

## **Summary of Recent Changes to Section 1557 Non-Discrimination Requirements for Covered Healthcare Providers**

The below summary identifies changes made to Section 1557 regulations for covered providers. Requirements currently in place and largely unchanged are not identified below nor does this summary discuss changes for health insurers and health plans or requirements for construction of buildings/facilities. Medicare Part B providers who have not previously been covered by Section 1557 must comply with Section 1557 by July 5, 2025. For providers currently subject to Section 1557, the new rule's effective date is July 5, 2024; however, several requirements have a delayed effective date as noted below.

### **1. Meaningful Access for Individuals with Limited English Proficiency**

Requirement: Provide accurate and timely access to language assistance services free of charge to individuals with Limited English Proficiency ("LEP") (including companions of patients) in a manner which protects the privacy and independent decision-making of the individual. Covered providers must already comply with this requirement but the new rules include some changes to how this requirement is implemented as noted below.

Compliance Deadline: July 5, 2024

Updates Needed to Current Policies/Processes:

- Update definitions to revise or include key terms. See last page of this summary for key terms and their definitions in the new rules.
- Provide language access to companions with LEP.
- Remove 2020 four factor analysis if its currently in your policies and replace with requirement that you'll take reasonable steps in light of the nature and importance of the service/activity and the communication at issue to the individual with LEP.
- Ensure reliance on non-qualified adult/minor interpreter in an emergency situation is a temporary measure only and once qualified interpreter arrives he/she must confirm or supplement initial communications with the initial non-qualified interpreter.
- If individual with LEP requests the use of an accompanying adult to interpret, the request must be made to the qualified interpreter in private to ensure it is voluntary.
- When using machine translation, translation must be reviewed by a qualified human translator when text is critical to the individual's rights/benefits/meaningful access; when accuracy is "essential"; or when source documents contain complex, non-literal or technical information. If human review not required, the document must warn the reader it was not reviewed by a human and may contain errors.
- Ensure video and audio remote interpreter services meet standards.

## **2. Effective Communication for Individuals with Disabilities**

Requirement: Provide communications with individuals with disabilities (including companions) in a manner as effective as communications with non-disabled individuals and free of charge. Covered providers must already comply with this requirement but the new rules include some changes to how this requirement is implemented as noted below.

Compliance Deadline: July 5, 2024

Updates Needed to Current Policies/Processes

- Update definitions to revise or include key terms. See last page of this summary for key terms and their definitions in the new rules.
- Provide companions with disabilities with access to effective communications and auxiliary aides and services.
- Make sure effective communications and auxiliary aides and services are provided free of charge.
- Avoid using an exclusive method of communications.
- Ensure video and audio remote interpreter services meet standards.

## **3. Prohibited Discrimination & Equal Access on the Basis of Sex**

Requirement: Must not discriminate against an individual on the basis of race, color, national origin, sex, age, disability. Covered providers must already comply with the non-discrimination requirement; however, the rule has expanded what's considered "discrimination on the basis of sex" to include "sex characteristics, pregnancy or related conditions, sexual orientation, gender identity, and sex stereotypes". The rules also contain a new requirement that covered providers provide individuals with equal access to services without discrimination on the basis of sex.

Compliance Deadline: July 5, 2024

Updates Needed to Current Policies/Processes:

- Discrimination is already prohibited; however, the new regulations expand what is considered discrimination on the basis of sex. Covered providers should evaluate their current policies/processes in light of the inclusion of "sex characteristics, pregnancy or related conditions, sex orientation, gender identity and sex stereotypes".
  - Consider any policies or processes used by the provider which may be implicated by the expanded interpretation of "sex discrimination" and which may be considered discriminatory under this expanded interpretation.
  - Consider how the "equal access on the basis of sex" requirement will impact the organization based on the expanded interpretation and inclusion of sex characteristics, pregnancy or related conditions, sex orientation, gender identity and sex stereotypes. Note, (i) inquiries regarding a patient's

sex or physical traits related to sex and other medical inquiries in the course of providing medical care are allowable but should be relevant to assessing the patient's condition or providing medical care; and (ii) the rule does not mandate a specific standard of care or course of treatment for any individual and a provider is not required to provide a service if it has a legitimate, nondiscriminatory reason.

