

Section 1557 - Fact Sheet

What Californians Need to Know about Trump's Roll-Back of Non-Discrimination Protections

On Friday June 12th, the Trump administration moved to roll-back Obama era regulations implementing Section 1557 of the Affordable Care Act (ACA), the provision that protects patients from discrimination in health care programs and activities. This move is particularly egregious as the nation and California continue to struggle with the disproportionate impact of COVID-19 on people of color and against the backdrop of racist violence targeting Black communities.

What Does Section 1557 Do?

Section 1557 of the Affordable Care Act (ACA), also known as the Health Care Rights Law, includes nondiscrimination protections for people accessing health care programs based on race, color, national origin, language proficiency, sex, sex stereotypes, gender identity, age, or disability. For the first time, a federal civil rights law provides critical safeguards against discrimination on the basis of sex and gender identity in health care. The rule provided strong protections for people with reproductive health needs, people with Limited English Proficiency (LEP) and people with disabilities. The Obama Administration received much public feedback and deliberated several years before finalizing regulations to implement Section 1557's protections.

What Does the Trump Rule Change Do?

The Trump administration has repeatedly tried and failed to repeal the ACA and this is just one more effort to undermine the law by weakening the law's discrimination protections. The Trump rule change makes it easier for doctors, hospitals and insurance companies to deny care or coverage to transgender people and people seeking the full range of reproductive services including abortion. Additionally the rule weakens federal notification requirements for Limited English Proficient (LEP) individuals by no longer requiring plans and providers to provide notice and taglines with information about how to access language assistance in one's native language, now instead allowing providers to take "reasonable

steps" to provide people with this critical information. The new rule also attempts to narrow the scope of Section 1557 by exempting most private health plans from compliance, stating that health insurance companies are not "principally engaged in the business of providing healthcare."

When Does the New Rule Go Into Effect?

The new rule is scheduled to go into effect on August 18, 2020, but there will be multiple lawsuits challenging the Trump rule that could halt or prevent implementation. Regardless the Trump administration cannot repeal a federal statute through regulations and individuals who experience discrimination are still protected under the law. As discussed in the final section below, you should continue to report discrimination in health care and seek legal advice on the best way to enforce your rights.

What Are My Rights in California?

Federal and state laws still prohibit discrimination in health care delivery and insurance coverage. In California no person may—on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation—be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under any program or activity that is conducted, operated, administered or funded by the State. This includes, but is not limited to, the Medi-Cal program and the insurance entities that participate in Covered California, the state's exchange.

These provisions are still in full effect, regardless of the federal actions taken by the Trump Administration. Agencies that regulate or provide oversight of health insurance in California have reiterated these protections. You can see below for their letters to insurance companies about protections for LGBTQ+, Limited English Proficient and Californians with disabilities.

- [Department of Managed Health Care](#)
- [Department of Health Care Services](#)
- [California Insurance Commissioner](#)

More Specifically:

If you are Limited English Proficient:

California law (SB 223 – Atkins) still requires insurance plans to notify their members in the top 15 languages spoken by Californians, of the state's stronger anti-discrimination protections and the availability of free language assistance services including translation, oral interpretation, auxiliary aids and services.¹ California law also requires health plans to provide translations of vital documents into the top languages, other than English, spoken by the plans' enrollees.²

If you are Transgender, Non-Binary and Gender Non-Conforming:

California independently protects equal access to health care regardless of a patient's sex, gender identity, or gender expression, including access to transition-related care. That means that health plans aren't allowed to exclude transition-related care, and health care providers are required to treat you with respect according to your gender identity.³ Additionally, on June 15, 2020, the US Supreme Court ruled that federal employment protections banning discrimination on the basis of sex included LGBTQ+ workers. Several lawsuits have already been filed challenging the Trump administrations re-writing of Section 1557, and *Bostock*⁴ will hopefully pave the way for the re-inclusion of LGBTQ protections nationally.

If you have a Disability:

Section 1557, as well as California law, continue to prohibit insurance companies from marketing or designing health insurance benefits that "have the effect of discouraging the enrollment of individuals with significant health needs."⁵ Examples of discriminatory benefit design include placing all of the drugs needed by individuals with HIV/AIDS on the plan's most expensive drug coverage tier, or categorically excluding coverage for cancer-related surgery, chemotherapy, radiation, and hormone drugs, or denying a specific kind of treatment commonly needed by individuals with a particular disability or health condition regardless of medical necessity. The prohibition on discriminatory benefit design includes plans that provide individual coverage, nongrandfathered health care service plans to small employers, health insurers/agents/brokers who sell to individuals, and nongrandfathered small employer carriers.

If you have Reproductive Health Needs:

The Obama era regulations implementing Section 1557 explicitly defined protections against health care discrimination "on the basis of sex" to include termination of pregnancy, miscarriage, abortion or related conditions, and childbirth or related medical

conditions. In an effort to drastically limit the scope of Section 1557 protections, the Trump administration removed this definition and with it, expressly stated protections for people who previously received or are now seeking comprehensive reproductive health services. The new Trump regulation also unlawfully attempts to add new religious exemptions to protections on the basis of the sex. However, there is nothing in the Section 1557 law that enables the Trump administration to add new exemptions through regulation. Thus, individuals who encounter health care discrimination because they previously received or are seeking reproductive health care services should continue to enforce their rights under the Section 1557 law.

What Can I Do If I am a Victim of Discrimination?

If you face discrimination from a health care provider or insurance company, they may have violated the law and there are various steps you can take:

- Call your health plan and register a grievance/complaint
- File a complaint with the [Department of Fair Housing and Employment](#)
- If you are on Medi-Cal, file a complaint with the Department of Health Care Services Office of Civil Rights at: <https://www.dhcs.ca.gov/Documents/1044-DHCS-DISCRIMINATION-COMPLAINT-FORM.pdf>, Complaints may also be filed by calling the DHCS Office of Civil Rights at (916) 440-7370 or by written correspondence to the Office of Civil Rights, Department of Health Care Services, PO Box 997413, MS 0009, Sacramento, CA 95899-7413, or by email addressed to CivilRights@dhcs.ca.gov
- If your health plan does not resolve your problem and continues to deny you needed services or coverage, you can file for an "Independent Medical Review" or a complaint with the Department of Managed Health Care at <https://www.dmhc.ca.gov/FileaComplaint.aspx>.
- You can also contact the Department of Insurance's Consumer Complaint Center at 1-800-927-4357, or submit a complaint through the Department's website at www.insurance.ca.gov
- If you would like legal support for filing a discrimination complaint, contact the Health Consumer Alliance: 888-804-3536 or <https://healthconsumer.org/>

¹ Health and Safety Code section 1367.042. ² Health and Safety Code section 1367.04. ³ California Code of Regulations section 25611.1. DMHC [Gender Nondiscrimination Requirements] and DHCS [Ensuring Access to Medi-Cal Services for Transgender Beneficiaries] both issued letters clarifying that the Insurance Gender Nondiscrimination Act prohibits regulated plans from denying care on the basis of a patient's actual or perceived gender identity. ⁴ *Bostock v. Clayton County*, 590 U.S. ____ (2020) ⁵ 42 U.S.C. §§ 18116(a), 18031(c)(1)(a); see also 45 C.F.R. § 156.225(b).