

# Nondiscrimination in Healthcare – Implementing Section 1557 of the ACA

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# Agenda



- What is Section 1557
- Regulatory tug-of-war
- To whom does Section 1557 apply
- Injunctions regarding gender-affirming care and reproductive rights
- Operational impacts affecting healthcare entities and providers
- Litigation update, expected enforcement by OCR, and what's next

## Section 1557 of the Affordable Care Act – The Law

Part of Affordable Care Act (2010) – 42 USC § 18116

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First federal law specifically prohibiting discrimination in healthcare settings

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Incorporated four other federal discrimination laws

- Title VI of Civil Rights Act of 1964
  - Section 504 of Rehabilitation Act of 1973
  - Title IX of Education Amendments of 1972
  - Age Discrimination Act of 1975
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Prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities



## Section 1557 of the Affordable Care Act – Key Dates

**May 18, 2016**

**Obama Administration Issues Final Rule**

Among other things, sex discrimination includes gender identity and sex stereotyping  
Was subject of court injunctions

**June 15, 2020**

SCOTUS decision in *Bostock v. Clayton County, Georgia*

**July 25, 2022**

Notice of Proposed Rulemaking

**March 23, 2010**

Affordable Care Act signed into law

**June 12, 2020**

**Trump Administration Announces Final Rule**

Limits scope of 2016 Rule

**May 10, 2021**

Biden Administration issues guidance on interpretation of the prohibition of sex discrimination in light of *Bostock*

**May 6, 2024**

**Biden Administration Issues Final Rule**

Consistent with 2022 Notice of Proposed Rulemaking

## Section 1557 of the Affordable Care Act – 2024 Regulations

Expands programs and activities that are covered



Nondiscrimination on basis of “sex” includes sexual orientation, gender identity, sex characteristics (including intersex traits), pregnancy or related conditions, and sex stereotypes

Allows for exercise of federal religious freedom and conscience laws



Suite of operational requirements



## Regulatory Tug-of-War: Key Provisions of 2024 Final Rule

- 2024 Final Rule reverses many provisions of the 2020 Final Rule and reinstates provisions originally adopted by the 2016 Final Rule:
  - Restores gender identity as part of the definition of sex discrimination
  - Health insurance
  - Meaningful access for individuals with limited English proficiency
  - Association-based discrimination
  - Notices and procedures



## Regulatory Tug-of-War: Key Provisions of 2024 Final Rule

- The 2024 Final Rule is more expansive than the 2016 Final Rule:
  - Broader scope
  - Broader sex discrimination definition
  - Application of religious freedom and conscience laws
  - Telehealth and patient care decision support tools
  - Training
- For a comparison of the 2016, 2020, and 2024 Final Rules: <https://www.kff.org/affordable-care-act/issue-brief/the-biden-administrations-final-rule-on-section-1557-non-discrimination-regulations-under-the-aca/>.

## To Whom Does Section 1557 apply?

- **Section 1557 applies broadly to nearly the entire healthcare industry.**
- **Except as otherwise provided in regulation, Section 1557 applies to:**
  - Every health program or activity, any part of which receives federal financial assistance from HHS directly or indirectly;
  - Every health program or activity administered by HHS; and
  - Every health program or activity administered by a Title I entity.

*See 45 CFR § 92.2*

- **Entities to which Section 1557 and the Final Rule apply are referred to as “covered entities.”**

## Who is a Covered Entity?

- **According to OCR, covered entities may include:**
  - Hospitals
  - Health clinics
  - Health insurance issuers
  - State Medicaid agencies
  - Community health centers
  - Physicians' practices
  - Home health care agencies
- **Providers and suppliers receiving Medicare Part B payments are now deemed a 1557 covered entity.**
- **The Final Rule does not apply to any employer or other plan sponsor of a self-insured group health plan.**
  - However, it applies to most carriers and third-party administrators and therefore applies at least indirectly to most group health plans.



