195. *Id.*

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196. Int'l Medical Interpreters Assoc., IMA Guide on Medical Translation, *supra* note 85, at 3.

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197. *Id.* at 3; EM Balk et al., Assessing the Accuracy of Google Translate To Allow Data Extraction From Trials Published in Non-English Languages, (Prepared by the Tufts Evidence-based Practice Center for the Agency for Healthcare Research & Quality, U.S. Dep't of Health & Human Servs.), 12-15, 21- 24, Pub. No. 12(13)-EHC145-EF (2013), *https://www.effectivehealthcare.ahrq.gov/ehc/products/329/1386/Methods_Paper-Google-Translate_1-17-13.pdf*.

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198. This position is consistent with the position on this issue taken by the U.S. Department of Justice and the U.S. Department of Education. *See* U.S. Dep't of Justice & U.S. Dep't of Educ., Dear Colleague Letter: English Learner Students and Limited English Proficient Parents, 38 n.103 (Jan. 7, 2015), *http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf*.

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199. For considerations on ensuring the quality of translations, see Kleber Palma, Migration Policy Institute, Strategies to Help Covered Entities Ensure Quality of Translations, *http://www.migrationpolicy.org/programs/language-access-translation-and-interpretation-policies-and-practices/practitioners-corner* (last visited Mar. 23, 2016); Jessica Sperling, Migration Policy Institute, Practitioner's Corner: Drafting Request for Proposals and Contracts for Language Assistance Services, *http://www.migrationpolicy.org/programs/language-access-translation-and-interpretation-policies-and-practices/practitioners-corner-drafting* (last visited May 4, 2016).

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200. HHS LEP Guidance, *supra* note 49, 68 FR at 47317.

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201. HHS LEP Guidance, *supra* note 49, 68 FR at 47317-18, 47323.

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202. *See, e.g.,* Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights and the Rhode Island Department of Human Services, OCR Transaction No. 0876828, pt. IV.K. (Jan. 19, 2011) *http://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/ridhhsagreement.pdf* (containing restrictions on the use of family members and friends as interpreters).

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203. We intend that "video remote interpreting services" used for oral interpretation for individuals with limited English proficiency means the same that it does when used to provide interpretation for individuals with disabilities as defined by reference in § 92.4 of this final rule: "an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in [28 CFR] 35.160(d)." *See infra* § 92.4 (defining "auxiliary aids and services" to include "video remote interpreting services," as defined in Title II of the ADA, **28 CFR 35.104**).

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204. **28 CFR 35.160**(d)(1)-(4). In contrast to **28 CFR 35.160**(d)(2), which regulates the size of the video image to ensure that the screen shows one's face, arms, hands, and fingers, paragraph (f)(2) of § 92.201 in this final rule does not regulate the size of the video image because this component is less relevant for oral interpretation between English and non-English languages.

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205. This understanding is consistent with the HHS LEP Guidance, *supra* note 49, 65 FR at 47318 (stating that even if an individual with limited English proficiency declines a qualified interpreter, where precise, complete, and accurate information is critical, or where the competency of the preferred interpreter that the individual desires to use is not established, "a recipient may want to consider providing its own, independent interpreter, even if the LEP person wants to use his or her own interpreter as well.").

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206. *See* HHS LEP Guidance, *supra* note 49, 68 FR at 47314, 47320.

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207. *See* Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights and Memorial Health System, OCR Transaction No. 08-79513, pt. V.B.1.b, *http://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/mhs_vra.pdf* (last visited Mar. 11, 2016) (listing data sources for an assessment of language needs).

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208. The safe harbor further provides that if a language group with fewer than 50 individuals constitutes 5% of the recipient's service area, the recipient is not obligated to translate written materials but must provide written notice in the primary language of that language group of the right to receive oral interpretation, at no cost to the individual. HHS LEP Guidance, *supra* note 49, 68 FR at 47319.

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209. *See* 80 FR at 54185.

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210. Qualified health plan issuers are also bound by the tagline requirement in market-wide regulations at **45 CFR 147.136**(e) (effective Jan. 19, 2016) described in the preamble to § 92.8, *supra* note 107.

