

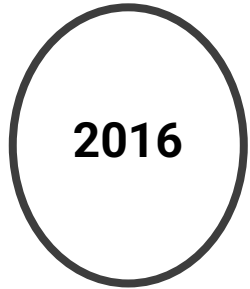
Section 1557 of the ACA

The New Proposed Federal Rule, What State Regulators Need to Know and How They Can Act

Roadmap of Presentation

- ▶ Background
- ▶ What Has Been Restored
 - ▶ History, Scope or Rule
- ▶ Impact of Rule
- ▶ Opportunities for Responses

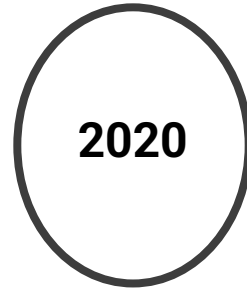
Background



2016

ACA

Established health policy for providers receiving federal funding.



2020

Narrow Interpretation

Previous administration offered significant changes that narrowed the 1557 Rule



2022

Proposed Rule

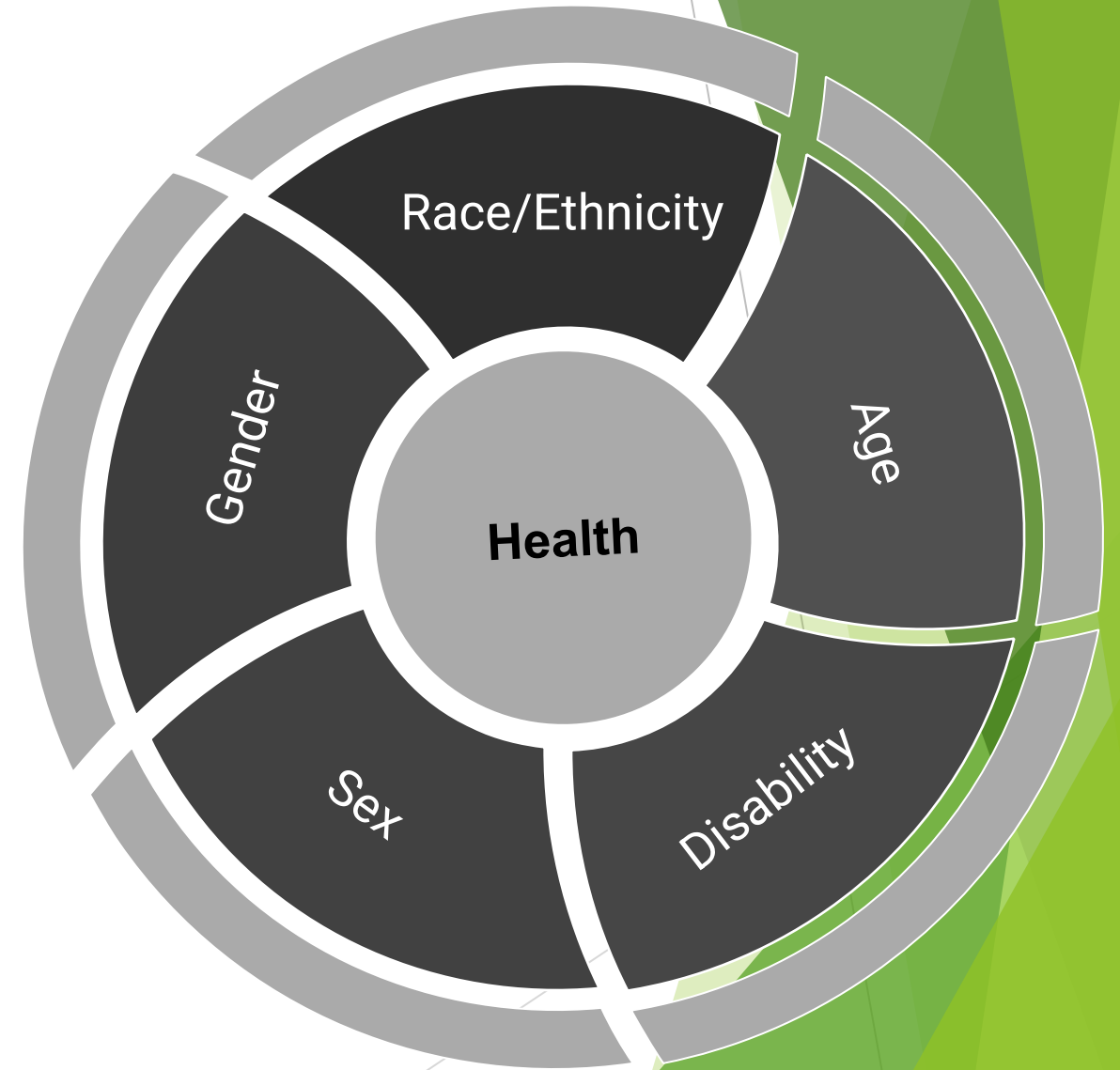
Restores ACA original protections. Looks to take some provisions further.