## Federal Judges Block Anti-Discrimination Protections for LGBTQI+ Americans

## Federal Courts Step In on July 3, 2024



**District of Mississippi**  
TN, MI, AL, GA, IN, KS, KY,  
LA, NE, SC, SD, VA, WV



**District of Texas**  
TX and MT



**District of Florida**  
FL and Catholic Medical  
Association

Each case resulted in an injunction against all or part of Section 1557 Final Rule



Lawsuit also filed in **District of Missouri** on July 10 - MO,  
UT, ND, SD, IA, AR, and American College of Pediatricians

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**IT IS FURTHER ORDERED AND ADJUDGED** that the July 5, 2024, effective date of the final rule entitled Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) is **STAYED** nationwide pursuant to 5 U.S.C. § 705, in so far as this final rule is intended to extend discrimination on the basis of sex to include discrimination on the basis of gender identity in the following regulations: 42 C.F.R. §§ 438.3, 438.206, 440.262, 460.98, 460.112; 45 C.F.R. §§ 92.5, 92.6, 92.7, 92.8, 92.9, 92.10, 92.101, 92.206-211, 92.301, 92.303, 92.304.

**IT IS FURTHER ORDERED AND ADJUDGED** that Defendants are **ENJOINED** nationwide from enforcing, relying on, implementing, or otherwise acting pursuant to the May 2024 Rule's provisions concerning gender identity.

## The Cases

- ***State of Tennessee, et al., v. Becerra, et al.*, S.D. Miss., Case No. 1:24-cv-00161**
  - On appeal in the Fifth Circuit
- ***State of Texas, et al., v. Becerra, et al.*, E.D. Tex., No. 6:24-cv-00211**
  - On appeal in the Fifth Circuit
- ***Florida v. Department of Health and Human Services*, M.D. Fla., No. 8:24-cv-01080**
  - On appeal in the Eleventh Circuit
- ***State of Missouri, et al., v. Becerra, et al.*, E.D. Mo., No. 4:24-cv-00937**
  - Not on appeal

## 2024 Final Rule – Where Are We?



Nationwide injunction against provisions expanding definition of discrimination based on “sex”

Entire Rule enjoined in TX and MT



Other provisions still effective everywhere else – some already



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# Operational Changes

## Section 1557 Final Rule – Effective Dates

Section 1557 Requirement	Compliance Date
§ 92.7 Section 1557 Coordinator	November 2, 2024
§ 92.8 Policies and Procedures	July 5, 2025
§ 92.9 Training	May 1, 2025
§ 92.10 Notice of Nondiscrimination	November 2, 2024
§ 92.11 Notice of Availability of Language Assistance Services and Auxiliary Aids and Services	July 5, 2025
§ 92.201 Meaningful Access for Individuals with Limited English Proficiency	July 5, 2024
§ 92.202 Effective Communication for Individuals with Disabilities	July 5, 2024
§ 92.203 Accessibility for Buildings and Facilities	July 5, 2024
§ 92.204 Accessibility of Information and Communication Technology for Individuals with Disabilities	July 5, 2024
§ 92.205 Requirement to Make Reasonable Modifications	July 5, 2024
§ 92.210(b), (c) Use of Patient Care Decision Support Tools	May 1, 2025
§ 92.211 Nondiscrimination in the Delivery of Health Programs and Activities Through Telehealth Services	July 5, 2024

## Operational Requirements

- Designate and authorize at least one Section 1557 Coordinator
- Notice of nondiscrimination
- Notice of availability of language assistance services and auxiliary aids and services
- Establish or update nondiscrimination policy, and procedures for grievances, language access, effective communication, and reasonable modifications
- Train all relevant employees and submit assurance of compliance with Section 1557

