective date of the rule **in its entirety, but only as to Texas and Montana**.

Action Steps

These rulings are likely to be appealed, so implementation of these Section 1557 provisions remains in flux. Plan administrators and issuers should **continue to monitor all legal developments** in consultation with benefits counsel and work closely with their benefits advisors in complying with their Section 1557 obligations. They can also review [OCR's Section 1557 webpage](#) for updates.