



1557 & 504

DISCLAIMER



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Agenda



504

- Requirements

1557

- Timeline
- Requirements

- **Section 504 of the Rehabilitation Act of 1973**
 - 29 USC §794
 - 45 CFR Part 84 and 85

“Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.”

- **Purpose – Prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance**
- **Broad Coverage – disability should be construed broadly in favor of expansive coverage under this section**
 - Focus should be on complying with obligations and whether discrimination has occurred and not whether an individual meets the definition of “disability”

504 – Disability



- **Physical or mental impairment that substantially limits one or more of the major life activities of such individuals;**

OR

- **A record of such impairment;**

OR

- **Being regarded as having such an impairment**

Physical or Mental Impairment



- **Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine;**
- **Any mental or psychological disorder such as intellectual disability, organic brain syndrome, mental health condition, and specific learning disability**

Physical or Mental Impairment continued



- **includes, but is not limited to, contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, mental health condition, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, substance use disorder, alcohol use disorder, and long COVID**

Major Life Activity

- **Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and**
- **The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.**

What do we need to do?



Assurance

- Department may require assurances that you will operate your programs consistent with Section 504
- Contracts



Self-Evaluation

- **Evaluation, with the assistance of interested persons, including persons with disabilities current policies and practices**
- **Make modifications as necessary**
- **Take remedial steps**
- **Document**
 - List of persons consulting
 - Description of areas examined/problems identified
 - Modifications/remedial actions taken



Designation of Individual

- **Designate 1 person to be responsible for the coordination of the efforts required**



Notice

- **Make available in any way the organization feels necessary to apprise people about their protections against discrimination under Section 504**
 - Employees
 - Applicants
 - Participants
 - Beneficiaries
 - Other interested persons



1557

- **Section 1557 of the Patient Protection and Affordable Care Act (ACA)**
 - 42 U.S.C. 18116
 - 45 CFR Part 92

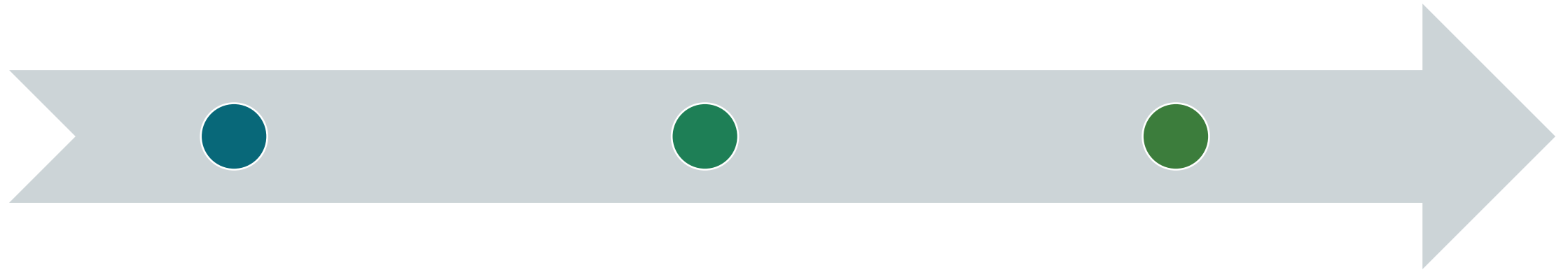
“Section 1557 provides that, except as otherwise provided in title I of the ACA, an individual shall not, on the grounds prohibited under title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an executive agency or any entity established under title I of the ACA.”

Been Around Awhile



2016

2024



2020

Timeline

TABLE 1 TO PARAGRAPH (b)

Section 1557 requirement and provision	Date by which covered entities must comply
§ 92.7	Within 120 days of July 5, 2024.
§ 92.8	Within one year of July 5, 2024.
§ 92.9	Following a covered entity's implementation of the policies and procedures required by § 92.8, and no later than one year of July 5, 2024.
§ 92.10	Within 120 days of July 5, 2024.
§ 92.11	Within one year of July 5, 2024.
§ 92.207(b)(1) through (5)	For health insurance coverage or other health-related coverage that was not subject to this part as of July 5, 2024, by the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025.
§ 92.207(b)(6)	By the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025.
§ 92.210(b) and (c)	Within 300 days of July 5, 2024.

