

HHS Vacates Gender Identity Provisions of ACA Section 1557 Nondiscrimination Rules

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Notice of Vacatur Regarding Certain Provisions of the 2024 Nondiscrimination in Health Programs and Activities Final Rule, 45 CFR Parts 80, 84, 92, 147, 155 and 156, 91 Fed. Reg. 32887 (June 2, 2026)

Available at <https://www.govinfo.gov/content/pkg/FR-2026-06-02/pdf/2026-11015.pdf>

HHS has published a Notice of Vacatur informing covered entities that a federal court has vacated certain provisions of the regulations implementing Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in health programs and activities receiving federal financial assistance. HHS published a final regulation in May 2024 which provided, among other things, that discrimination on the basis of sex includes discrimination on the basis of gender identity. Shortly after the 2024 regulations took effect, a federal district court granted a preliminary injunction prohibiting HHS from enforcing the gender identity provisions. The same court later issued a judgment vacating specific provisions of the 2024 regulations to the extent they expand Title IX's definition of sex discrimination to include gender-identity discrimination.

The notice confirms that the vacated provisions are legally void to the extent they expand Title IX's definition of sex discrimination to include gender-identity discrimination, and that HHS will not investigate or enforce compliance with those provisions. The notice further clarifies that it applies to all covered entities with respect to the vacated provisions but does not affect the remaining provisions of the 2024 regulations, which remain in force.

EBIA Comment: Employers and their advisors should be aware that HHS will not take action based on the gender identity provisions of the 2024 regulations while the vacatur remains in effect, but the remainder of the 2024 regulations continues to apply, and other federal nondiscrimination laws—including Title VII of the Civil Rights Act, as interpreted by the U.S. Supreme Court—may independently address gender identity discrimination in certain contexts. For more information, see EBIA's Health Care Reform manual at Section XXXIV.A ("Section 1557 Nondiscrimination: Grounds Prohibited Under Federal Laws") and EBIA's Group Health Plan Mandates manual at Section XXI.M.1 ("Interaction of Title VII and Affordable Care Act Section 1557"). See also EBIA's Self-Insured Health Plans manual at Section XIII.D.5 ("Section 1557 Nondiscrimination: Nondiscrimination in Health Programs and Activities").

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