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211. Health Insurance Marketplaces have language access obligations under laws independent of Federal civil rights laws requiring the following to be accessible to individuals with limited English proficiency: a Marketplace's toll-free call center, *see* **45 CFR 155.205**(a); a Marketplace's Web site, *see id.* 155.205(b); applications, forms, and notices required to be sent by a MarketplaceSM. ; *see id.* 155.230(b); and a Marketplace's consumer assistance functions, including a Marketplace's outreach and education activities and a Marketplace's Navigator program authorized by **42 U.S.C. 18031**(i) and regulated at **45 CFR 155.210**, *see id.* 155.205(d) and (e). In making information accessible to individuals with limited English proficiency, Marketplaces must do so through a combination of written translation, oral interpretation, posting of taglines, and translation of certain Web site content. *See* **45 CFR 155.205**(c)(2)(i)(A) (oral interpretation), (ii) (written translation), (iii)(A) (taglines), (iv)(A) (translation of certain Web site content). With respect to a Marketplace's Navigator program, Navigators are required to provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the MarketplaceSM. , including individuals with LEP. *See* **42 U.S.C. 18031**(i)(3)(E) (statutory requirement); **45 CFR 155.210**(e)(5) (regulatory requirement).

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212. State agencies administering Medicaid programs and CHIP have language access obligations under laws independent of Federal civil rights laws. *See, e.g.,* **42 CFR 435.905**(a)-(b)(1) (requiring State agencies administering Medicaid programs to provide language assistance services for applicants and beneficiaries who are limited English proficient); 457.340(a) (requiring State agencies administering CHIP to comply with certain regulatory requirements applicable to Medicaid, including 435.905(a)-(b)(1), which requires that program information be accessible to individuals with LEP); 435.1200(f)(2) (requiring States to make their Medicaid Web sites accessible to individuals with limited English proficiency); 438.10(c)(1)-(5) (specifying obligations for States delivering benefits and services through Medicaid managed care plans, including managed care organizations and certain plans themselves, to make written information available in certain non-English languages, to provide oral interpretation, and to notify individuals with limited English proficiency of the availability of language assistance).

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213. *See, e.g.,* **42 U.S.C. 18031**(e)(3)(B) (requiring health plans seeking certification as qualified health plans to provide certain information, including claims payment and rating practices, cost-sharing, and enrollee and participant rights in plain language, which means language that the intended audience, including individuals with limited English proficiency, can readily use and understand); **45 CFR 155.205**(c)(2)(i)(A), (ii), (iii)(A), (iv)(B) (requiring telephonic interpreter services, written translation, taglines, and translations of certain Web site content, respectively, for information provided to individuals with limited English proficiency); 156.250 (requiring meaningful access to certain qualified health plan information in accordance with the standards described in 155.205(c)).

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214. *See* **45 CFR 155.205**(c)(2)(i)(A).

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215. **28 CFR 35.104**.

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216. *See* **28 CFR 35.150**(a); **45 CFR 84.22**(a); *Bird.* v. *Lewis and Clark Coll,* 303 F.3d 1015, 1021 (9th Cir. 2002), *cert. denied,* 538 U.S. 923 (2003) ("the central inquiry [under the ADA and Section 504] is whether the program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities").

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217. *See* U.S. Dep't of Justice, ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities (1993), § III-1.2000, *http://www.ada.gov/taman3.html*.

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218. For more information or to contact your regional center, please see *https://adata.org/* and *https://adata.org/national-network*.

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219. The terms "undue financial and administrative burdens" and "fundamental alteration" as used in this part have the same meaning that they have under the ADA.

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220. *See, e.g. ,* discussion of case law in U.S. Dep't of Justice, Accessibility of Web Information and Services of State and Local Government Entities and Public Accommodations (Advanced Notice of Proposed Rulemaking), **75 FR 43460**, 43463-(Jul. 26, 2010).

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221. 36 CFR pt. 1194.

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222. Commenters wanted OCR to cite to **28 CFR 35.160**(a)(1), (2); 35.160(d); 35.163; and 35.164.