- Assess whether and how:
  - Your services or access to your services are impacted by the individual's sex assigned at birth, gender identity or gender otherwise recorded;
  - Individuals are treated differently or separated on the basis of sex in a manner that subjects them to more than de minimis harm, including policies or practices which prevent the individual from participating in your services consistent with their gender identity;
  - You deny or limit health services sought for the purpose of gender transition or other gender-affirming care that would be provided for other purposes and if that denial or limitation is based on the individual's sex assigned at birth, gender identity or gender otherwise recorded; and
  - A health care professional's ability to provide health services is impacted based on the individual's sex assigned at birth, gender identity or gender otherwise recorded and whether the impact results in prohibition discrimination or denial of services.
- Consult with your legal counsel on the risk of any policies or processes that implicate the new expanded interpretation of "sex discrimination" and how they may need to be changed in light of the expanded interpretation.
- If you're a religious-affiliated organization, discuss application of the provisions in light of the conscience protection with your legal counsel.
- Monitor status of litigation challenging the scope of the new rules and its provisions applicable to sex discrimination.

#### **4. Section 1557 Coordinator**

Requirement: If 15 or more employees, must designate an employee to serve as the organization's Section 1557 Coordinator. This is a new requirement.

Compliance Deadline: November 2, 2024

Updates Needed to Policies/Processes:

- Designate an employee as the 1557 Coordinator; may have more than one 1557 Coordinator if you have multiple facilities, locations, etc.
- Create job description/role definition for the 1557 Coordinator. 1557 Coordinator is responsible for coordinating the organization's compliance with its responsibilities under Section 1557 in its health programs/activities, including the investigation of

any grievance communicated to it alleging non-compliance with Section 1557 or alleging any action that would be prohibited by Section 1557. Specific duties include:

- Receiving, reviewing, and processing grievances;
  - Coordinating recordkeeping requirements;
  - Coordinating effective implementation of the organization's language access procedures;
  - Coordinating effective implementation of the organization's communication procedures;
  - Coordinating effective implementation of the reasonable modification procedures; and
  - Coordinating training of relevant employees, including maintaining documentation.
- 1557 Coordinator may delegate duties to other individuals but remains responsible for ensuring requirements are met.

## **5. Notice of Non-Discrimination**

Requirement: Must provide all patients and the public with a notice of non-discrimination. This is a new requirement.

Compliance Deadline: November 2, 2024

Updates Needed to Policies/Processes

- Prepare notice. Get sample notice at <https://www.hhs.gov/civil-rights/for-providers/resources-covered-entities/index.html>
- Provide notice to all patients annually.
- Post notice in conspicuous location on organization's website.
- Post notice in clear/prominent physical locations where patients come to receive services in no smaller than 20 point sans serif font.
- Provide notice to individuals upon request.

## **6. Non-Discrimination in Patient Care Decision Support Tools**

Requirement: Have an ongoing duty to make reasonable efforts to (i) identify uses of patient care decision support tools used in providing services that employ input variables or factors that measure race, color, national origin, sex, age or disability and (ii) mitigate the risks of discrimination resulting from the tools use. This is a new requirement.

Compliance Deadline: May 1, 2025

Update to Policies/Processes:

- Identify patient care decision support tools being used within your organization.

- Implement policies/processes to:
  - Evaluate patient care decision support tools prior to use and periodically thereafter and seek information from the developer or publicly available sources on potential for variables or factors based on race, color, national origin, sex, age or disability;
  - Ensure patient care decision support tools are used in the manner or under conditions intended by the developer;
  - If customizing or developing your own patient care decision support tool, ensure the potential for discrimination and risks associated with discrimination are evaluated and mitigated; and
  - Consider ways to mitigate the risk associated with discrimination in patient care decision support tools.

## 7. Notice of Availability

Requirement: Notice of availability of language assistance services and auxiliary aides and services must be provided in English and 15 languages most commonly spoken by LEP individuals in the State(s) the organization operates in and provided in alternative formats to ensure effective communications with individuals with disabilities. This is a new requirement, similar to the “tagline” requirement in the 2016 regulations.

Compliance Deadline: July 5, 2025

Updates Needed to Policies/Processes:

- Prepare notice in English and 15 most common languages in the State. Get sample notice at <https://www.hhs.gov/civil-rights/for-providers/resources-covered-entities/index.html>
- Provide notice annually, accompanying notice of non-discrimination.
- Post notice in conspicuous location on organization’s website.
- Post notice in clear/prominent physical locations where patients come to receive services in no smaller than 20 point sans serif font.
- Include in these electronic or written communications:
  - Notice of non-discrimination;
  - Notice of privacy practices;
  - Application and intake forms;
  - Consent forms and instructions related to medical procedures or operations;
  - Communications and forms relating to advanced directives, medical power of attorney or living will;
  - Discharge papers/instructions;
  - Communications relating to the cost or payments for care, including bills, collection materials, and good faith estimates;
  - Notices of denial or termination of eligibility/benefits/services, including notices of appeals or grievance rights;