§92.7 – Designation & Responsibilities of a Section 1557 Coordinator



- **Date Required by 11/02/2024**
- **Designate a coordinator to coordinate compliance with the responsibilities set forth in Section 1557**
- **At a minimum:**
 1. Receives, reviews, and processes grievances
 2. Coordinates recordkeeping requirements
 3. Coordinates effective implementation of language access procedures
 4. Coordinates effective implementation of effective communication procedures
 5. Coordinates training of relevant employees and maintains documentation required

§92.8 – Policies and Procedures



- **July 4, 2025**
- **Nondiscrimination Policy**
- **Grievance Procedure**
- **Language Access Procedure**
- **Effective Communication Procedure**
- **Reasonable Modification Procedures**
- **!!CAN BE COMBINED WITH 504 Policies and Procedures!!**

§92.9 – Training

To each relevant employee of the health program or activity as soon as possible, but no later than 30 days following a covered entity's implementation of the policies and procedures required by § 92.8, and no later than 300 days following July 5, 2024;

- **May 1, 2025**
- **Train all relevant employees on policies and procedures above**
- **New Employees from that date forward**
- **With any change**

§92.10 – Notice of Nondiscrimination



- i. On an annual basis to participants, beneficiaries, enrollees (including late and special enrollees), and applicants of its health program or activity;**
- ii. Upon request;**
- iii. At a conspicuous location on the covered entity's health program or activity website, if it has one; and**
- iv. In clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service from the health program or activity to be able to read or hear the notice.**

§92.10 – Notice



- **Effective November 2, 2024**
- **Model Notice**
- **Appendix A to Part 92—Sample Notice Informing Individuals About Nondiscrimination and Accessibility Requirements and Sample Nondiscrimination Statement: Discrimination is Against the Law**

§92.11 – Notice of Availability of Language Assistance Services and Auxiliary Aides and Services



- **must provide a notice of availability of language assistance services and auxiliary aids and services that, at minimum, states that the covered entity, in its health programs or activities, provides language assistance services and appropriate auxiliary aids and services free of charge, when necessary**
- **must be provided in English and at least the 15 languages most commonly spoken by individuals with limited English proficiency of the relevant State or States in which a covered entity operates**

§92.11 – Notice of Availability of Language Assistance Services and Auxiliary Aides and Services



- **annual basis to participants, beneficiaries, enrollees**
- **Upon request**
- **At a conspicuous location on the covered entity's health program or activity website, if it has one**
- **clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service from the health program or activity to be able to read or hear the notice; and**

§92.11 – Notice of Availability of Language Assistance Services and Auxiliary Aides and Services



- In the following electronic and written communications when these forms are provided by a covered entity:
 - (i) Notice of nondiscrimination required by [§ 92.10](#);
 - (ii) Notice of privacy practices required by [45 CFR 164.520](#);
 - (iii) Application and intake forms;
 - ...;
 - (vii) Consent forms and instructions related to medical procedures or operations, medical power of attorney, or living will (with an option of providing only one notice for all documents bundled together);
 - (viii) Discharge papers;
 - (ix) Communications related to the cost and payment of care with respect to an individual, including medical billing and collections materials, and good faith estimates required by section 2799B-6 of the Public Health Service Act;
 - (x) Complaint forms; and
 - (xi) Patient and member handbooks.

§92.11 – Notice of Availability of Language Assistance Services and Auxiliary Aides and Services



- **Two ways to be in compliance with respect to individual:**
 1. Annual basis give the individual the ability to opt out of receiving notice
 - Cannot condition the receipt of service on opting out
 - Must inform that they have right to receive the notice in primary language and through appropriate auxiliary aides/services
 - Must inform that it is not a waiver of their right to receive the language assistance or auxiliary aide/services
 - Document on an annual basis that the individual has opted out of receiving the notice required for the year
 - Cannot treat a non-response as a decision to opt out

§92.11 – Notice of Availability of Language Assistance Services and Auxiliary Aides and Services



