

Publications

HHS Issues Proposed Rulemaking Drastically Revising ACA Section 1557 Nondiscrimination Regulations

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On June 14, 2019, the Office for Civil Rights (“OCR”) of the U.S. Department of Health and Human Services (“HHS”) published a notice of proposed rulemaking (“Proposed Rule”) extensively revising the current regulations implementing Section 1557 of the Patient Protection and Affordable Care Act (“ACA”), the ACA’s nondiscrimination provision. 84 Fed. Reg. 27846. Most strikingly, the Proposed Rule re-interprets Section 1557 to remove protections against discrimination based on gender identity. The Proposed Rule also reduces the scope of the current rule’s applicability to health insurance issuers and administrators and eliminates the rule’s language-related tagline and notice requirements.

Critical Revisions Proposed:

- **Gender identity would no longer be protected.** The Proposed Rule reinterprets the scope of Section 1557’s underlying civil rights statutes, including the scope of Title IX’s prohibition of discrimination on the basis of sex. Currently, the rule explicitly forbids discrimination based on sex, including gender identity.