

OUR PRACTICE

Health Care Discrimination Litigation and Compliance

Section 1557 of the Affordable Care Act prohibits discrimination in covered health programs or activities on the basis of a number of personal characteristics. Current regulatory interpretation of the law also requires covered providers to implement programs, activities, and affirmative actions to prevent and address discrimination in health care within their organizations.

Section 1557's reach is expansive, in that it touches any health care program or activity which receives federal funds, including funding under Medicare, Medicaid, and a long list of other federal programs. Baker Donelson provides a holistic approach to legal solutions for health care and long term care facilities seeking to comply with Section 1557 of the Affordable Care Act's nondiscrimination provisions, and who may face related litigation.

Our team consists of experienced members from multiple practice areas (including Labor & Employment, Health Care Regulatory, Long Term Care, and Real Estate Litigation) who work with providers to protect their organizations and respond to private health care discrimination actions. The team also assists in responding to enforcement actions by the U.S. Department of Health and Human Services' Office of Civil Rights (HHS-OCR) involving allegations that a provider has discriminated on the basis of race, sex, sexual orientation, gender identity, disability, age, language proficiency, color, or national origin.

HHS-OCR has provided increasingly specific guidance regarding the mandates of Section 1557 and has stepped up enforcement actions against covered entities. In addition, as awareness of Section 1557's reach has increased, we have seen more providers become the subject of lawsuits from patients alleging health care discrimination. Similarly, state discrimination and fair housing laws are also becoming popular vehicles for lawsuits against providers. Providers need assistance in navigating the latest guidance and in developing and implementing compliance programs to protect against these actions, and they need advocates whose experience in health care discrimination law may help to prevent costly damages awards, civil money penalties, and/or operational mandates.

Baker Donelson attorneys provide the following services to address these changing needs:

- Proactive compliance reviews to ensure organizations are not engaging in discriminatory practices.
- Educational programs for leadership and employees to ensure appropriate policies and procedures are enforced.
- Review of clinical policies and advice regarding risk mitigation.
- Representation in litigation.
- Representation in investigatory proceedings.
- Privacy-related reviews.
- Telehealth compliance advice.
- Medicaid/Medicare reimbursement/payment guidance and advice.



Representative Matters

- Defended a large health care system during an investigation by the U.S. Health and Human Services Department and the Department of Justice regarding allegations made by a patient who is a member of the LGBTQ+ community. The patient alleged that one of the medical system's hospitals violated

Section 1557 when they were denied certain medical services as a result of their gender assigned at birth.

- Defended a large private medical practice during an investigation by a local agency regarding allegations from several deaf patients. The patients alleged that the practice failed to provide adequate hearing assistance aids during the course of their interactions with the practice and its providers.
- Defended a regional health care system during an investigation by the U.S. Health and Human Services Department regarding allegations made by the daughter of a deceased 80-year-old former patient. The surviving daughter alleged that one of the system's hospitals violated Section 1557 based on her mother's age when it denied the former patient certain medications to fight COVID-19, including experimental medications that were not readily available at the beginning of the pandemic.
- Represented a provider in a case in the U.S. District Court for the District of Columbia arising under Section 1557 for failure to provide services to a transgender patient.
- Provided advice and counsel to a provider regarding gender-neutral best practices for verbal and written patient communications and general office policies.