



Compliance with Section 1557 of the Affordable Care Act: Requirements Related to Individuals with Limited English Proficiency

Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age or disability in health programs or activities that receive federal financial assistance. It builds upon several long-standing federal civil rights laws, including Title VI of the Civil Rights Act of 1964 which prohibits recipients of federal financial assistance from discriminating on the basis of race, color or national origin.

In May 2016 the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) issued the Nondiscrimination in Health Programs and Activities Final Rule¹ (“Final Rule”), implementing Section 1557 for health programs and activities that receive federal financial assistance from HHS.² As entities participating in Medicare and Medicaid, and often receiving grant funds from the Health Resources and Services Administration (HRSA), all section 330 health centers (both grantees and lookalikes) are required to comply with the final rule.

This document will provide an overview of the access, notice and grievance procedure requirements related to individuals with limited English proficiency (LEP). An individual with LEP is a person whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.

Access

Under the Final Rule, oral and written language assistance services must be provided free of charge, in an accurate and timely fashion and must protect the privacy and independence of the individual with LEP. The staff members or contract companies providing language assistance services must be “qualified.” The following chart summarizes the qualification requirements for interpreters, bilingual staff members and translators:

Oral language assistance services		Written language assistance services
Interpreter services	Bilingual staff members	Translator services
1. Adhere to generally accepted interpreter ethics principles, including client confidentiality 2. Demonstrate proficiency in speaking and understanding both spoken English and at least one other spoken language 3. Interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology	1. Demonstrate proficiency in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology, and 2. Communicate effectively, accurately, and impartially directly with individuals with LEP in their primary languages	1. Adhere to generally accepted translator ethics principles, including client confidentiality 2. Demonstrate proficiency in writing and understanding both written English and at least one other written non-English language 3. Translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology

¹ The Final Rule is available at https://www.federalregister.gov/documents/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov.

² The Final Rule also applies to health programs and activities administered by HHS, to health insurance Marketplaces and to all plans offered by issuers that participate in those Marketplaces.

Being qualified to provide one type of language assistance service does not mean that an individual can automatically provide the other types of language assistance service. For example, a bilingual staff member may serve as an interpreter or translator only if s/he meets the qualification requirements for that type of language assistance service.

Steps to compliance:

- Develop a process to determine qualification of language assistance services: While health centers may accept a license or certification as evidence of qualification, a license or certification is not required under the Final Rule. Other than credentials, health centers must also consider additional factors, such as whether the interpreter has not practiced in a long time or is late to appointments. The health center's process should allow for regular review of qualification to continue providing language assistance services.
- Develop a policy and procedure on the use of interpreter services: This policy may be part of a health center's language access plan³ or it may be a stand-alone policy and procedure. As described in the Final Rule, the policy and procedure should meet the following requirements:
 - An adult accompanying an individual with LEP may interpret only:
 - In an emergency situation involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter immediately available
 - Where the individual with LEP specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate.
 - A minor child accompanying an individual with LEP may interpret only:
 - In an emergency situation involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter immediately available.

Notice

Under the Final Rule, covered entities are required to post a nondiscrimination notice that, among other things, informs individuals with LEP of their right to communication assistance, the entity's grievance procedures, and the individual's right to file a discrimination complaint with OCR. In addition, covered entities are required to post taglines (short statements written in non-English languages that indicate the availability of language assistance services free of charge) indicating the availability of language assistance in the top 15 languages spoken by individuals with LEP in that state.⁴

Steps to compliance:

- What notices must be posted:
 - A nondiscrimination statement⁵ and
 - Taglines⁶ including detail of how to obtain language assistance services in at least the top 15 languages spoken by individuals with LEP of the relevant state(s).

³ While covered entities are not required to develop and implement a written language access plan, OCR strongly encourages covered entities to do so and the Director will consider whether the covered entity has developed and implemented a language access plan when evaluating compliance with the Final Rule. OCR suggests that HHS's updated language access plan may serve as a useful model. See U.S. Dep't of Health & Human Servs., Language Access Plan (2013), available at <http://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf>.

⁴ OCR has made available a table displaying OCR's list of the top 15 languages spoken by individuals with LEP in each state, the District of Columbia, Puerto Rico and each U.S. Territory, available at <http://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf>.

⁵ OCR has provided a sample notice in English and in 64 additional languages, available at <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>.

⁶ OCR has provided a sample tagline in English and in 64 additional languages, available at <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>.

- Where must notices be posted:
 - On the website: In a conspicuous location, accessible from the home page;
 - In physical locations where the health center interacts with the public, including clinic and administrative offices; and,
 - In significant publications and communications targeted to patients and the public, including outreach publications and notices of patient rights.⁷

Grievance procedures

Under the Final Rule, entities with 15 or more employees must:

1. Designate an employee as compliance coordinator to coordinate compliance efforts related to the Final Rule and to assure the entity investigates any grievances alleging noncompliance with Section 1557 or the Final Rule.
2. Adopt grievance procedures with appropriate due process standards and provide for prompt, equitable resolution of grievances alleging noncompliance with Section 1557 or the Final Rule.⁸

Steps to compliance:

- Identify an employee as the compliance coordinator.
- Review and revise health center's existing grievance procedures to assure compliance with Section 1557 and the Final Rule.

Assurance of Compliance and Enforcement

When a covered entity applies or reapplies for federal financial assistance from HHS on or after July 18, 2016, the entity will have to sign, date and submit a new Assurance of Compliance Form which will include an attestation of compliance with all requirements under Section 1557. In applying for and accepting funding from HRSA, health centers are attesting that they are in compliance with all of the requirements of the Final Rule, including the access, notice and grievance procedure requirements related to individuals with LEP.

The existing enforcement mechanisms under Title VI and the other underlying civil rights laws apply for violations of the Final Rule, and include OCR's ability to require covered entities to keep records and submit compliance reports, conduct compliance reviews and complaint investigations, and provide technical assistance and guidance. Where noncompliance or threatened noncompliance cannot be corrected by informal means, available enforcement mechanisms include suspension of, termination of, or refusal to grant or continue federal financial assistance; referral to the Department of Justice with a recommendation to bring proceedings to enforce any rights of the United States; and any other means authorized by law. The Final Rule also recognizes that an individual may bring a civil action to challenge a Section 1557 violation.

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⁷ According to the Final Rule, OCR intends to interpret "significant publications and significant communications" broadly. Significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures, must include a nondiscrimination statement and taglines in at least the top two languages spoken by individuals with LEP of the relevant state(s).

⁸ OCR has provided a sample grievance procedure, available at <http://www.hhs.gov/sites/default/files/section1557-sample-grievance-procedure.pdf>.