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223. **45 CFR 155.120**(c).

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224. **45 CFR 156.200**(e); **45 CFR 147.104**(e); Public Health Service Act section 2705 (codified at **42 U.S.C. 300**gg-4).

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225. Like the proposed rule, the final rule separately addresses employer liability for discrimination in employee health benefit programs at § 92.208.

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226. Where an entity that acts as a third party administrator for an employer's employee health benefit plan is legally separate from an issuer that receives Federal financial assistance for its insurance plans, we proposed to engage in a case-by-case inquiry to evaluate whether that entity is appropriately subject to Section 1557. The final rule addresses this further in the discussions under § 92.2 and § 92.208.

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227. We note that under § 92.207(a), a covered entity would be barred from denying coverage of any claim (not just sex-specific surgeries) on the basis that the enrollee is a transgender individual.

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228. Liza Khan, *Transgender Health at the Crossroads,* 11 Yale J. Health Pol'y L. & Ethics 375, 393 (2011).

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229. *See infra* note 263. *See also* discussion in the proposed rule at 80 FR at 54189-90.

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230. **45 CFR 156.122**(a)(3) (for plan years beginning on or after Jan. 1, 2017).

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231. U.S. Dep't of the Treasury, U.S. Dep't of Labor, and U.S. Dep't of Health & Human Servs., Incentives for Nondiscriminatory Wellness Programs in Group Health Plans (Final Rule), **78 FR 33158** (June 3, 2013).

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232. For a discussion of Value-Based Insurance Design, see Affordable Care Act Implementation FAQs Set 5, Q1,

http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html (last visited May 4, 2016); U.S. Dep't of the Treasury, Dep't of Labor, and U.S. Dep't of Health & Human Servs., Coverage of Certain Preventive Services Under the Affordable Care Act, Final Rule, **80 FR 41318**, 41321 (July 1, 2015); and U.S. Dep't of Health & Human Servs., Center for Medicare & Medicaid Servs., Medicare Advantage Value-Based Insurance Design Model (Sept. 1, 2015), *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-09-01.html*.

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233. *See supra* discussion on deeming compliance with other laws in the General Comments section.

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234. 78 FR at 33168; U.S. Dep't of Health & Human Servs., Center for Medicare & Medicaid Servs., Affordable Care Act Implementation FAQs Set 2, Q5, *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs2.html* (last visited May 4, 2016).

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235. The comments addressed in this section pertain to comments related to the implementation date of § 92.207. OCR also received comments requesting a delayed effective date for the rule in general, which are discussed *supra* under § 92.1 of this preamble.

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236. We note that issuers have been provided notice that they are subject to Section 1557 in other Departmental regulations (HHS's Notice of Benefit and Payment Parameters for 2017, Final Rule, **80 FR 12204**, 12312 (Mar. 8, 2016); HHS's Notice of Benefit and Payment Parameters for 2017, Proposed Rule, **80 FR 75488**, 75553 (Dec. 2, 2015); HHS's Notice of Benefit and Payment Parameters for 2016, Final Rule, **80 FR 10750**, 10823 (Feb. 27, 2015)).

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237. **42 U.S.C. 300**gg-91(c).

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238. We note that non-health-related excepted benefits would be covered under the rule if offered by a covered entity that is principally engaged in providing health care or health coverage.

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239. Title IX applies to these benefits to the extent they are provided in connection with federally funded educational programs or activities.

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240. **42 U.S.C. 300**gg-91(c).

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241. **45 CFR 156.230**.

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242. *See, e.g.,* **42 U.S.C. 300**gg-5(a); **42 CFR 422.205**(a).

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243. *See, e.g.,* Title VII of the Civil Rights Act of 1964 (**42 U.S.C. 2000**e-2000e-17), the ADA (**42 U.S.C. 12101** *et seq.*), the Age Discrimination in Employment Act (**29 U.S.C. 621**-634); Executive Order 11246 (30 FR 12319, 12935, 3 CFR, 1964-1965, as amended), Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 793), and the Vietnam Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. Sec. 4212).