- Communications related to an individual’s rights, eligibility, benefits, and services that require or request a response from the individual;
- Communications related to a public health emergency;
- Complaint forms; and
- Patient handbooks/manuals.
- May include an opt-out process where on an annual basis the organization may provide the individual with the option to opt out of receipt of the notice of availability as long as you do not condition the receipt of any benefit on the opt out. If using opt-out, you must:
  - Inform the individual they have the right to receive notice upon request in their primary language and through auxiliary aides and services;
  - Inform the individual opting out isn’t a waiver of their right to receive language assistance or auxiliary aides and services;
  - Document on an annual basis the individual has opted out; and
  - Do not treat a non-response as a decision to opt out.
- May also document the individual’s primary communication or auxiliary aid/service and provide all material and communications in that language or through that auxiliary aide/service.

**8. Section 1557 Policies & Procedures**

Requirement: Implement written policies and procedures that are designated to comply with Section 1557 and reasonably designed taking into account the size, complexity and type of services undertaken by the provider. This is a new requirement; however, providers may already have policies implementing portions of their Section 1557 requirements.

Compliance Deadline: July 5, 2025

Updates Needed to Policies/Processes:

- Ensure you update or create new policies, including:
  - A non-discrimination policy which prohibits discrimination;
  - Describing the language assistance services provided including how an employee identifies who is an LEP individual and obtains the services of qualified interpreters and translators; the names of any qualified bilingual staff members; a list of any electronic and written translated materials the provider has including the languages translated into, the date and how to access electronic translations; and the name and contact information for the 1557 coordinator (if applicable);
  - Describing the processes used for ensuring individuals with disabilities receive effective communication, including how an employee obtains the services of qualified interpreters; the names of qualified interpreter staff members; how to access appropriate auxiliary aides and services; and the name and contact information for the 1557 coordinator (if applicable); and

- Describing the processes for making reasonable modifications to policies, practices or procedures when necessary to avoid discrimination on the basis of disability; describing the process for responding to requests from individuals with disabilities for changes, exceptions or adjustment to a rule, policy, practice, or service; process for determining whether making the modification would fundamentally alter the nature of the service; and the name and contact information for the 1557 coordinator (if applicable).
- When developing your language assistance policies, consider the language access needs in your service area and make sure your identified interpreter and translator providers are capable of meeting these language needs. Review and consider the recommendations in HHS LEP Guidance and HHS Language Access Plan.
- If 15 or more employees, implement written grievance procedures that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by Section 1557.
- Update record retention policies to ensure records relating to filed grievances are retained for at least 3 years.
- Include in the policy a requirement that employees who are impacted by a change in the policies will receive additional training in connection with the change.

## **9. Training on Policies & Procedures**

Requirement: Train relevant employees on the organization’s Section 1557 policies. This is a new requirement.

Compliance Deadline: Within 30 days of implementation of 1557 policies but no later than July 5, 2025.

Updates Needed to Policies/Processes:

- Identify “relevant employees” who must be trained. “Relevant employees” include permanent and temporary employees whose roles and responsibilities include interacting with patients and members of the public; making decisions that directly or indirectly affect patients’ health care, including the executive leadership team and legal counsel; and performing tasks and making decisions that directly or indirectly affect patients’ financial obligations, including billing and collection.
- Develop training materials based on your updated policies and procedures.
- Update new hire processes to ensure new hires are trained on Section 1557 policies within a reasonable period of time after hire.
- Update record retention policies to ensure training documentation is retained for a minimum of 3 years.

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## KEY TERMS & DEFINITIONS IN UPDATED SECTION 1557 REGULATIONS

The following is a list of key terms and definitions in the updated Section 1557 regulations.

**“Auxiliary aids and services”**<sup>1</sup> include, for example:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services, as defined in 28 CFR 35.104 and 36.104; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology (ICT); or other effective methods of making aurally delivered information available to persons who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible information and communication technology; or other effective methods of making visually delivered materials available to persons who are blind or have low vision;

(3) Acquisition or modification of equipment and devices; and

(4) Other similar services and actions.

**“Companion”**<sup>2</sup> means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a covered entity, who along with such individual, is an appropriate person with whom a covered entity should communicate.

