



REPRODUCTIVE RIGHTS & HEALTH

PROHIBITING SEX DISCRIMINATION IN HEALTH CARE: WHAT YOU NEED TO KNOW ABOUT THE AFFORDABLE CARE ACT'S HEALTH CARE RIGHTS LAW

The Affordable Care Act (ACA) contains an important non-discrimination prohibition, the Health Care Rights Law, sometimes referred to as Section 1557. The Health Care Rights Law prohibits discrimination in health care on the basis of race, color, national origin, age, disability, and sex including pregnancy, gender identity, and sex stereotyping. Health insurers, hospitals, clinics, and any other entities that receive federal funds are covered by this law.

The ACA's Health Care Rights Law is the first broad prohibition against sex discrimination in health care. It protects women from discrimination, as well as people who are pregnant, have had an abortion, are transgender, and those who don't meet traditional sex stereotypes. The Health Care Rights Law also protects people of color, people with disabilities, and people who face discrimination because of their age. And it protects those who face multiple and intersecting forms of discrimination, such as a pregnant transgender man or a Black immigrant who does not speak English.

WHAT FORMS OF SEX DISCRIMINATION ARE PROHIBITED BY THE ACA'S HEALTH CARE RIGHTS LAW?

Sex discrimination in health care occurs when health care providers (such as doctors, nurses, hospitals, or health insurance plans), or other health care programs and entities (such as government programs that pay for health care or nursing homes) treat an individual or group differently than others because of that person's or group's sex, gender identity, or sexual orientation.

Sex discrimination in health care can take many forms, such as when a health care provider:

- Refuses to treat someone because they are transgender;
- Refuses to treat someone because she has had an abortion;
- Refuses to provide care to a newborn with parents in a same-sex relationship because of sex stereotypes that marriage should be between a man and a woman;
- Denies a woman counseling on the full-range of birth control options because of stereotypes about the sexuality of a particular racial or ethnic group;
- Dismisses women's medical concerns because of stereotypes that women are emotional and therefore may be "exaggerating" their symptoms;
- Sexually harasses or assaults their patients.

WHAT KINDS OF HEALTH CARE PROVIDERS AND PROGRAMS ARE REQUIRED TO COMPLY WITH THE HEALTH CARE RIGHTS LAW?

The ACA's Health Care Rights Law applies to a wide range of health providers and programs. It protects individuals from discrimination by:

- Any health program or provider that receives funding from the federal government, such as hospitals, clinics, or doctor's offices;
- Any program run by the federal government, including federal health programs that provide health coverage for people who are struggling to make ends meet, those with disabilities, and older people such as Medicare, Medicaid, and the Children's Health Insurance Program (CHIP); and
- Any health insurance plan sold in the marketplaces set up by the ACA and all plans offered by insurance companies who participate in the marketplaces.



WHY IS THE HEALTH CARE RIGHTS LAW IMPORTANT?

While other provisions in the Affordable Care Act made important strides in helping to address specific forms of sex discrimination in health care and health insurance – such as barring insurance companies from charging women more than men for health insurance and requiring insurance plans to cover critical services women need, like maternity care, birth control, and breastfeeding supports – the Health Care Rights Law is an important backstop that prohibits discrimination not specifically covered by these other important provisions.

For example, the Health Care Rights Law is critical to ensure that

- Insurance companies don't deny maternity coverage for dependent children;
- Insurance companies don't limit coverage for health care like infertility treatments or birth control based on age rather than medical need;
- Providers don't sexually harass or assault their patients;
- Providers don't discriminate and deny transgender patients health care.

The Health Care Rights Law also provides important non-discrimination protections in health care beyond prohibiting sex discrimination. For example, it ensures hospitals and clinics provide appropriate care and information to people whose first language is not English.

WHO INTERPRETS THE HEALTH CARE RIGHTS LAW?

The Health Care Right Law was passed in 2010 as part of the Affordable Care Act. The Department of Health and Human Services (HHS) is responsible for interpreting it. In 2016, after considerable public input and deliberation, HHS issued final regulations interpreting the Health Care Rights Law. These regulations make it clear that discrimination on the basis of sex includes discrimination based on sex stereotyping, gender identity, and pregnancy, including termination of a pregnancy.

HHS has responsibility for enforcing the law. Its Office of Civil Rights (OCR) is supposed to work with covered programs to prevent discrimination from happening in the first place and to remedy discrimination that has already occurred. OCR receives complaints from individuals, undertakes investigations, and educates providers about their responsibilities under the law.

Federal courts also play a role in enforcing the law, and have protected individuals from discrimination in health care because of lawsuits brought by individuals who have faced such discrimination.

HAS THERE BEEN ANY PUSHBACK TO THE HEALTH CARE RIGHTS LAW?

In 2016, a group of religiously affiliated medical organizations, including dentists, along with eight states, filed a lawsuit with a federal court in Texas, claiming that they should be allowed to discriminate against someone because of their gender identity or because they have had or are seeking an abortion. They asked the court to stop HHS from enforcing the Health Care Rights Law's sex discrimination regulations, and in particular the regulations that made clear that the Health Care Rights Law prohibits discrimination based on abortion and gender identity. The court agreed to halt enforcement of these key regulations, although other regulations related to sex discrimination remain in force.

I HEARD THE TRUMP-PENCE ADMINISTRATION HAS CHANGED OR IS PLANNING TO CHANGE THE HEALTH CARE RIGHTS LAW OF THE ACA, IS THAT TRUE?

Yes. In response to the lawsuit filed in 2016, the Trump-Pence Administration has said that it will issue proposed regulations, in an attempt to rollback key pieces of the Health Care Rights Law. Those proposed regulations are currently under review at the Office of Management and Budget and will be issued sometime soon.

DOES THE PUSHBACK AGAINST THE HEALTH CARE RIGHTS LAW MEAN THAT IT ISN'T CURRENTLY IN EFFECT?

The Affordable Care Act and the Health Care Rights Law remain the law of the land. People still have the right to seek and receive health care and health insurance free from discrimination, including sex discrimination. And people still have the right to file a complaint or go to court if they are subject to discrimination, including discrimination because of gender identity or termination of pregnancy.

Despite the actions of one court in Texas, other federal courts across the country have held that the Health Care Rights Law protects people against discrimination because of their gender identity or because they don't conform to gender stereotypes. These courts have made clear that people can still go directly to court if they experience discrimination for these or any other reasons.

WHAT SHOULD I DO IF I HAVE BEEN DISCRIMINATED AGAINST IN HEALTH CARE?

If you or someone you know has faced discrimination in health care, there are various legal options available. You can go directly to court to stop acts of discrimination and get compensation for any injuries you suffered. You can also file a complaint with the Department of Health and Human Services Office for Civil Rights.

If you think you have been discriminated against, you can contact the National Women's Law Center's Legal Network for Gender Equity at (202) 319-3053 or <https://nwlc.org/legal-assistance>. We can help provide you with resources so you can advocate for yourself, file a complaint, or connect you with a lawyer who will provide you with a free legal consultation.