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244. **29 U.S.C. 1001** *et seq.*

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245. 80 FR at 54189 n.73.

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246. *See supra* discussion of the CRRA under the discussion of "health program or activity" under § 92.4.

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247. **29 U.S.C. 1144**(d).

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248. *See supra* discussion on deeming compliance with other laws in the General Comments section.

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249. *See* § 92.208 and discussion of § 92.208 *infra.*

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250. *See* **29 U.S.C. 1104**(a)(1)(D).

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251. **5 U.S.C. 8901** *et seq.*

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252. *See, e.g., Papa* v. *Katy Indus., Inc.,* 166 F.3d 937, 939 (7th Cir. 1999), *cert. denied,* 528 U.S. 1019 (1999) (ADA, ADEA); *Arrowsmith* v. *Shelbourne, Inc.,* 69 F.3d 1235, 1240-42 (2d Cir. 1995) (Title VII).

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253. *Papa* v. *Katy Indus., Inc.,* 166 F.3d at 941.

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254. 80 FR at 54190.

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255. *See, e.g. ,* **45 CFR 155.210**(b)(2)(i) (requiring Exchanges to develop and publically disseminate Navigator training standards that ensures expertise in the needs of underserved and vulnerable populations); **81 FR 12204**, 12338 (Mar. 8, 2016) (establishing new requirement at **45 CFR 155.210**(e)(8) to require Navigators to provide targeted assistance to serve underserved or vulnerable populations).

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256. **45 CFR 156.225**(b) (prohibiting qualified health plans from employing marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs); **45 CFR 147.104**(e) (prohibiting a health insurance issuer from employing marketing practices or benefit designs that have the effect of discouraging the enrollment of individuals with significant health needs in health insurance coverage or discriminate based on an individual's race, color, national origin, present or predicted disability, age, sex, gender identity, sexual orientation, expected length of life, degree of medical dependency, quality of life, or other health conditions); **42 CFR 422.2260**-422.2615 (establishing Part D marketing requirements).

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257. We note that "benefit design" is a term of art used in other Departmental and Federal regulations governing the private health insurance industry. *See e.g.,* **42 CFR 422.100**(f)(3); **45 CFR 156.225**(b); **45 CFR 147.104**(e); **29 CFR 2510.3**-40(c)(1)(iv)(A).

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258. CMS has identified benefit design features that might be discriminatory. For example, placing most or all prescription medications that are used to treat a specific condition on the highest cost formulary tiers (U.S. Dep't of Health & Human Servs., Centers for Medicare & Medicare Servs., Patient Protection and Affordable Care Act: HHS Notice of Benefit and Payment Parameters Rule, (Final Rule), **80 FR 10750**, 10822 (Feb. 27, 2015); U.S. Dep't of Health & Human Servs., Centers for Medicare and Medicaid Servs., Final 2016 Letter to Issuers in the Federally-facilitated Marketplace, 37 (Feb. 20, 2015)); applying age limits to services that have been found clinically effective at all ages (80 FR at 10822 (Feb. 27, 2015); Final 2016 Letter to Issuers in the Federally-facilitated Marketplace, 36-37 (Feb. 20, 2015)); and requiring prior authorization and/or step therapy for most or all medications in drug classes such as anti-HIV protease inhibitors, and/or immune suppressants regardless of medical evidence (Centers for Medicare and Medicaid Servs., Qualified Health Plan Master Review Tool, Non-Discrimination in Benefit Design (2017), *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Master-Review-Tool_v1-1_03302016.zip* (open "Master Review Tool_2017v1.0.xlsm" document; then open "Non-Discrimination Guidance" tab)).

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259. Title VII prohibits discrimination in employment practices "because of sex," **42 U.S.C. 2000**e-2(a), which is defined to include "because of or on the basis of pregnancy, childbirth, or related medical conditions. . . ." **42 U.S.C. 2000**e(k); *Newport News Shipbuilding & Dry Dock Co.* v. *EEOC,* 462 U.S.

669, 684 (1983) ("discrimination based on a woman's pregnancy is, on its face, discrimination because of her sex.").

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260. **42 U.S.C. 300**gg-91(c).