1. X
2. **Document the individual's primary language and any appropriate auxiliary aides and services AND:**
 - Provide all materials and communications in that individual's primary language and through appropriate auxiliary aids/services; or
 - Provide the Notice in the individual's primary language and through appropriate auxiliary aids and services

Specific Applications to health Programs and Activities



- **§92.201 Meaningful access for individuals with limited English proficiency**
 - Must take reasonable steps to provide meaningful access to each individual with LEP eligible to be served or likely to be directly affected by health programs and activities
 - Language Assistance Services Requirements
 - Free of charge
 - Accurate and timely
 - Protect privacy and independent decision-making ability of the individual

§92.201 Meaningful access for individuals with limited English proficiency

continued



• Interpreter and Translation Services

- When interpretation services are required, must offer a qualified interpreter
- When translation services are required, must offer qualified translator
- When using machine translation to translate text that is critical to rights, benefits, meaningful access, and/or accuracy is essential, the material is complex, contains non-literal or technical language,
 - **MUST BE REVIEWED BY A QUALIFIED HUMAN TRANSLATOR**

Evaluating Compliance

- **Importance of the health program or activity**
- **Effectiveness of policies implemented**



Restricted use of certain persons to interpret or facilitate communication



- **You cannot:**
 - Require an individual with LEP to provide their own interpreter
 - Pay for their interpreter
 - Rely on an adult, not qualified as an interpreter, **EXCEPT**
 - As a temporary measure while finding a qualified interpreter in an emergency (imminent threat to the safety or welfare of an individual or public)
 - The individual with the LEP specifically requests the “adult”
 - Individual must make the request in private – in presence of a qualified interpreter
 - **OUTSIDE** the presence of the “adult”
 - Rely on a minor child **EXCEPT** As a temporary measure while finding a qualified interpreter in an emergency
 - Rely on staff that are not qualified interpreters, translators or bilingual/multilingual staff

Video Remote Interpreting Service



- **Real-time, full-motion video and audio**
- **Dedicated high-speed, wide-bandwidth video connection or wireless connection – no lags, choppy, blurry, or grainy images, or irregular pauses**
- **Sharp Image of interpreter's face and patient's face regardless of body position**
- **Clear audible of voice**
- **Adequate training to users**

Audio Remote Interpreting Services



- **Real-time audio, dedicated high-speed, wide-bandwidth connection of wireless**
- **No lags or irregular pauses**
- **Clear audible transmission of voices**
- **Adequate training of users**

**ACCEPTANCE NOT
REQUIRED**

Effective communication for individuals with disabilities



- **Must ensure communications with individuals with disabilities are as effective as communications with non-disabled individuals**
- **Must provide appropriate auxiliary aids/services where necessary to afford individuals with disability and equal opportunity to participate, enjoy the benefits of**
 - Free
 - Accessible formats
 - Timely
 - Protect privacy and independence

Accessibility for buildings and facilities



- **No qualified individual with a disability shall, because a covered entity's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any health program or activity**

§92.204 – Accessibility of information and communication technology for individuals with disabilities



- **Must ensure programs/activities offered through information and communication technology are accessible to individuals with disabilities**
 - Unless undue financial and administrative burden
 - Unless fundamental alteration in the nature of the program/activity
 - Expected to take maximum action that would allow for individuals to receive benefit without altering or burdening the program

§92.205 – Reasonable Modifications



- **Must make reasonable modifications to policies, practices, or procedures in health programs/activities when such modifications are necessary to avoid discrimination**
 - Meaningful discussions and assessments of what will work

