

ACA 1557: More Than Just Transgender Benefits

Earlier this year, the Department of Health and Human Services ("HHS") Office of Civil Rights issued final regulations implementing Affordable Care Act ("ACA") section 1557. Most headlines and discussion surrounding these final regulations centered on covered entities providing transgender services effective for the 2017 plan year. Potentially lost in the shuffle are a number of other detailed compliance obligations with much earlier deadlines. We highlight below these compliance obligations so that plan sponsors that qualify as covered entities under ACA section 1557 can begin implementing these additional steps. Generally speaking, a covered entity for this purpose is an entity that operates a health program and receives federal financial assistance from HHS. Covered entity status can be complex and should be carefully reviewed with legal counsel.

Effective July 18, 2016, covered entities that employ 15 or more persons must:

- **Designate a responsible employee to coordinate ACA section 1557 compliance efforts.** This employee will also lead investigation of any allegations of noncompliance with ACA section 1557. The responsible employee can be any employee of the covered entity and can also be a committee of employees. While the deadline for appointing the responsible employee was July 18, 2016, the notice in which the responsible employee will be first identified is not required until October 16, 2016. Accordingly, covered entities should designate the responsible employee as soon as possible to meet the upcoming notice deadline.
- **Adopt grievance procedures that incorporate appropriate due process standards and provide for prompt and equitable resolution of grievances under ACA section 1557.** The final regulations do not detail what the grievance procedures should include, but provide a nonmandatory sample grievance procedure. Covered entities might also contend that a slightly modified version of the Department of Labor ("DOL") claims and appeals provisions, included in the group health plan, could satisfy the requirement.

POSTED:

Oct 10, 2016

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Effective October 16, 2016 all covered entities, regardless of size, must:

- **Provide a new notice to all participants, beneficiaries, applicants and enrollees, and members of the public that includes the following information:**
- a statement 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;
- a statement that the covered entity provides appropriate "auxiliary aids and services," including qualified interpreters and information in alternate formats, free of charge and in a timely manner, where such aids and services are necessary to ensure equal opportunity to participate for individuals with disabilities;
- a statement that the covered entity 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;
- information on how to obtain these aids and services; and
- how to file a discrimination complaint with the HHS Office of Civil Rights.

Covered entities that employ 15 or more employees must also include the following in the notice:

- identification of, and contact information for the responsible employee; and
- the availability of a grievance procedure and how to file a grievance.

The notice must be posted:

- in a conspicuously visible font size in all "significant publications" and "significant communications" sent to participants, beneficiaries, applicants and members of the public;
- in a conspicuous physical location where the entity interacts with the public;



and

- in a conspicuous location on the covered entity's website accessible from the homepage of the website.

The covered entity must also include taglines in the top 15 languages spoken by individuals with limited English proficiency in the relevant state or states in the notices. A tagline is a short statement written in the non-English languages that indicates the availability of language assistance services free of charge.

- **Include a nondiscrimination statement in significant publications and significant communications that are small sized, such as postcards and trifold brochures.** This statement is in lieu of the notice described above and will provide 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. This nondiscrimination statement must also include taglines in the top two languages spoken by individuals with limited English proficiency in the relevant state or states.

The final regulations do not specify what constitutes a "significant publication" or "significant communication." Without additional information on what is considered a significant publication or communication, the notice or statement should likely accompany any enrollment materials, summary plan descriptions, summaries of benefits and coverage, and summaries of material modifications.

Covered entities should review these requirements so that these actions can be implemented by the upcoming October deadline. Plan sponsors that are uncertain whether they qualify as covered entities or that have questions on these obligations should contact their Reinhart attorney.

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