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261. 80 FR at 54189.

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262. 80 FR at 54191.

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263. 80 FR at 54189 *See e.g.,* World Professional Association for Transgender Health (WPATH), *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (7th ed. 2011), *http://www.wpath.org/uploaded_files/140/files/* Standards Of Care, V7 Full Book.pdf; Institute of Medicine of the National Academies, *The Health of Lesbian, Gay, Bisexual and Transgender People: Building a Foundation for Better Understanding (2011); www.nationalacademies.org/hmd/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx. See also* U.S. Dep't of Health & Human Servs., Departmental Appeals Bd., Appellate Division NCD 140.3, Docket No. A-13-87, Decision No. 2576, 22-24 (May 30, 2014), *http://www.hhs.gov/dab/decisions/dabdecisions/dab2576.pdf.*

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264. *See supra* discussion of the definition "on the basis of sex" under § 92.4.

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265. *See supra* discussion on including a religious exemption under § 92.2.

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266. 80 FR at 54189 n.75.

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267. The Medicare program already directs providers to use this approach. *See* Dep't of Health & Human Servs., Centers for Medicare & Medicaid Servs., Medicare Claims Processing Manual, Chapter 32, Transmittal 240: Special Instructions for Certain Claims with a Gender/Procedure Conflict *(last revised Jan. 20, 2015),* (directing providers to use an approved national billing code for sex-specific services for transgender patients to alert the contractor that it is not an error and to allow the claim to continue with normal processing), *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c32.pdf.*

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268. As reflected in § 92.101(a)(2) and as discussed in the preamble of the proposed rule, 80 FR at 54180, except as provided here, the proposed rule does not generally apply to discrimination by a covered entity against its own employees. Thus, the rule does not generally extend to hiring, firing, promotions, or terms and conditions of employment outside of those identified in § 92.208; such claims would continue to be brought under other laws, including Title VII, Title IX, Section 504, the ADA and the Age Discrimination in Employment Act, as appropriate.

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269. This approach is consistent with the basic principle underlying the rule and derived from longstanding civil rights interpretations: Where an entity that receives Federal financial assistance is principally engaged in providing or administering health services, health insurance coverage, or other health coverage, all of its operations are covered by Section 1557. *See* discussion *supra* of § 92.2.

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270. **42 U.S.C. 2000**e-2000e-17.

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271. **42 U.S.C. 12101** *et seq.*

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272. **29 U.S.C. 621**-634.

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273. By contrast, with regard to the liability of the legal entity that an employer creates to administer its employee health benefit plan, *i.e.,* a group health plan, we proposed to analyze questions related to the application of Section 1557 on a case-by-case basis consistent with longstanding principles of nondiscrimination law. We will ask, for example, whether the group health plan itself receives Federal financial assistance, such as through receipt of Medicare Part D payments. If it does not, we will evaluate the group health plan's relationship with the employer in assessing whether Section 1557 applies to the group health plan. 80 FR at 54191 n. 94. We noted that a group health plan may be a covered entity under this rule if the group health plan receives Federal financial assistance, as it operates a health program or activity by virtue of its provision or administration of the employee health benefit program. 80 FR at 54191 n. 93.

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274. Under ERISA, when a group health plan is established or maintained by a single employer, the plan sponsor is the employer, but when a group health plan is established or maintained by two or more employers, the plan sponsor is the association, committee, joint board of trustees, or other similar group of representatives of the parties who establishes or maintains the plan. In the case of a plan established or maintained by an employee organization, the plan sponsor is the employee organization. **29 U.S.C. 1002**(16)(B).

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275. However, under employment discrimination laws like TItle VII, the employer may be liable for the health plan's discrimination. *See, e.g., Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U.S. 702 (1978).

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276. 80 FR at 54191 n. 93.