## Section 1557 Coordinator - § 92.7

- **Rule:** A covered entity that employs 15 or more persons must designate and authorize at least one Section 1557 Coordinator by **November 2, 2024**.
- **Role:** Coordinate compliance with Section 1557, including investigation of any grievance.
- **Ultimate Oversight:** May assign one or more designees to carry out responsibilities, but the Section 1557 Coordinator must retain ultimate oversight.
- **Duties:**
  - Receives, reviews, and processes grievances
  - Coordinates the covered entity's recordkeeping requirements in § 92.8
  - Coordinates effective implementation of the language access procedures in § 92.8(d), effective communication procedures in § 92.8(e), and reasonable modification procedures in § 92.8(f)
  - Training of relevant employees under § 92.9, including maintaining required documentation
- **Regulatory Tug-of-War:** 2016 final rule required a Section 1557 Coordinator, 2020 final rule did not, and 2024 final rule has expanded the duties of the Section 1557 Coordinator

## Notice of Nondiscrimination - § 92.10

- By **November 2, 2024**, a covered entity must provide a Notice of Nondiscrimination to participants, beneficiaries, enrollees, and applicants of its health programs and activities, and members of the public.
- **Content:**
  - The notice must state that the covered entity does not discriminate based on the protected categories under Section 1557
  - The covered entity provides reasonable modifications and language assistance services
  - How to obtain reasonable modifications, appropriate auxiliary aids and services, and language assistance services
  - Contact information for the Section 1557 Coordinator
  - Availability of the grievance procedure and how to file a grievance
  - How to file a discrimination complaint with OCR
  - How to access the covered entity's website that provides the information required for the notice (if it has one)
- **When and Where to Provide:**
  - On an annual basis and upon request;
  - Made publicly available at a conspicuous location on the covered entity's website, if it has one; and
  - In clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service would be able to read or hear the notice.
- **HHS example:** <https://www.hhs.gov/sites/default/files/notice-non-discrimination-english.pdf>.

## Notice of Availability of Language Assistance Services, Auxiliary Aids and Services - § 92.11

- By **July 5, 2025**, a covered entity must provide this notice to participants, beneficiaries, enrollees, and applicants of its health programs or activities, and members of the public.
- **Content:**
  - At a minimum, the notice must state that the covered entity provides language assistance services and appropriate auxiliary aids and services free of charge.
  - Must be in English and at least the 15 languages most commonly spoken by individuals with limited English proficiency of the relevant State or States.
- **When and Where to Provide:**
  - On an annual basis and upon request;
  - At a conspicuous location on the covered entity's website, if it has one;
  - In clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service would be able to read or hear the notice; and
  - In certain electronic and written communications (see next slide).
- **HHS example:** <https://www.hhs.gov/sites/default/files/notice-availability-language-services-auxiliary-aids-english.pdf>.

## Notice of Availability of Language Assistance Services, Auxiliary Aids and Services - § 92.11

- **Notice must appear in certain electronic and written communications:**
  - Notice of nondiscrimination
  - Notice of privacy practices
  - Application and intake forms
  - Notices of denial or termination of eligibility, benefits or services (including Explanation of Benefits) and notices of appeal and grievance rights
  - Communications related to an individual's rights, eligibility, benefits or services that require or request a response
  - Communications related to a public health emergency
  - Consent forms
  - Discharge papers
  - Communications related to the cost and payment of care
  - Complaint forms
  - Patient and member handbooks

## Policies and Procedures - § 92.8

- **Types of policies and procedures:**
  - Nondiscrimination policy
  - Grievance procedures
  - Language access procedures
  - Effective communication procedures
  - Reasonable modification procedures
- **All policies and procedures must:**
  - Be written
  - Include an effective date
  - Reasonably designed, taking into account the size, complexity, and type of health programs or activities undertaken by a covered entity
- **Samples for all five provided by HHS:** <https://www.hhs.gov/civil-rights/for-providers/resources-covered-entities/index.html>.
- **Deadline: July 5, 2025**



## Training - § 92.9

- **Must train all “relevant employees” on the Section 1557 policies and procedures:**

