EXPERT UPDATE

ACA Section 1557 Overview

By Shari Herrle, Director of Compliance

Plan sponsors are receiving information from their Third Party Administrators (TPAs) and insurers regarding the Affordable Care Act's (ACA) Code § 1557 non-discrimination provision. This particular ACA provision prohibits discrimination in certain "health programs and activities" on the basis of race, color, national origin, sex, age, or disability. It applies to health programs and activities funded or administered by HHS, which includes health insurers and employee health benefits of certain employers that receive federal financial assistance and are principally engaged in health care (e.g., hospitals and nursing homes). Section 1557 refers to these entities as "covered entities", a term not to be confused with "covered entity" as defined by HIPAA.

Entities Required to Comply with Section 1557

All health programs and activities that receive Federal financial assistance from HHS are required to comply. Examples:

- Hospitals
- Health clinics
- Physician Practices
- Community Health Centers
- Nursing Homes
- Rehabilitation Centers
- Health insurance issuers - e.g., Aetna, CIGNA, Highmark, UHC, UPMC
- State-based and Federally-facilitated Exchanges
- State Medicaid agencies
- Health programs administered by HHS (Medicare)

When entities are principally engaged in health services or health coverage, ALL of the entity's operations are considered part of the health program or activity, and therefore must be in compliance with the rules. This would include a hospital's medical departments, gift shop and cafeteria.

Examples of Federal Financial Assistance

- Grants
- Property
- Medicare and Medicaid payments
- Tax credits and cost-sharing subsidies under Title I of the ACA

Self-insured Group Sponsors that are not a Covered Entity

Self-insured plans for employers who are not engaged in health services or health coverage are not required to comply. Under Section 1557, an employer is liable for discrimination in its employee health benefit programs only if the employer is principally engaged in health services, health insurance coverage, or other health coverage (or meets one of the other criteria for employer liability).

Insured Group Health Plan Sponsors Generally Not Required to Comply

Plan sponsors of insured group health plans that are not a covered entity under Section 1557 are not required to comply, but the health insurer that provides the group policy must. Insurers are reaching out to plan sponsors now regarding the new coverage requirements, when they will be added to the health insurance plan, etc.

Overview of Requirements

The regulations prohibit covered entities from denying, canceling, limiting, or refusing to issue or renew policies; using discriminatory benefit designs; denying or limiting coverage of a claim; or imposing additional cost-sharing or other coverage limitations on any of the prohibited bases. This includes discrimination on the basis of gender identity and clarifies that covered entities may not deny or limit coverage for health services that are ordinarily or exclusively available to individuals of one gender because an individual's sex assigned at birth, gender identity, or recorded gender is different than the one to which the services are ordinarily or exclusively available. Coverage must be provided for gender reassignment surgery at the same cost-sharing, medical policy and medical necessity criteria as other surgical procedures.

Effective Date

The health plan of a covered entity must comply by the 1st day of the 1st plan year beginning on or after January 1, 2017. Consistent with how Plan Year is defined under other ACA requirements, Plan Year is:

- The designated plan year in the ERISA Plan Document.

If no document exists, then the Plan Year is:

- The date in which benefits, including deductibles and out-of-pocket limits, are reset on an annual basis; or
- If the plan does not impose deductibles or limits on a yearly basis, then the plan year is the policy year.

If none on the above apply, please contact your HBI analyst or consultant for direction.

Required Notice

Covered entities must provide individuals with notice of their rights, in "significant publications" and "significant communications" with taglines alerting individuals with limited English proficiency to the availability of language-assistance services. Refer to the HHS website for a sample notice.

Resources for this New Rule

HHS has provided numerous resources for this new requirement, including, Training materials, FAQs, Fact Sheet and HHS sample notice and statement. Please contact your HBI representative for more information.