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277. *Id.*

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278. *See, e.g., McGinest* v. *GTE Service Corp.,* 360 F. 3d 1103, 1118 (9th Cir. 2004), cert. denied, 552 U.S. 1180 2008) (holding that harassment of white employee who associated with African American employees was discrimination under Title VII); *Tetro* v. *Elliot Popham Pontiac,Oldsmobile, Buick & GMC Trucks Inc.,* 173 F.3d 988, 993-96 (6th Cir. 1999) (holding that white plaintiff with biracial child stated a claim under Title VII based on his own race because Title VII protects victims of discriminatory animus towards third persons with whom one associates); *Parr* v. *Woodmen of the World Life Ins.,* 791 F.2d 888, 892 (11th Cir. 1986)

("Where a plaintiff claims discrimination based upon an interracial marriage or association, he alleges by definition that he has been discriminated against because of his race.")

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279. **42 U.S.C. 12182**(b)(1)(E)(Title III); **28 CFR 35.130**(g) (Title II). *See generally http://www.eeoc.gov/facts/association_ada.html. Cf. Loeffler* v. *Staten Island Univ. Hosp.,* 582 F.3d 268, 277 (2d Cir. 2009) (permitting associational discrimination claim under Section 504); *Falls* v. *Prince George's Hosp. Ctr.,* No. Civ. A 97-1545, 1999 WL 33485550 at * 11 (D. Md. Mar. 16, 1999) (holding that parent had an associational discrimination claim under Section 504 when hospital required hearing parent to act as interpreter for child who was deaf). *Cf.* Questions and Answers About the Americans with Disabilities Act's Association Provision.

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280. *See* discussion of § 92.101(a) *supra.*

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281. See **45 CFR 80.8**(a).

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282. No. 14-CV-2037 2015 WL 1197415 (D. Minn. Mar. 16, 2015).

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283. *Id.* at *11.

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284. **42 U.S.C. 1988**.

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285. *See, e.g.,* **28 U.S.C. 1391**.

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286. *See, e.g.,* **28 U.S.C. 1332**.

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287. **45 CFR 80.6**-.11; 45 CFR pt. 81.

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288. **45 CFR 86.71**.

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289. **45 CFR 84.61**.

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290. **45 CFR 91.41**-.50.

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291. *Compare* **45 CFR 84.61** *with* **45 CFR 85.61**-.62.

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292. **45 CFR 85.61**-.62.

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293. **45 CFR 80.7**(e).

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294. Further, as the U.S. Supreme Court observed in *Jackson* v. *Birmingham Bd. of Educ.,* 544 U.S. 167, 180 (2005), protecting individuals from discrimination under Title IX "would be difficult, if not impossible, to achieve if persons who complain about sex discrimination did not have effective protection against retaliation." (citing to the brief of the United States as Amicus Curiae). The same principle is true for discrimination under Section 1557.

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295. **44 U.S.C. 3501**-3520.

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296. **5 CFR 1320.3**(c).

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297. **45 CFR 80.4**(a).

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298. **45 CFR 80.5**.

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299. **45 CFR 91.33**.

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300. Exec. Order No. 12866, 58 FR 51735 (1993).

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301. Exec. Order No. 13563, **76 FR 3821** (2011).

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302. Patient Protection and Affordable Care Act, **Public Law 111-148**, 1557, 124 Stat. 119, 260, (2010) (codified at **42 U.S.C. 18116**).

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303. **42 U.S.C. 18116**(c).

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304. Kristen Suthers, American Public Health Association: Issue Brief: Evaluating the Economic Causes and Consequences of Racial and Health Disparities (2008), *http://hospitals.unm.edu/dei/documents/eval_cause_conse_apha.pdf;* Timothy Waldmann, Urban Institute, Estimating the Cost of Racial and Ethnic Health Disparities (2009), *http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411962-Estimating-the-Cost-of-Racial-and-Ethnic-Health-Disparities.PDF;* LaVera M. Crawley, David K. Ahn, and Marilyn A. Winkleby, Perceived Medical Discrimination and Cancer Screening Behaviors of Racial and Ethnic Minority Adults, 17(8), Cancer Epidemiol Biomarkers Prev., 1937-1944 (2008), *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2526181/*.

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305. U.S. Dep't of Health & Human Servs., Center for Medicare & Medicaid Servs., CMS Provider of Service file, June 2014, *https://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/NonIdentifiableDataFiles/ProviderofServicesFile.html*.