**Relevant employee** = **permanent and temporary employees** whose roles and responsibilities entail interacting with patients and members of the public; making decisions that directly or indirectly affect patients’ health care, including the covered entity’s executive leadership team and legal counsel; and performing tasks and making decisions that directly or indirectly affect patients’ financial obligations, including billing and collections

- **Document:** Contemporaneously document completion of training in written or electronic form, and retain for at least 3 calendar years
- **Timing:**
  - For current relevant employees, no later than 30 days following implementation and no later than May 1, 2025
  - For new relevant employees, within a reasonable period of time after they join
  - If there is a material change to policies, within a reasonable period of time after the change is made
- **Deadline: May 1, 2025**

## Section 1557's Nondiscrimination Provisions

- **Meaningful Access for Individuals with Limited English Proficiency**
- **Nondiscrimination Based on Disability**
  - Effective communication for individuals with disabilities
  - Accessibility for buildings and facilities
  - Accessibility for information and communication technology
  - Reasonable modifications
- **Equal Program Access on the Basis of Sex**
- **Nondiscrimination in Health Insurance Coverage and Other Health Related Coverage**
- **Prohibition on Sex Discrimination Related to Marital, Parental, or Family Status**
- **Nondiscrimination on the Basis of Association**
- **Nondiscrimination in the Use of Patient Care Decision Support Tools**
- **Nondiscrimination in Telehealth**

## Meaningful Access for Individuals with Limited English Proficiency - § 92.201

- Must take reasonable steps to provide meaningful access to individuals with LEP (including companions with LEP) eligible to be served or likely to be directly affected by health programs and activities.
- Language assistance services must be provided free of charge, accurate and timely, and protect the privacy and independent decision-making ability of the individual with LEP.
- Must offer qualified interpreter and translation services when required. However, acceptance is not required.
- A covered entity cannot:
  - Require an individual to provide their own interpreter or pay for one
  - Rely on an adult, not qualified as an interpreter, to interpret or facilitate communication
  - Rely on a minor child to interpret or facilitate
  - Rely on staff other than qualified interpreters or translators
- **Limited Exceptions:** (1) temporary measure in an emergency (adults and minors), and (2) requested (adults)
- Video and audio remote interpreting services must allow meaningful access.

## Individuals with Disabilities - §§ 92.202 - .205

### ▪ **Effective communication - § 92.202**

- Auxiliary aids must afford persons with disabilities an equal opportunity to receive services, and must be provided free of charge, in accessible formats, in a timely manner, and protect their privacy and independence.

### ▪ **Accessibility for buildings and facilities - § 92.203**

- A qualified individual with a disability shall not be denied benefits or excluded from participation because a covered entity's facilities are inaccessible or unusable by the individual.
- Must comply with ADA standards for accessibility as set forth in § 92.203(b).

### ▪ **Accessibility of information and communication technology - § 92.204**

- Services provided through information and communication technology must be accessible unless doing so would result in undue financial burdens or a fundamental alteration of the nature of the health program or activity.
- Websites and mobile apps must comply with Section 504 of the Rehabilitation Act, as interpreted consistent with Title II of the ADA.

### ▪ **Reasonable modifications - § 92.205**

- Consistent with the ADA, must make reasonable modifications to policies, practices, or procedures to avoid discrimination unless doing so would fundamentally alter the nature of the health program or activity.