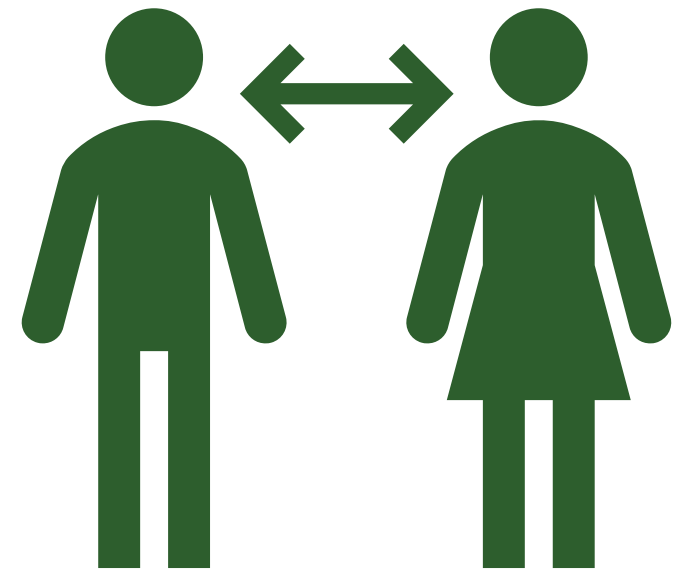
§92.206 – Equal program access on the basis of sex



- **Cannot discriminate on the basis of sex**
- **Cannot**
 - Deny or Limit health services to individuals of a certain sex or upon individuals sex assigned at birth, gender identity, or gender otherwise recorded
 - Deny based on individuals sex assigned at birth, gender identity, or gender otherwise recorded
 - Adopt or apply any policy or practice of treating individuals differently or separating them on the basis of sex in a manner that subjects any individual to more than de minimus harm, including by adopting a policy or engaging in a practice that prevents an individual from participating in a health program/activity consistent with the individual's gender identity
 - Deny or limit health services sought for purpose of gender transition or other gender-affirming care that the covered entity would provide to an individual for other purposes if the denial or limitation is based on an individual's sex assigned at birth, gender identity, or gender otherwise recorded.

§92.206 – Equal program access on the basis of sex

- **Can still have a legitimate, nondiscriminatory reason**
 - Do not provide the service to *any* individual
 - Determine not clinically appropriate



§ 92.208 Prohibition on sex discrimination related to marital, parental, or family status.

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



§ 92.209 Nondiscrimination on the basis of association



- **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**

§ 92.210 Nondiscrimination in the use of patient care decision support tools



- **must not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs or activities through the use of patient care decision support tools**
- **ongoing duty to make reasonable efforts to identify uses of patient care decision support tools in its health programs or activities that employ input variables or factors that measure race, color, national origin, sex, age, or disability**
- **must make reasonable efforts to mitigate the risk of discrimination resulting from the tool's use in its health programs or activities**

§ 92.211 Nondiscrimination in the delivery of health programs and activities through telehealth services.



- **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**



Resources



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Executive Order 14187



- The Executive Order declares that “it is the policy of the United States that it will not fund, sponsor, promote, assist, or support the so-called “transition” of a child from one sex to another, and it will rigorously enforce all laws that prohibit or limit these destructive and life-altering procedures.”

Case Law Update



Pursuant to decisions by various district courts regarding the 2024 Final Rule implementing Section 1557, entitled Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) (“2024 Final Rule”), provisions are stayed or enjoined as indicated below:

1. In *Florida v. Department of Health and Human Services*, No. 8:24-cv-1080-WFJ-TGW (M.D. Fla.), the court stayed 45 C.F.R. 92.101(a)(2)(iv), 92.206(b), 92.207(b)(3)-(5), and 42 C.F.R. 438.3(d)(4), in Florida. OCR also may not enforce the interpretation of discrimination “on the basis of sex” in 45 C.F.R. 92.101(a)(2)(iv), 92.206(b), or 92.207(b)(3)-(5) in Florida.
2. In *Tennessee v. Becerra*, No. 1:24cv161-LG-BWR (S.D. Miss.), the court stayed nationwide the following regulations to the extent they “extend discrimination on the basis of sex to include discrimination on the basis of gender identity”: 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; and enjoined HHS from enforcing the 2024 Final Rule “to the extent that the final rule provides that ‘sex’ discrimination encompasses gender identity.”
3. In *Texas v. Becerra*, the court stayed nationwide the following regulations: 42 C.F.R. 438.3(d)(4), 438.206(c)(2), 440.262, 460.98(b)(3), 460.112(a); 45 C.F.R. 92.101(a)(2) (and all references to this subsection), 92.206(b), 92.207(b)(3)-(5).

Notices of appeal have been filed in all three cases.

Compliance Cases



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 - Failed to provide sign language interpreters