



**Connect for Health
Colorado's Section 1557
Nondiscrimination Policy**

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AUTHORITY

The Colorado Health Benefit Exchange (COHBE) was established by the State of Colorado under SB 11-200. A Board of Directors provides oversight and ultimate governance for COHBE.

On May 6, 2013, COHBE became also known as Connect for Health Colorado (C4HCO) for business purposes of the healthcare marketplace.

APPROVED

Date _____

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REVISION HISTORY

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1 Purpose

This policy is intended to set out broad principles and guidelines for Connect for Health Colorado in its implementation of the Patient Protection and Affordable Care Act's Section 1557.

2 Scope

This policy governs the actions of Connect for Health Colorado ("the Marketplace") as an entity. Section 1557 applies to any entity receiving funds from HHS, but parties contracting with the Marketplace to provide services on behalf of the Marketplace are also required to comply with this policy.

3 Policy

As required by Section 1557 of the Patient Protection and Affordable Care Act ("PPACA") and its implementing regulations, Connect for Health Colorado, its employees and associated entities shall not, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any public programs administered by the Marketplace.

It is important to note that the above categories are expanded upon by regulation to include prohibitions of discrimination based upon language or gender identity, among others. Within the comments to the regulation, it is clarified that the prohibition on discrimination based upon gender identity includes discrimination rooted in gender-based stereotypes. Connect for Health Colorado interprets discrimination based upon gender-based stereotypes to include sexual orientation.

The Marketplace designates its General Counsel as the primary contact for receiving grievances or reports of discrimination. Customers will be informed of the General Counsel's role and of how to submit a grievance. General Counsel may assign Marketplace employees to work on individual grievances and to find an impartial resolution to claims of discrimination. General Counsel and assignees will work to ascertain whether discrimination may have occurred and to ensure that applicants receive the proper eligibility. Such efforts, detailed in accompanying procedures, should be completed expeditiously and in such a way as to make other avenues of resolution, such as a civil suit or intervention by Health and Human Services' Office of Civil Rights, unnecessary.

4 Role and Responsibilities

Marketplace's General Counsel will be the primary contact for 1557 grievances. The Customer Service Director and the Director of Training and Performance Management will develop and implement procedures to educate consumers about the 1557 grievance process, including how to submit a discrimination grievance to General Counsel.

5 Policy Maintenance

The Internal Compliance and Audit Manager will work with the legal department to regularly review policies to ensure they are in compliance with the most recent rules and regulations.

6 Applicable Compliance and Regulations

The Office of Civil Rights within HHS promulgated the final rule implementing 1557 on May 11, 2016, coming into effect on July 18, 2016. The rule is expansive and is encoded in 45 CFR Part 92. The most pertinent provisions of that part of the Code of Federal Regulations for this policy are reprinted below.

[...]

§ 92.3 Relationship to other laws.

- (a) Rule of interpretation. Neither Section 1557 nor this part shall be construed to apply a lesser standard for the protection of individuals from discrimination than the standards applied under 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, the Age Discrimination Act of 1975, or the regulations issued pursuant to those laws.
- (b) Other laws. Nothing in this part shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the Architectural Barriers Act of 1968, Title IX of the Education Amendments of 1972, Sections 504 or 508 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008, or other Federal laws or to supersede State or local laws that provide additional protections against discrimination on any basis described in § 92.1.

[...]

§ 92.7 Designation of responsible employee and adoption of grievance procedures.

- (a) Designation of responsible employee. Each covered entity that employs 15 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Section 1557 and this part, including the investigation of any grievance communicated to it alleging noncompliance with Section 1557 or this part or alleging any action

that would be prohibited by Section 1557 or this part. For the Department, including the Federally-facilitated Marketplaces, the Director will be deemed the responsible employee under this section.

- (b) Adoption of grievance procedures. Each covered entity that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by Section 1557 or this part. For the Department, including the Federally-facilitated Marketplaces, the procedures for addressing complaints of discrimination on the grounds covered under Section 1557 or this part will be deemed grievance procedures under this section.

[...]

§ 92.101 Discrimination prohibited.

- (a) General.

- (1) Except as provided in Title I of the ACA, an individual shall not, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any health program or activity to which this part applies.

- (2) This part does not apply to employment, except as provided in § 92.208.

- (b) Specific discriminatory actions prohibited. Under any health program or activity to which this part applies:

- (1) (i) Each covered entity must comply with the regulation implementing Title VI, at § 80.3(b)(1) through (6) of this subchapter.

- (ii) No covered entity shall, on the basis of race, color, or national origin, aid or perpetuate discrimination against any person by providing significant assistance to any entity or person that discriminates on the basis of race, color, or national origin in providing any aid, benefit, or service to beneficiaries of the covered entity's health program or activity.

- (2) (i) Each recipient and State-based Marketplace must comply with the regulation implementing Section 504, at §§ 84.4(b), 84.21 through 84.23(b), 84.31, 84.34, 84.37, 84.38, and 84.41 through 84.52(c) and 84.53 through 84.55 of this subchapter. Where this paragraph cross-references regulatory provisions that use the term "recipient," the term "recipient or State-based Marketplace" shall apply in its place.

- (ii) The Department, including the Federally-facilitated Marketplaces, must comply with the regulation implementing Section 504, at §§ 85.21(b), 85.41 through 85.42, and 85.44 through 85.51 of this subchapter.

- (3) (i) Each covered entity must comply with the regulation implementing Title IX, at § 86.31(b)(1) through (8) of this subchapter. Where this paragraph cross-references regulatory provisions that use the term "student," "employee," or "applicant," these terms shall be replaced with "individual."

- (ii) A covered entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals on the basis of sex.
- (iii) In determining the site or location of a facility, a covered entity may not make selections that have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the basis of sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity on the basis of sex.
- (iv) A covered entity may operate a sex-specific health program or activity (a health program or activity that is restricted to members of one sex) only if the covered entity can demonstrate an exceedingly persuasive justification, that is, that the sex-specific health program or activity is substantially related to the achievement of an important health-related or scientific objective.
- (4) (i) Each covered entity must comply with the regulation implementing the Age Act, at § 91.11(b) of this subchapter.
- (ii) No covered entity shall, on the basis of age, aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of age in providing any aid, benefit, or service to beneficiaries of the covered entity's health program or activity.
- (5) The enumeration of specific forms of discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.
- (c) The exceptions applicable to Title VI apply to discrimination on the basis of race, color, or national origin under this part. The exceptions applicable to Section 504 apply to discrimination on the basis of disability under this part. The exceptions applicable to the Age Act apply to discrimination on the basis of age under this part. These provisions are found at §§ 80.3(d), 84.4(c), 85.21(c), 91.12, 91.15, and 91.17–.18 of this subchapter.
- (d) Where the regulatory provisions referenced in paragraphs (b)(1), (b)(3), and (b)(4), and paragraph (c) of this section use the term “recipient,” the term “covered entity” shall apply in its place. Where the regulatory provisions referenced in paragraphs (b)(1), (b)(3), and (b)(4) and paragraph (c) of this section use the terms “program or activity” or “program” or “education program,” the term “health program or activity” shall apply in their place.