## Equal Program Access on the Basis of Sex - § 92.206

- **Must provide equal access to health programs and activities without discriminating on the basis of sex.**
- **§ 92.206(b) provides that a covered entity must not:**
  - 1) **Deny or limit services** based on an individual's sex assigned at birth, gender identity, or gender otherwise recorded
  - 2) **Deny or limit a health care provider's ability to provide health services** if such denial or limitation has the effect of excluding individuals, denying them benefits, or otherwise subjecting them to discrimination based on sex
  - 3) **Adopt any policy or practice of treating individuals differently or separating** them based on sex in a manner that subjects them to more than de minimis harm
  - 4) **Deny or limit gender transition or other gender-affirming care services** that the covered entity offers if the denial or limitation is based on an individual's sex assigned at birth, gender identity, or gender otherwise recorded
- **Legitimate, nondiscriminatory reason for denying or limiting a service is permitted.**
  - Including if the covered entity typically declines to provide the service to any individual or where the covered entity reasonably determines that such service is not clinically appropriate for the individual.
- **Nationwide injunctions against § 92.206(b), but notices of appeal have been filed.**

## Nondiscrimination in Health Insurance Coverage - § 92.207

- In providing or administering health insurance coverage or related coverage, a covered entity must not:
  1. Deny or limit coverage, or impose additional cost-sharing or other limitations and restrictions:
    - based on race, color, national origin, sex, age, disability, or any combination;
    - to an individual based on their sex assigned at birth, gender identity, or gender otherwise recorded; or
    - for specific health services related to gender transition/gender-affirming care if it results in sex discrimination.
  2. Have or implement marketing practices or benefit designs that discriminate.
  3. Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition or other gender affirming care.
  4. Have or implement benefit designs that do not provide or administer coverage in the most integrated setting appropriate to the needs of the qualified individual with disabilities.
    - This includes practices that result in the serious risk of institutionalization or segregation.
- Legitimate, nondiscriminatory reason for denying or limiting coverage is permitted.
- Nationwide injunctions against portions of § 92.207, but notices of appeal have been filed.

## Prohibition on Sex Discrimination Related to Marital, Parental, or Family Status - § 92.208

- In determining whether an individual satisfies any policy or criterion regarding access to its health programs or activities, a covered entity must not take an individual's sex, as defined in 92.101(a)(2), into account in applying any rule concerning an individual's current, perceived, potential, or past marital, parental, or family status.
- Nationwide injunction against § 92.208 to the extent it "extends discrimination on the basis of sex to include discrimination on the basis of gender identity." Notice of appeal filed.

## Nondiscrimination on the Basis of Association - § 92.209

- A covered entity must not exclude from participation in, deny the benefits of, or otherwise discriminate against an individual or entity in its health programs and activities on the basis of the respective race, color, national origin, sex, age, or disability of the individual and another person with whom the individual or entity has a relationship or association.
- Nationwide injunction against § 92.209 to the extent it “extends discrimination on the basis of sex to include discrimination on the basis of gender identity.” Notice of appeal filed.



## Nondiscrimination in the Use of Patient Care Decision Support Tools - § 92.210

- **Must not discriminate against individuals in using patient care decision support tools, which is defined as:**  
“Any automated or non-automated tool, mechanism, method, technology, or combination used by a covered entity to support clinical decision-making in its health programs or activities.”
- **Reasonable efforts to identify** tools that use input variables/factors that measure race, color, national origin, sex, age, or disability, and **reasonable efforts to mitigate** the risk of discrimination resulting from the tool.
- **In assessing compliance, OCR may consider, among other factors:**
  - (1) size and resources;
  - (2) whether the tool was used in the manner or under the conditions intended by the developer and approved by regulators, if applicable, or whether the tool was adapted or customized;
  - (3) whether the covered entity received product information from the developer regarding the potential for discrimination or identified the tool’s input variables include the protected categories; and
  - (4) whether the covered entity has a method or process for evaluating patient care decision support tools it adopts or uses.

## Nondiscrimination in the Use of Telehealth - § 92.211

- A covered entity must not, in delivery of its health programs and activities through telehealth services, discriminate on the basis of race, color, national origin, sex, age, or disability.
- Nationwide injunction against § 92.211 to the extent it “extends discrimination on the basis of sex to include discrimination on the basis of gender identity.” Notice of appeal filed.

