Federal District Court Issues Preliminary Injunction Blocking Enforcement of ACA Section 1557

January 12, 2017

The U.S. District Court for the Northern District of Texas issued a preliminary nationwide injunction December 31, 2016, blocking HHS from enforcing Section 1557 of the Affordable Care Act in ***Franciscan Alliance, Inc. et. al. v. Burwell***. We previously reported on Section 1557 (which prohibits discrimination in certain healthcare programs and activities for Title IX reasons, *e.g.*, race, color, national origin, sex, age, or disability), the final Section 1557 regulations issued by HHS, and the potential effects on healthcare providers, insurers, and employer-provided health care coverage **here**. The *Franciscan Alliance* plaintiffs are three religiously affiliated healthcare providers (later joined by five states) that claimed (i) HHS impermissibly extended Title IX to include gender identity and termination of pregnancy as forms of sex discrimination contrary to Title IX?ÃÃs history and legislative intent, (ii) Section 1557 requires covered entities to perform and/or provide insurance coverage for abortion and transition-related procedures, and (iii) Section 1557 denies the healthcare provider plaintiffs the protections available to them under the Religious Freedom Restoration Act. The court agreed and issued an injunction for the prohibition against sex discrimination on the basis of gender identity or termination of pregnancy. Section 1557 remains effective for other forms of discrimination including ?ÃÂ£traditional?ÃÂ¥ sex discrimination, and its notice requirements also remain in effect as the notices merely refer to sex discrimination without mentioning gender identity or termination of pregnancy. This injunction likely comes too late for many group health plans that were modified to comply with Section 1557 (voluntarily or otherwise) on or near January 1, 2017, although some employers will take advantage of this injunction. We will inform you about future material developments with this case when they occur.

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