

Section 1557 of the Patient Protection and Affordable Care Act

Section 1557 of the Patient Protection and Affordable Care Act (42 USC 18116) and its implementing regulation provide that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. (race, color, national origin), Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq. (sex), the Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq. (age), or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (disability), under any health program or activity, any part of which is receiving federal financial assistance; any program or activity administered by the Department under Title I of the Act; or any program or activity administered by any entity established under such Title. The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services has enforcement authority with respect to health programs and activities that receive federal financial assistance from the Department of Health and Human Services (HHS), or are administered by HHS or any entity established under Title I of the Affordable Care Act. OCR is responsible for enforcing regulations issued under Section 1557 of the Affordable Care Act (Section 1557), protecting the civil rights of individuals who access or seek to access covered health programs or activities. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex (including sexual orientation and gender identity), age, or disability in covered health programs or activities. 42 U.S.C. § 18116(a).

If you believe you have been discriminated against on one of the bases protected by Section 1557, [you may file a complaint](#) with OCR.

Issuance of the 2020 Final Rule

On June 12, 2020, HHS OCR announced a final rule revising its Section 1557 regulations. [Read the final rule](#) | [Read the Fact Sheet - PDF](#)
[Executive Summary of the Final Rule](#)

Update (May 10, 2021)

On June 15, 2020, the U.S. Supreme Court held that Title VII of the Civil Rights Act of 1964 (Title VII)'s prohibition on employment discrimination based on sex encompasses discrimination based on sexual orientation and gender identity. *Bostock v. Clayton County, GA*, 140 S. Ct. 1731 (2020). The *Bostock* majority concluded that the plain meaning of “because of sex” in Title VII necessarily included discrimination because of sexual orientation and gender identity. *Id.* at 1753-54.

Since *Bostock*, two federal circuits have concluded that the plain language of Title IX of the Education Amendments of 1972's (Title IX) prohibition on sex discrimination must be read similarly. See *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 616 (4th Cir. 2020), *as amended* (Aug. 28, 2020), *reh'g en banc denied*, 976 F.3d 399 (4th Cir. 2020), *petition for cert. filed*, No. 20-1163 (Feb. 24, 2021); *Adams v. Sch. Bd. of St. Johns Cnty.*, 968 F.3d 1286, 1305 (11th Cir. 2020), *petition for reh'g en banc pending*, No. 18-13592 (Aug. 28, 2020). In addition, on March 26, 2021, the Civil Rights Division of the U.S. Department of Justice issued a memorandum to Federal Agency Civil Rights Directors and General Counsel concluding that the Supreme Court's reasoning in *Bostock* applies to Title IX of the Education Amendments of 1972. As made clear by the Affordable Care Act, Section 1557 prohibits discrimination "on the grounds prohibited under . . . Title IX." 42 U.S.C. § 18116(a).

Consistent with the Supreme Court's decision in *Bostock* and Title IX, beginning May 10, 2021, OCR will interpret and enforce Section 1557's prohibition on discrimination on the basis of sex to include: (1) discrimination on the basis of sexual orientation; and (2) discrimination on the basis of gender identity. This interpretation will guide OCR in processing complaints and conducting investigations, but does not itself determine the outcome in any particular case or set of facts.

In enforcing Section 1557, as stated above, OCR will comply with the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*, and all other legal requirements. Additionally, OCR will comply with all applicable court orders that have been issued in litigation involving the Section 1557 regulations, including *Franciscan Alliance, Inc. v. Azar*, 414 F. Supp. 3d 928 (N.D. Tex. 2019); *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 485 F. Supp. 3d 1 (D.D.C. 2020); *Asapansa-Johnson Walker v. Azar*, No. 20-CV-2834, 2020 WL 6363970 (E.D.N.Y. Oct. 29, 2020); and *Religious Sisters of Mercy v. Azar*, No. 3:16-CV-00386, 2021 WL 191009 (D.N.D. Jan. 19, 2021).

OCR applies the enforcement mechanisms provided for and available under Title IX when enforcing Section 1557's prohibition on sex discrimination. 45 C.F.R. § 92.5(a). Title IX's enforcement procedures can be found at 45 C.F.R. § 86.71 (adopting the procedures at 45 C.F.R. §§ 80.6 through 80.11 and 45 C.F.R. Part 81).

- [Read the Federal Register Notice](#)
- [Read the Press Release](#)

Update (Feb. 1, 2021)

On January 19, 2021, the U.S. District Court for the District of North Dakota issued an order in the consolidated cases *Religious Sisters of Mercy v. Azar*, and *Catholic Benefits Assoc'n v. Azar*, No. 3:16-cv-00386, holding that the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb *et seq.*, entitles named

plaintiffs to permanent injunctive relief from the provision or coverage of gender-transition procedures under Section 1557 of the Affordable Care Act, 42. U.S.C. § 18116(a), or any implementing regulations. The order may be found here:

- [Memorandum Opinion and Order \(Jan. 19, 2021\) - PDF*](#)

Update (Sept. 15, 2020)

On October 15, 2019, the U.S. District Court for the Northern District of Texas issued an order in *Franciscan Alliance, Inc. v. Burwell*, No. 7:16-cv-00108, which vacated portions of HHS's 2016 rule implementing Section 1557. The order and accompanying decision may be found here:

- [Memorandum Opinion and Order \(Oct. 15, 2019\) - PDF*](#)
- [Clarifying Order \(Nov. 21, 2019\) - PDF*](#)

On August 17, 2020, the U.S. District Court for the Eastern District of New York issued an order in *Asapansa-Johnson Walker v. Azar*, No. 1:20-cv-02834, staying portions of the 2020 Final Rule's repeal of portions of the 2016 rule and preliminarily enjoining HHS from enforcing the repeal of those provisions. The order may be found here:

- [Memorandum Opinion and Order \(Aug. 17, 2020\) - PDF*](#)

On September 2, 2020, the U.S. District Court for the District of Columbia issued an order in *Whitman-Walker Clinic v. HHS*, No. 1:20-cv-01630, preliminarily enjoining HHS from enforcing portions of the 2020 Final Rule. The order and accompanying decision may be found here:

- [Memorandum Opinion \(Sept. 2, 2020\) - PDF*](#)
- [Order \(Sept. 2, 2020\) - PDF*](#)

On October 29, 2020, the U.S. District Court for the Eastern District of New York issued an order in *Asapansa-Johnson Walker v. Azar*, No. 1:20-cv-02834, staying/enjoining additional portions of the 2020 Final Rule's repeal of portions of the 2016 rule. The order may be found here:

- [Memorandum Opinion and Order \(Oct. 29, 2020\) - PDF](#)

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