## Notification of Views Regarding Application of Federal Religious Freedom and Conscience Laws – § 92.302

- **Adopts a new religious freedom and conscience protection exemption process.**
- **Assurance:** May seek assurance of an exemption at any time, including while there is no investigation pending and during an OCR investigation, by submitting a notification to the Director of OCR.
- **Temporary Exemption:** Temporary exemption from administrative investigation and enforcement takes effect upon receipt of the notification, regardless of whether the assurance is sought before or during an investigation.
- **Effect of Determination:** If granted, the recipient will be considered exempt from OCR's administrative investigation and enforcement with regard to the application of that provision(s) as applied to the specific contexts, procedures, or health care services.
- **Appeal:** Recipient subject to an adverse determination of request for exemption assurance may appeal under the administrative procedures at 45 CFR part 81. The temporary exemption will expire upon a final decision.

## Key Deadlines

- **Now:**

- Individuals with Limited English Proficiency
- Individuals with Disabilities
  - Auxiliary aids must afford equal opportunity
  - Buildings and facilities must be accessible
  - Services provided through information and communication technology must be accessible
  - Reasonable modifications to policies, practices, or procedures
- Equal Access on Basis of Sex
- Telehealth

- **By November 2, 2024:**

- Section 1557 Coordinator
- Notice of Non-Discrimination

- **By May 1, 2025:**

- Patient Care Decision Support Tools
- Train relevant employees

- **By July 5, 2025:**

- Policies and Procedures
- Notice of Availability of Language Assistance and Auxiliary Aids

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## Enforcement and Litigation

## Enforcement by OCR

- The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) is the first-line agency that investigates and enforces Section 1557 complaints
- According to OCR:

*Prior to taking an enforcement action (i.e., terminating Federal financial assistance or referring a matter to DOJ for enforcement), OCR must attempt to achieve a covered entity's voluntary compliance with the law, such as through providing technical assistance and reviewing policies and procedures.*

# HHS Investigating Section 1557 Complaint Against Cleveland Clinic



September 10, 2024

Wisconsin Institute for Law & Liberty, Inc  
Attn: Cara Tolliver and Daniel P. Lennington  
330 E. Kilbourn Avenue, Suite 725  
Milwaukee, WI 53202  
Email: [Cara@will-law.org](mailto:Cara@will-law.org)

Re: OCR Transaction Number: 24-585977

Dear Ms. Tolliver and Mr. Lennington:

Please be advised that the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR),<sup>1</sup> received a complaint from the Wisconsin Institute for Law & Liberty, Inc., on behalf of the Do No Harm organization, dated August 14, 2024. The complaint alleges that the Cleveland Clinic is in violation of Title VI of the Civil Rights Act of 1964<sup>2</sup> and Section 1557 of the Affordable Care Act<sup>3</sup> (Section 1557). Specifically, the complaint alleges that Cleveland Clinic treats white individuals differently from certain racial and ethnic minorities in the tailoring and provision of services provided through its Minority Stroke Program and Minority Men's Health Center.

OCR has reviewed the complaint and has determined that it has sufficient authority and cause to investigate the allegations under its authorities. Therefore, we have initiated an investigation and will contact you should we need any additional information. In the meantime, if you have documentation supporting your claim that you have not yet provided OCR, please provide copies of those documents at your earliest convenience.

414-727-WILL (9455)  
Fax 414-727-6385  
[www.will-law.org](http://www.will-law.org)

August 14, 2024

**VIA ELECTRONIC MAIL ONLY: [OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)**

Centralized Case Management Operations  
U.S. Department of Health and Human Services  
Office for Civil Rights  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201

**RE: Civil Rights Complaint Against Cleveland Clinic Pursuant to Title VI and Section 1557 of the ACA**

Dear Sirs or Madams:

We represent Do No Harm ("DNH"), a nationwide membership organization that opposes racially discriminatory programs and policies in healthcare and seeks to keep identity politics out of medical education, research, and clinical practice. DNH is comprised of members who are physicians, nurses, other healthcare professionals, medical students, patients, and policymakers. Through its work, DNH has become aware of certain racially discriminatory programs provided by Cleveland Clinic in Cleveland, Ohio.<sup>1</sup> This letter focuses on two specific examples of race discrimination at Cleveland Clinic: the Minority Stroke Program and the Minority Men's Health Center.