Impact of Care

*We are intersectional,
Care is intersectional.*

Expand some definitions

Proposed Rule would increase access



Restoration of the Full Scope of Sex Nondiscrimination Protections

- 2016 rule:
 - Gender identity, sex stereotypes, and pregnancy status included under the definition of sex
 - Specific examples of gender identity nondiscrimination in coverage and care
 - Followed previous action by ~20 state regulators to prohibit discrimination against transgender people, particularly in benefit design
- 2020 rule:
 - Eliminated gender identity, sex stereotyping, and pregnancy nondiscrimination protections
 - Also eliminated sexual orientation and gender identity (SOGI) protections from various CMS rules

Restoration of the Full Scope of Sex Nondiscrimination Protections

- 2022 rule:
 - Based on the 2020 Supreme Court decision in *Bostock v. Clayton County*, re-establishes gender identity nondiscrimination protections under the basis of sex and adds sexual orientation
 - Re-establishes protections on the basis of sex stereotypes and pregnancy status
 - Clarifies that sex-based distinctions are allowed, but only if they cause *de minimis* harm to beneficiaries or patients
 - Clarifies that religious/conscience exemptions will be considered on a case-by-case basis by OCR under existing federal laws
 - Does not require providers to perform services outside of their scope of practice or area of specialty
 - Re-establishes CMS regulations that were eliminated by the 2020 rule

Data Collection and Clinical Algorithms

- Several Executive Orders require the collection, analysis, and reporting of demographic data for various purposes, including civil rights enforcement
- OCR proposes to rely on existing authorities to promote the recurring collection of data on leading civil rights indicators related to access and barriers to opportunities and services
- OCR seeks comments on whether a new requirement to collect data would have utility for regulators and covered entities
- Several other provisions also relate to data through research and clinical algorithms
 - Covered entities may not discriminate in federally supported research (in, e.g., study enrollment)
 - Clinical decisionmaking algorithms cannot incorporate bias that results in reduced access to health care or coverage benefits or services

Benefit Design: Network Adequacy

- Network adequacy is a major consideration in advancing health equity and ensuring high quality of coverage (Workstream 5 presentation in June 2022)
- Network inadequacy can cause:
 - Alienation from care and poor health outcomes, especially for chronic conditions
 - Patient complaints and lawsuits, low quality scores
- OCR does not propose to establish a single network adequacy standard but notes that narrow networks may pose discrimination concerns
- OCR seeks comments on how Section 1557 might apply to provider network design, particularly for people with disabilities and others with specific health conditions, in addition to the general requirements related to race, color, national origin, age, and sex

Nondiscrimination On the Basis of Disability, Limited English Proficiency

- *Broad definition of “health program or activity”
- 1557 Coordinator, Policies and Procedures, Training
- Notices of Nondiscrimination
- Meaningful Access and Effective Communication
- Information & Communication Technology

Disability Accessibility: Structures, Policies, and Medical Equipment

- Structural Accessibility & Reasonable Modifications
- Availability of medical diagnostic equipment and Section 510 standards: request for comments
 - a. What we know about the dearth of accessible equipment
 - b. Detailed consensus standards exist
- Accessible web content and WCAG standards: request for comments

Disability & LEP Data Collection, Algorithms, Telehealth

- Disability data collection in electronic health records
 - a. Capture health and healthcare disparities experienced by people with disabilities, including barriers that compound disparities for people of color and the LGBTQ+ community
 - b. Mitigate barriers by meeting accommodation needs
- Best practices for gathering disability data
- Better data helps discern disability and LEP discrimination in the use of algorithms and telehealth

Benefit Design

- Section 92:207 - nondiscrimination in insurance coverage
- No 'special' cost-sharing & restrictions/limitations on coverage
- Utilization Management for Rx must be neutral, applied in a non-discriminatory manner that does not target any specific indicated use or group, and based on clinical evidence
- Proxy discrimination
- Failure to provide or administer “health-related coverage” in the most integrated setting appropriate to people with disabilities

Opportunities To Support

- Support Access (Parity, Networks, language, etc.)
- Strengthening the feedback loop between consumer assisters, consumers, advocates, state departments of insurance
- Improving the consumer complaints process; and, sharing findings of discriminatory benefit design.
- Availability of medical diagnostic equipment and Section 510 standards: request for comments
- Reasonable Modifications to Algorithms

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