



## HHS Releases Notice of Benefit and Payment Parameters for 2023 Final Rule

May 3, 2022

The Centers for Medicare & Medicaid Services (CMS) has released a [final rule](#) along with a [fact sheet](#) addressing the benefit and payment parameters for 2023.

According to CMS, the 2023 benefit and payment parameters final rule seeks to strengthen the coverage offered by qualified health plans (QHPs) on the federal Marketplace. These parameters will also ensure consumers can more easily find the right form of quality, affordable coverage for their circumstances.

The final rule primarily affects the individual market and the Marketplaces, but as noted below there is guidance regarding forthcoming rulemaking relating to prohibited discrimination in general benefit plan design.

The final rule is scheduled to be published on May 6, 2022, and will be effective on July 1, 2022.

The 2022 open enrollment period runs from November 1, 2022, to December 15, 2022.

### Section 1557 Discrimination

In its earlier proposed rule, the U.S. Department of Health & Human Services (HHS) proposed amendments to regulations to explicitly identify and recognize discrimination on the basis of sexual orientation and gender identity as prohibited forms of discrimination based on sex consistent with the Supreme Court's 2020 decision in *Bostock v. Clayton County*. HHS also included in the proposed rule an example related to gender-affirming care that was intended to illustrate a health plan design that presumptively discriminates against enrollees based on gender identity.

HHS did not finalize the proposed rule in the 2023 Payment Notice because it says it is simultaneously working on proposed rulemaking under section 1557 of the ACA. However, HHS states that is committed to removing barriers to coverage because, in its view, doing so can lead to improved health outcomes in the LGBTQI+ community. HHS announced that it will continue to interpret and enforce section 1557 of the ACA and its protections against sex discrimination to prohibit discrimination on the basis of sexual orientation and gender identity in all aspects of health insurance coverage governed by section 1557.

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