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By Nina Youngstrom

◆ **A federal court on Aug. 17 blocked HHS from enforcing its revised definition of sex discrimination in Sec. 1557, which prohibits discrimination on the basis of race, color, national origin, sex, age or disability.** In the final Sec. 1557 regulation published in the *Federal Register* June 19,^[1] HHS removed gender identity and termination of pregnancy from the definition of sex discrimination. Gender identity and termination of pregnancy were included when the Sec. 1557 regulation was first promulgated in 2016. Then HHS reversed it a few days after a landmark June 15 ruling from the U.S. Supreme Court in *Bostock v. Clayton County*.^[2] The Supreme Court said the Civil Rights Act of 1964, which bans sex discrimination, applies to discrimination against gay and transgender people in the workplace. Now the U.S. District Court for the Eastern District of New York has ruled^[3] the 2016 definition will remain in effect for now, noting that “when the Supreme Court announces a major decision, it seems a sensible thing to pause and reflect on the decision’s impact ... Since HHS has been unwilling to take that path voluntarily, the Court now imposes it.” Judge Frederic Block said the stay and an injunction will remain in place “pending further order of this Court.” For the time being, providers should operate “as though Sec. 1557 bars discrimination on the basis of gender identity,” said Andrew Stevens, an attorney with Arnall Golden Gregory LLP. The revised 1557 regulation, which also dropped compliance requirements, such as taglines,^[4] comes from the Affordable Care Act. Contact Stevens at drew.stevens@agg.com.

◆ **Metropolitan Jewish Health System Hospice and Palliative Care in New York has agreed to pay \$4.85 million to settle false claims allegations that it provided services to hospice patients at higher levels than they qualified for,** the U.S. Attorney’s Office for the Eastern District of New York said Aug. 19.^[5] The hospice provider also agreed to pay the state of New York \$375,000. The U.S. attorney’s office alleged that from 2011 to 2015, Metropolitan Jewish Health System Hospice and Palliative Care falsely claimed that some of its patients required general inpatient services and continuous home care services. The case was set in motion by a whistleblower.

¹ Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160 (June 19, 2020) , <https://bit.ly/2YR6vd2>.

² *Bostock v. Clayton County*, 590 U.S. ___, 140 S. Ct. 1731 (2020), <https://bit.ly/2zN7LW8>.

³ *Asapansa-Johnson Walker et al v. Azar*, Case No. 20-CV-2834, August 17, 2020, <https://bit.ly/2EoPO25>.

⁴ Nina Youngstrom, “Sec. 1557 Rule Drops Taglines, Narrows Definition of 'Sex'; Court Decision Opens It Up,” *Report on Medicare Compliance* 29, no. 23 (June 22, 2020), <https://bit.ly/34kU9xX>.

⁵ Department of Justice, U.S. Attorney’s Office for the Eastern District of New York, “New York Hospice Provider Settles Civil Healthcare Fraud Allegations,” news release, August 19, 2020, <https://bit.ly/3l6uBL1>.

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