**“Disability”**<sup>3</sup> means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment, as defined and construed in the Rehabilitation Act, 29 U.S.C. 705(9)(B), which incorporates the definition of “disability” in the ADA, 42 U.S.C. 12102, as amended and adopted at 28 CFR 35.108.

**“Individual with limited English proficiency”**<sup>4</sup> means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English. An individual with limited English proficiency may be competent in English for certain types of communication (e.g., speaking or understanding), but still be limited English proficient for other purposes (e.g., reading or writing).

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<sup>1</sup> Similar to the definition in the 2016 rule.

<sup>2</sup> New definition; not included in the 2016 rule.

<sup>3</sup> Similar to the definition in the 2016 rule.

<sup>4</sup> Additions from 2016 rule underlined.



**“Information and communication technology (ICT)”**<sup>5</sup> means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; telehealth interfaces or applications; customer premises equipment; multifunction office machines; software; mobile applications; websites; videos; and electronic documents.

**“Language assistance services”**<sup>6</sup> may include, but are not limited to:

(1) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with limited English proficiency, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with limited English proficiency;

(2) Written translation, performed by a qualified translator, of written content in paper or electronic form into or from languages other than English; and

(3) Written notice of availability of language assistance services.

**“Machine translation”**<sup>7</sup> means automated translation, without the assistance of or review by a qualified human translator, that is text-based and provides instant translations between various languages, sometimes with an option for audio input or output.

**“Patient care decision support tool”**<sup>8</sup> means any automated or non-automated tool, mechanism, method, technology, or combination thereof used by a covered entity to support clinical decision-making in its health programs or activities.

**“Qualified bilingual/multilingual staff”**<sup>9</sup> means a member of a covered entity's workforce who is designated by the covered entity to provide in-language oral language assistance as part of the person's current, assigned job responsibilities and who has demonstrated to the covered entity that they are:

(1) Proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology; and

(2) Able to effectively, accurately, and impartially communicate directly with individuals with limited English proficiency in their primary languages.

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<sup>5</sup> Similar to the definition in the 2020 rule.

<sup>6</sup> Similar to the definition in the 2016 rule but “Taglines” replaced with “notice of availability”.

<sup>7</sup> New definition; not included in the 2016 rule.

<sup>8</sup> New definition; not included in the 2016 rule.

<sup>9</sup> Similar to the definition in the 2016 rule.

**“Qualified individual with a disability”**<sup>10</sup> means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the covered entity.

**“Qualified interpreter for an individual with a disability”**<sup>11</sup> means an interpreter who, via a video remote interpreting service (VRI) or an on-site appearance:

- (1) Has demonstrated proficiency in communicating in, and understanding:
  - (i) Both English and a non-English language (including American Sign Language, other sign languages); or
  - (ii) Another communication modality (such as cued-language transliterators or oral transliteration);
- (2) Is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original statement; and
- (3) Adheres to generally accepted interpreter ethics principles including client confidentiality.
- (4) Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

**“Qualified interpreter for an individual with limited English proficiency”**<sup>12</sup> means an interpreter who via a remote interpreting service or an on-site appearance:

- (1) Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language (qualified interpreters for relay interpretation must demonstrate proficiency in two non-English spoken languages);
- (2) Is able to interpret effectively, accurately, and impartially to and from such language(s) and English (or between two non-English languages for relay interpretation), using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and
- (3) Adheres to generally accepted interpreter ethics principles, including client confidentiality.

**“Qualified reader”**<sup>13</sup> means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

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<sup>10</sup> Similar to the definition in the 2016 rule.

<sup>11</sup> Revised from the 2016 rule.

<sup>12</sup> Similar to the definition in the 2016 rule.

<sup>13</sup> New definition; not included in the 2016 rule.

**“Qualified translator”**<sup>14</sup> means a translator who:

(1) Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language;

(2) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original written statement; and

(3) Adheres to generally accepted translator ethics principles, including client confidentiality.

**“Relay interpretation”**<sup>15</sup> means interpreting from one language to another through an intermediate language. This mode of interpretation is often used for monolingual speakers of languages of limited diffusion, including select indigenous languages. In relay interpreting, the first interpreter listens to the speaker and renders the message into the intermediate language. The second interpreter receives the message in the intermediate language and interprets it into a third language for the speaker who speaks neither the first nor the second language.

**“Telehealth”**<sup>16</sup> means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health, and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications.

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<sup>14</sup> Additions from 2016 rule underlined.

<sup>15</sup> New definition; not included in the 2016 rule.

<sup>16</sup> New definition; not included in the 2016 rule.