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306. U.S. Dep't of Health & Human Servs., Health Res. & Servs. Admin., Justification of Estimates for Appropriation Committee For Fiscal Year 2016, 53, *http://www.hrsa.gov/about/budget/budgetjustification2016.pdf*.

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307. *Id.* at 69.

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308. Qualified Health Plans Landscape Individual Market Medical, Data.HealthCare.gov (2015), *https://data.healthcare.gov/dataset/2015-QHP-Landscape-Individual-Market-Medical/mp8z-jtg7* (last visited May 3, 2016).

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309. 80 FR at 54195.

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310. John Holahan and Irene Headen, Kaiser Commission on Medicaid and the Uninsured, Medicaid Coverage and Spending in Health Reform: National and State-by-State Results for Adults at or Below 133% FPL (2010), *http://kff.org/health-reform/report/report-and-briefing-on-medicaid-coverage-and/*. Estimates are based on data from FY 2010 Medicaid Statistical Information System.

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311. Aaron Young, Humayun J. Chaudhry, Jon V. Thomas, & Michael Dugan, *A Census of Actively Licensed Physicians in the United States, 2012,* 99 no.2 J. Med. Reg. 11 (2013), *https://www.fsmb.org/Media/Default/PDF/Census/census.pdf*.

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312. 80 FR at 54195.

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313. The Area Health Resource File itself double counts physicians who are licensed in more than one state. *See infra* discussion below at II.C.1.a.

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314. U.S. Census Bureau, Statistics of U.S. Businesses, *http://www.census.gov/econ/susb/* (last visited May 3, 2016).

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315. U.S. Dep't of Labor, Bureau of Labor Statistics, May 2015 National Occupational Employment and Wage Estimates, *http://www.bls.gov/oes/2014/may/oes_nat.htm (last visited May 3, 2016).*

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317. Qualified Health Plans Landscape Individual Market Medical (2015), *supra* note 308.

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328. We calculated the cost of training the medical personal using the weighted median hourly rate, $47.22, multiplied by the 446,210 medical staff identified as employed in State governments.

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329. Exec. Order No. 13166, **65 FR 50121** (2000).

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330. U.S. Dep't of Health & Human Servs., Language Access Plan, *supra* note 186.

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331. Consistent with OCR's enforcement of other civil rights authorities, the proposed definition of "Federal financial assistance" under the regulation does not include Medicare Part B, which means that physicians receiving only Medicare Part B payments are not covered under the regulation. However, because almost all physicians receive payments from other Department programs such as Medicaid or Medicare meaningful use payments, we believe that there are very few physicians excluded from these provisions. *See supra* pt. I. C. 1.

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334. **45 CFR 155.120**(c)(1)(ii) prohibits a Health Insurance MarketplaceSM. from discriminating based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation.

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335. **45 CFR 147.104**(e) prohibits health insurance issuers in non-grandfathered individual, small and large group markets from employing benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in health insurance coverage or discriminate based on an individual's race, color, national origin, present or predicted disability, age, sex, gender identity, sexual orientation, expected length of life, degree of medical dependency, quality of life, or other health conditions. **45 CFR 156.200**(e) prohibits a qualified health plan issuer from discriminating on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. **45 CFR 156.125**(a) prohibits issuers that provide essential health benefits from using benefit designs that discriminate based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions. **45 CFR 156.125**(b) requires issuers that provide essential health benefits to comply with **45 CFR 156.200**(e).

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336. **45 CFR 147.104**(e), 156.200(e) and 156.125(a)-(b) are applicable to qualified health plan issuers.

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337. **45 CFR 147.104**(e) is applicable to non-grandfathered coverage in the individual, small and large group markets. **45 CFR 147.150**(a) incorporates essential health benefits requirements (and implementing regulations at **45 CFR 156.200**(e) and 156.125(a)-(b)) for non-grandfathered coverage in the individual and small group markets.

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338. 42 U.S.C.300gg.

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339. *Id.* 18022 (b).

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340. *Id.* 300gg-13 (a)(4).

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341. *Id.* 18001.

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