



HHS Proposed Rule to Strengthen Nondiscrimination in Health Care

The Department of Health and Human Services (HHS) announced a proposed rule implementing Section 1557 of the Affordable Care Act (ACA) that prohibits discrimination on the basis of race, color, national origin, sex, age, and disability in certain health programs and activities. The proposed rule restores and strengthens civil rights protections for patients and consumers in certain federally funded health programs and HHS programs after the 2020 version of the rule, issued during the previous administration, limited its scope and power to cover fewer programs and services.

The proposed rule affirms protections against discrimination on the basis of sex, including sexual orientation and gender identity consistent with the U.S. Supreme Court's holding in *Bostock v. Clayton County*. In addition, the proposed rule clarifies that sex discrimination includes discrimination on the basis of sex stereotypes; sex characteristics, including intersex traits; and pregnancy or related conditions including pregnancy termination.

The proposed rule, consistent with congressional intent and court precedent, reinstates and strengthens its application to health insurance issuers that receive federal financial assistance. Recognizing the significant role that health insurance issuers play in the provision of health care, the proposed rule provides clear nondiscrimination standards for the industry.

The proposed rule, for the first time, requires recipients of federal financial assistance, all HHS health programs and activities, and the State ACA Exchanges to give staff clear guidance on the provision of language assistance services for limited English proficient (LEP) individuals, and effective communication and reasonable modifications to policies and procedures for people with disabilities.

The proposed rule states that a covered entity must not discriminate against any individual on the basis of race, color, national origin, sex, age, or disability through the use of clinical algorithms in its decision-making. This provision is not intended to hinder the use of clinical algorithms; but to prevent discrimination given the recent increasing reliance on clinical algorithms in health care decision-making.

The proposed rule specifically addresses nondiscrimination in the provision of health programs and activities through telehealth services. Telehealth is an alternative means by which covered entities provide their health programs and activities. This provision clarifies that covered entities have an affirmative duty not to discriminate in the delivery of their telehealth services. This duty includes ensuring that such services are accessible to individuals with disabilities and providing meaningful program access to LEP individuals. Such services would include communications about the availability of telehealth services, the process for scheduling telehealth appointments, and the telehealth appointment itself.

[Full text of fact sheet \(HHS, July 25, 2022\)](#)

[Full text of the proposed rule \(HHS, July 25, 2022\)](#)

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