## Litigation

- **Section 1557 incorporates forms of discrimination prohibited by other statutes:**
  - Title IX of the Education Amendments of 1972, which makes it unlawful to discriminate on the basis of sex
  - Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin
  - The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age
  - Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability
- **The enforcement mechanisms available for and provided under the listed statutes apply to claims under Section 1557.** See 42 USC § 18116(a); 45 CFR § 92.301
- **“Section 1557 does not create a new healthcare-specific anti-discrimination standard.”** *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204 (9th Cir. 2020).



# Do No Harm v. University of Washington, et al.

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

DO NO HARM,

*Plaintiff,*

v.

UNIVERSITY OF WASHINGTON  
SCHOOL OF MEDICINE; UW MED-  
ICINE; GABRIEL SARAH, in his offi-  
cial capacity as the Associate Dean for  
Student Affairs of the UW School of  
Medicine; BESSIE YOUNG, in her offi-  
cial capacity as the Vice Dean for Eq-  
uity, Diversity, and Inclusion of the UW  
School of Medicine and the Medical Di-  
rector for the UW Medicine Office of  
Healthcare Equity; PAULA HOU-  
STON, in her official capacity as the  
UW Medicine Chief Equity Officer;  
TIMOTHY DELLIT, in his official ca-  
pacity as the Dean of the UW School of

Case No.: 2:24-cv-1678

**COMPLAINT**

# Legacy, et al. v. OHA – Health Systems’ 1557 claim against OHA

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

LEGACY EMANUEL HOSPITAL &  
HEALTH CENTER d/b/a UNITY CENTER  
FOR BEHAVIORAL HEALTH; LEGACY  
HEALTH SYSTEM; PEACEHEALTH;  
PROVIDENCE HEALTH & SERVICES –  
OREGON and ST. CHARLES HEALTH  
SYSTEM,

Plaintiffs,

vs.

SEJAL HATHI, MD, in her official capacity  
as Director of Oregon Health Authority,

Defendant.

Case No. 6:22-cv-01460-AN

## SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

SECOND AMENDED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF - 1

**EPSTEIN BECKER & GREEN, P.C.**  
1050 SW 6<sup>th</sup> Ave., Ste. 1530  
Portland, Oregon 97204  
Telephone: 503.334.6475 • Fax: 503.343.6476

**STOEL RIVES LLP**  
760 SW Ninth Avenue, Suite 3000  
Portland, Oregon 97205  
Phone: +1.503.224.3380 • Fax: +1.503.220.2480

### EIGHTH CLAIM

#### Violation of Section 1557 of the Patient Protection and Affordable Care Act

132. Plaintiffs reallege and incorporate by reference paragraphs 1 through 131 above.  
133. OHA receives Federal financial assistance for its health programs, including programs and activities related to civil commitment of individuals with mental disabilities and treatment during their period of commitment. As such, OHA is a covered entity subject to the requirements of 45 C.F.R. Part 92 and Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116 et seq.

134. As a covered entity, OHA is prohibited from discriminating against individuals with mental disabilities, both directly and through coordinated care organizations that it regulates and funds for its Medicaid programs.

135. OHA discriminates against individuals with mental disabilities who are civilly committed by failing to provide adequate treatment resources, failing to ensure treatment is received in the least restrictive and most integrated setting, creating unreasonable risks of institutionalization and segregation, failing to legally design and implement benefits, failing to ensure adequate provider networks, denying services, and failing to provide for reimbursement rates sufficient to avoid discrimination.

