



Section 1557 Relief Obtained

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As noted in the 2020 AAPD CEO's Annual Report to the membership that was published in the July 2020 *PDT*, the Organized Dentistry Coalition (**ODC**), which includes the AAPD and ADA, submitted a regulatory comment letter on Aug. 23, 2019, to the U.S. Department of Health and Human Services Office for Civil Rights' (**OCR**) supporting a proposal to amend portions of the Section 1557 Final Rule. This is the provision of the Affordable Care Act that prohibits health care entities that receive federal financial assistance from discriminating on the basis of race, color, national origin, age, disability and sex. Implemented in 2016, the final rule applies to health care providers who receive certain funds through HHS, including Medicaid and the Children's Health Insurance Program.

Among other provisions of the OCR's proposal, was a **repeal of the Section 1557 requirements for covered dental practices to post taglines in the top 15 non-English languages spoken in the state and notices of nondiscrimination**. The proposal also expanded permissible use of audio-based interpretation services for individuals with limited English proficiency. The ODC letter said each dental coalition member "strongly supports non-discrimination in health care and equal access to care for all patients without regard to race, color, national origin, sex, age, religion or disability," but noted dentists have reported 'great difficulty' complying with this provision of the rule." Further, coalition members "believe that the repeal of these requirements will lead to cost savings and will allow staff to spend time on appropriate patient care and communication instead of time on interpreting and complying with the regulations." The coalition also expressed support for the proposed rule's exemption from the auxiliary aids and services requirements for covered entities with fewer than 15 employees.

With the release of final regulations on June 18, 2020, these changes are now final with an effective date of Aug. 18, 2020.¹ To summarize:

- Dentists are no longer required to include notices related to nondiscrimination and language assistance services in all significant communications. Providers had been required to include taglines in the top 15 non-English languages spoken in their state indicating that free language assistance services were available, as well as a notice of nondiscrimination, with any significant publications and communications. OCR repealed this requirement, stating the "requirement caused significant unanticipated expenses" because of confusion over what constitutes a significant communication, leading many covered entities to include the nondiscrimination notice and taglines with most written communications. ADA estimated that the dental profession has spent an estimated \$240 million on complying with the Section 1557 requirements.
- Covered dentists are still required to provide taglines when they are necessary to ensure meaningful access by people with limited English proficiency to a covered program or activity, according to the amended rule.

- Remote English language interpreting services are permitted to be audio based instead of video based.
- The final regulation does NOT contain an exemption for entities with 15 or fewer employees from the auxiliary aids and services requirements for covered entities:

“... the Department finds it appropriate not to adopt an exemption from the auxiliary aids and services requirement for covered entities with fewer than 15 employees.”²

For further information, contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169, ext. 29 or slitch@aapd.org.

This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.

¹Available at: <https://www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-11758.pdf>.

Also see the ADA news story at: <https://www.ada.org/en/publications/ada-news/2020-archive/june/department-of-health-and-human-services-finalizes-section-1557-regulations>

²85 FR 37215

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