

## Report on Patient Privacy Volume 22, Number 9. September 07, 2022 HHS Sec. 1557 Draft Reg Expands Definition of Sex, Applies to MDs

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By Nina Youngstrom

In a new proposed rule implementing Sec. 1557 of the Affordable Care Act (ACA) for a third time, the Biden administration is seeking to protect patients' gender identity, sexual orientation and pregnancy from sex discrimination in health care programs and activities and bring back notice and other requirements dropped from the Trump administration's version of the rule.

Published in the Aug. 4 Federal Register with a comment deadline of Oct. 3,<sup>[1]</sup> the proposed rule was announced by HHS Secretary Xavier Becerra along with new acting Office for Civil Rights (OCR) Director Melanie Fontes Rainer. The government also provided a fact sheet to help explain the proposed rule.<sup>[2]</sup>

The proposed rule is more in keeping with the Obama administration's 2016 vision, with its notice of nondiscrimination and Sec. 1557 compliance officer; it also introduces a "notice of availability" about language assistance and auxiliary aids. And as the latest incarnation makes clear, nondiscrimination requirements apply to telehealth services. It also expands applicability to Medicare Part B providers.

The ongoing revisions of the protections and requirements of Sec. 1557, which prohibits discrimination on the basis of race, color, national origin, sex, age or disability, reflects the change in administrations and court rulings. Abby Bonjean, a former OCR investigator, called the situation something of a "roller coaster."

"I have watched it from day one being at OCR when 1557 first came out, [and] then we had the Trump administration trying to roll back as many protections as they could." Now the Biden administration is moving to bring them back, said Bonjean, with Polsinelli. For now, though, she reminded hospitals and other covered entities (CEs) that they aren't required to post taglines because the 2020 regulation is still the rule of the land.

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