

# Five Frequently Asked Questions About the Health Care Rights Law and Proposed Changes

JUNE 2019

## What is the Health Care Rights Law?

The Health Care Rights Law (HCRL), also known as Section 1557 of the Affordable Care Act, is a landmark federal law that prohibits discrimination in health care. It is the only federal law that bans discrimination on the basis of race, color, national origin, sex, age, and disability specifically in health programs and activities that receive federal financial assistance and is the first federal law to prohibit sex discrimination in health care.<sup>1</sup> It does so by incorporating longstanding federal civil rights laws, including: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

## Why is the Health Care Rights Law important to older adults?

Older adults, particularly seniors of color, seniors with limited English proficiency (LEP), and LGBTQ older adults, often face discrimination in accessing health care services. While longstanding federal civil rights statutes are important, they sometimes fail to adequately protect these communities from discrimination. The HCRL and its corresponding regulations clarified how these important civil rights statutes specifically apply to health care, better protecting older adults and other marginalized communities from discrimination.

The HCRL regulations issued by the Department of Health and Human Services (HHS) under President Barack Obama in 2016 are critical to defining the scope of protections under Section 1557.<sup>2</sup> They include, for example, protections for transgender older adults based on gender identity, and require health care insurance companies and providers to provide notice of non-discrimination and rights to language assistance, including in non-English languages.<sup>3</sup> The regulations also clarify that victims of disparate impact discrimination have a private right of action to challenge that discrimination in federal district court.<sup>4</sup> For older adults who might experience

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1 42 U.S.C. § 18116.

2 81 Fed. Reg. 31376 (May 18, 2016).

3 45 C.F.R. § 92.206; 45 C.F.R. § 92.8.

4 81 Fed. Reg. at 31439-40.

discrimination because of intersecting identities (e.g., age and race), the regulations explain that the HCRL recognizes intersectional discrimination claims.<sup>5</sup> For more on the 2016 HCRL regulations, see Justice in Aging’s issue brief Section 1557: Strengthening Civil Rights Protections in Health Care.<sup>6</sup>

## What changes is the Trump Administration proposing to the Health Care Rights Law?

On June 14, 2019, HHS under President Trump proposed major changes to the HCRL regulations.<sup>7</sup> Those changes include eliminating protections for transgender individuals by eliminating the previous definition of gender identity as an individual’s internal sense of gender, which may be different from an individual’s sex assigned at birth and which may be male, female, neither, or a combination of male and female.<sup>8</sup> In proposing such changes, HHS not only reverses previous regulations but also runs counter to nearly two decades of caselaw that say federal sex discrimination laws protect transgender communities.<sup>9</sup> The proposed changes would also roll back the requirement that notices of non-discrimination and language assistance are provided in non-English languages to assist LEP individuals, citing a burden to providers. In addition, HHS proposes limiting the scope of health care entities that are required to comply with the regulations. Finally, the proposed regulations state that the enforcement provisions in the underlying statute, e.g. Title VI in a race discrimination context, would govern the enforcement of the HCRL. This would essentially eliminate the private right of action for disparate impact claims.

These proposed changes, if finalized, would severely undermine the rights of transgender older adults and LEP seniors to access health care free from discrimination and in a way they understand and would harshly limit the ways victims of discrimination can seek redress in court.

## What can I do to fight these proposals to change the Health Care Rights Law?

June 14, 2019 begins a 60-day public comment opportunity, ending on August 13, 2019. Now is the time to voice your concerns about these proposed changes to HHS. Advocates for older adults should write to HHS and tell them these proposed changes would negatively impact their clients and communities and allow for more discrimination in health care to go unchecked. Under federal law, the agency is required to read and consider every comment before finalizing a proposed rule. In the coming weeks, Justice in Aging will release template comments that advocates can tailor and use as a model for their advocacy. [Visit our website](#) to find more resources.

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5 81 Fed. Reg. at 31405.

6 Justice in Aging, “Section 1557: Strengthening Civil Rights Protections in Health Care,” (Jan. 2017), *available at* [justiceinaging.org/wp-content/uploads/2017/01/Section-1557-Strengthening-Civil-Rights-Protections-in-Health-Care.pdf](https://www.justiceinaging.org/wp-content/uploads/2017/01/Section-1557-Strengthening-Civil-Rights-Protections-in-Health-Care.pdf).

7 84 Fed. Reg. at 27846. (June 14, 2019)

8 45 C.F.R. § 92.4.

9 National Center for Transgender Equality, “Federal Case Law on Transgender People and Discrimination,” *available at* [transequality.org/federal-case-law-on-transgender-people-and-discrimination](https://transequality.org/federal-case-law-on-transgender-people-and-discrimination).

## Am I still protected from discrimination? What should I do if I am discriminated against?

The HCRL and the statutes it incorporates are still the law of the land, and discrimination on the basis of race, color, national origin, sex, age, and disability are still prohibited. HHS does not have the power to change the law. However, the proposed changes may confuse consumers, providers, and insurance companies and may lead to more discrimination. Also keep in mind that many states have their own anti-discrimination laws that remain unchanged regardless of federal administrative proposals.

If you or someone you know has been discriminated against, please reach out to a legal organization to explore your options. While we do not provide direct legal services or represent individuals, Justice in Aging is available for [case consultations](#) with attorneys and advocates.