

Nationwide Injunction of Select ACA Nondiscrimination Requirements

The U.S. District Court for the Northern District of Texas ("District Court") issued an injunction on December 31, 2016 in *Franciscan Alliance, Inc. v. Burwell* that prevents the Department of Health and Human Services ("HHS") from enforcing the "gender identity" and "termination of pregnancy" nondiscrimination requirements in the Affordable Care Act's section 1557 regulations. The injunction applies to covered entities nationwide. Accordingly, HHS cannot currently enforce the section 1557 regulations which require covered entities to cover transgender services. All other aspects of the section 1557 regulations, including the notice and tagline requirements, continue to apply.

The District Court's injunction renders uncertain the "gender identity" and "termination of pregnancy" nondiscrimination requirements. HHS has not yet indicated whether it will appeal, but if it does, the Fifth Circuit Court of Appeals may overturn the District Court's decision and reinstate HHS's ability to enforce these two parts of the section 1557 regulations, at least until there is a final ruling on the issue. However, even if HHS appeals, the agency may not vigorously pursue the case after Inauguration Day.

Health plan sponsors should note other laws may require them to cover transgender services. For example, the District Court's ruling does not affect Executive Order 11246 and its implementing regulations, which independently prohibit federal contractors from discriminating against transgender individuals when providing health care benefits. Additionally, if health plan sponsors' coverage discriminates against transgender individuals, they may face sex discrimination claims under title VII of the Civil Rights Act of 1964. These types of title VII sex discrimination claims gained traction in 2016 and present a risk to plans that do not cover transgender services.

Health plan sponsors should weigh the effects of the District Court's injunction when planning their covered benefits. Please contact your Reinhart [Employee Benefits](#) attorney for assistance with your benefit planning, compliance, or any other questions.

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