136. OHA’s practices violate Section 1557 and its regulations, including 45 C.F.R. §§ 92.101, 92.205 and 92.207.

137. Pursuant to 42 U.S.C. § 18116(a), the Court should enter declaratory judgment that OHA’s practices violate Section 1557 and an injunction against further violations.

## Prediction: Wave of Litigation

- Litigation concerning protections for LGBTQI+ Americans and reproductive rights will make their way to the Supreme Court
- More legal challenges in light of *Loper*
- Increase in disability discrimination lawsuits
- Increase in reverse-discrimination claims
- Challenges to state Medicaid programs
- Combined claims with parity laws



# Health Care Antidiscrimination Laws in Oregon

## ORS 659A.142(6)(a)

- It is an unlawful practice for a provider or any person acting on behalf of a provider to discriminate by doing any of the following based on the patient's race, color, national origin, sex, sexual orientation, gender identity, age or disability:
  - (A) Deny medical treatment to the patient that is likely to benefit the patient based on an individualized assessment of the patient using objective medical evidence; or
  - (B) Limit or restrict in any manner the allocation of medical resources to the patient.

## ORS 659A.142(5)

- (a) It is an unlawful practice for state government to exclude an individual from participation in or deny an individual the benefits of the services, programs or activities of state government or to make any distinction, discrimination or restriction because the individual has a disability.
- (b) Paragraph (a) of this subsection is intended to ensure equal access to available services, programs and activities of state government.

## ORS 441.049 - Support Persons for Patients with Disabilities

- (2) A hospital licensed in this state must allow a patient to designate at least three support persons, and to allow at least one support person to be present with the patient at all times in the emergency department and during the patient's stay at the hospital, if necessary to facilitate the patient's care . . .

## Insurance Coverage and Benefits

- **ORS 659.875**  
Discrimination in issuance of benefits or coverage or payment for certain medical services prohibited
- **ORS 659.830**  
Prohibitions and requirements relating to health insurance
- **ORS 746.021**  
Discrimination under health benefit plans



## Licensing Boards - OMB

- **OAR 847-010-0073 - Reporting Requirements:**

(1) Board licensees and health care facilities must report to the Board as required by ORS 676.150, 677.092, 677.190, and 677.415. These reports include, but are not limited to, the following:

(c) A licensee must report within 10 business days to the Board any information that appears to show that a licensee is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be a licensee with a physical incapacity.

**Effective October 9, 2024**

## Licensing Boards - OMB

OPINION

# Microaggression madness in Oregon could cost doctors their license

Let's look at an alarming idea taking shape in Oregon: Doctors will be turned into snitches before they give stitches

## Licensing Boards - OMB

- **OAR 847-010-0073 - Reporting Requirements**

(3) For the purposes of ORS chapters 676 and 677, the terms medical incompetence, unprofessional conduct, and impaired licensee have the following meanings:

(J) Discrimination in the practice of medicine, podiatry, or acupuncture resulting in differences in the quality of healthcare delivered that is not due to access-related factors or clinical needs, preferences, and appropriateness of intervention.

**Effective October 9, 2024**

## Licensing Boards - OBOP

- OAR 855-115-0150 - Prohibited Practices

Pharmacists must not:

(3) Engage in any form of **discrimination**, harassment, intimidation, or assault.



U.S. Department of  
**Health and Human Services**

Enhancing the health and well-being of all Americans

## **Guidance to Nation’s Retail Pharmacies: Obligations under Federal Civil Rights Laws to Ensure Nondiscriminatory Access to Health Care at Pharmacies**

*Revised guidance: On September 29, 2023, OCR revised this guidance to clarify that the guidance does not require pharmacies to fill prescriptions for medication for the purpose of abortion.*

## According to OCR

Most Americans live within five miles of a pharmacy

131 million people (66 % of adults) use prescription medication

In 2019, 7.6 billion retail prescription drugs filled – 44 % paid by Medicare or Medicaid

“

Pharmacies are often the most accessible health care provider for millions of Americans...”

Questions?

## Presented by



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