

Susan Nash Discusses New HHS Nondiscrimination Rule with Law360

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Winston & Strawn partner Susan Nash discussed the U.S. Department of Health and Human Services' recently finalized rule designed to strengthen protections against discrimination in healthcare under the Affordable Care Act with Law360. The rule, which revived previously rescinded protections for LGBTQI+ individuals, makes clear that under Section 1557 of the ACA, prohibitions against discrimination based on sex protect against discrimination based on gender identity and sexual orientation, and cover any health program or activity by an entity that receives any federal funding.

Attorneys in the benefits and health care industries noted that the rule's expansive application to third-party health plan administrators and insurers brings additional liability concerns. Susan said she took heed of the "really interesting discussion" on liability considerations for TPAs that administer self-funded employer health plans in the final rule. "That's been playing out in the courts quite a bit," she said.

Susan said with a third set of rules on the books and with courts having enjoined various sections of the policies, "it's been kind of a roller-coaster ride, trying to figure out what the rules say and how they should apply in certain contexts."

"But in any event, it's something that we keep in mind when we're advising employers who sponsor group health plans, because sometimes the entities that are administering those plans are subject to 1557," she said.

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