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## **DHHS Issues Final Rule Prohibiting Discrimination by Health Care Providers That Receive Medicare or Medicaid Funds**

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On May 18, 2016, the U.S. Department of Health and Human Services issued a final rule prohibiting entities that are reimbursed by Medicare or Medicaid from discriminating against an individual in the provision of or access to health services or health insurance coverage on the basis of race, color, national origin, age, disability, or sex.

The new rule, which goes into effect on July 18, 2016, applies federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, age, disability, or sex to all providers receiving Medicare or Medicaid payments, expanding the reach of Title IX of the Education Amendments of 1972, which previously applied only to educational institutions.

The final regulation prohibits discrimination

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on the basis of gender identity, an individual's internal sense of gender. A transgender person has a different gender identity from the sex assigned at birth. Consequently, the new rule prohibits a Medicare or Medicaid provider from taking actions that have the effect of denying or limiting access to health programs and services to transgender individuals and requires that an individual be treated consistently with the individual's gender identity.

Under the rule, sex-specific programs may continue only if a provider can demonstrate that the sex-specific program is substantially related to the achievement of an important health-related or scientific objective. In addition to sex-specific programs, programs are frequently established for specific age groups or persons with certain disabilities. The rule requires programs established on the basis of race, color, national origin, age, or disability to meet other specified standards in order to continue. The specific standard that applies to a given program depends on which of the factors, race, color, national origin, age, or disability, is used to determine eligibility for the program. All of these programs need to be evaluated in light of the new rule.

Medicare or Medicaid providers are required to comply with the anti-discrimination provisions of the new rule beginning July 18, 2016. Before that date, any Medicare or Medicaid provider employing 15 or more individuals must designate a compliance officer responsible for complying with the rule and adopt a grievance policy to receive grievances under the new rule.

The final regulation also requires Medicare or Medicaid providers to develop notifications, advising patients of their rights under the new rule, prior to October 17, 2016. This notification must be conspicuously posted at the provider's facility and on the provider's website and must accompany all significant communications to patients beginning no later than October 17, 2016.

If you have any questions or if you would like assistance with this or any other matter, please do not hesitate to contact us.

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