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## ACL 17-05

Date: April 4, 2017

To: Community-Based Adult Services (CBAS) Center Administrators and Program Directors

From: California Department of Aging (CDA) CBAS Branch

Subject: Final Rule Implementing Section 1557 of the Affordable Care Act

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### Purpose

The purpose of this All Center Letter (ACL) is to notify CBAS providers of federal requirements regarding the Final Rule Implementing Section 1557 of the Affordable Care Act (ACA).

### References

*Section 1557 of the Patient Protection and Affordable Care Act.* U.S. Department of Health and Human Services, Office of the Secretary [45 CFR Part 92].

<https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>

### Background

The Department of Health and Human Services (HHS) issued the Final Rule implementing the prohibition of discrimination under Section 1557 of the ACA of 2010. The Final Rule, *Nondiscrimination in Health Programs and Activities*, will help to advance equity and reduce health disparities by protecting some of the populations that have been most vulnerable to discrimination in the health care context. The Final Rule explains consumers' rights under the law and provides covered entities important guidance about their obligations.

Section 1557 prohibits discrimination based on race, color, national origin, sex, age or disability in certain health programs and activities.

ACL # 17-05

April 4, 2017

PAGE 2

## **Coverage of the Rule**

The rule covers:

- Any health program or activity, any part of which receives funding from HHS (such as hospitals that accept Medicare or doctors who accept Medicaid). This includes CBAS centers;
- Any health program that HHS itself administers;
- Health Insurance Marketplaces and issuers that participate in those Marketplaces.

## **Protections Under the Rule**

Section 1557 builds on prior federal civil rights laws to prohibit sex discrimination in health care. The Final Rule requires that women be treated equally with men in the health care they receive and also prohibits the denial of health care or health coverage based on an individual's sex, including discrimination based on pregnancy, gender identity, and sex stereotyping. The Final Rule also requires covered health programs and activities to treat individuals consistent with their gender identity.

For individuals with disabilities, the Final Rule requires covered entities to make all programs and activities provided through electronic and information technology accessible; to ensure the physical accessibility of newly constructed or altered facilities; and to provide appropriate auxiliary aids and services for individuals with disabilities. Covered entities are also prohibited from using marketing practices or benefit designs that discriminate on the basis of disability and other prohibited bases.

Covered entities must take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in their health programs and activities. In addition, covered entities are encouraged to develop and implement a language access plan.

The Final Rule on Section 1557 does not include a religious exemption; however, the Final Rule does not displace existing protections for religious freedom and conscience.

## **Implementation**

To ensure compliance with Final Rule Section 1557 and the California Department of Health Care Services' (DHCS) directives, CBAS centers must develop and implement

April 4, 2017

PAGE 3

policy and procedures that incorporate the guidance outlined in this ACL. The policy and procedures must include provisions for the following requirements:

- CBAS centers are required to post a notice of nondiscrimination in a prominent physical location at the CBAS center, as well as a conspicuous location on the home page of a provider's website, if applicable.
- CBAS centers are required to post taglines that alert individuals with limited English proficiency (LEP) to the availability of language assistance services. Taglines of the top 15 languages spoken nationally by LEP individuals will be posted in a prominent physical location at the CBAS center, as well as in a conspicuous location on the home page of a provider's website, if applicable.
  - A sample tagline:
  - **ATTENTION: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).**
- CBAS centers will include use of the nondiscrimination language and tagline in significant publications targeted to beneficiaries, applicants, and members of the public. Providers with current stock of publications may determine, based on their client population, whether it is appropriate to exhaust their existing stock before printing new stock that includes the new language.
- CBAS centers are required to offer a qualified interpreter for oral interpretation and use a qualified translator when translating written content in paper or electronic form.
- CBAS centers may be required to translate full documents if they do not have access to language specific workers and/or translation services; otherwise, full written documents will not need to be translated into the 15 threshold languages.
- CBAS providers with 15 or more employees are required to have a grievance procedure and a compliance coordinator.
- All vendor contracts of CBAS centers should include non-discrimination language.

ACL # 17-05

April 4, 2017

PAGE 4

### **Additional Materials**

To reduce burden and costs, the Office of Civil Rights has translated a sample notice of nondiscrimination and taglines into 64 languages; however, providers may choose to translate their own versions if they choose.

- For translated notices of nondiscrimination and taglines visit:

<https://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>

- For a sample notice of nondiscrimination visit:

<https://www.hhs.gov/sites/default/files/sample-ce-notice-english.pdf>

The Final Rule includes an appendix that provides a model grievance procedure.

- For a sample grievance procedure visit:

<https://www.hhs.gov/sites/default/files/section-1557-sample-grievance-procedure.pdf>

### **Questions**

For questions about this letter, please contact the CBAS Branch at (916) 419-7545; [cbascda@aging.ca.gov](mailto:cbascda@aging.ca.gov).