

# HHS Office for Civil Rights in Action



May 15, 2020

## **BULLETIN: Ensuring the Rights of Persons with Limited English Proficiency in Health Care During COVID-19**

In light of the nationwide public health emergency and national emergency<sup>1</sup> declared as a result of Coronavirus Disease 2019 (COVID-19), the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) provides this bulletin to health entities covered by OCR's civil rights authorities to ensure they are better able to serve individuals with limited English proficiency (LEP).<sup>2</sup>

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and Section 1557 of the Affordable Care Act (Section 1557), which prohibit entities receiving HHS-provided federal financial assistance from discriminating on the basis of race, color and national origin (including LEP). Under the regulations implementing Section 1557, recipients, such as health care providers, must take reasonable steps to provide meaningful access to individuals with LEP eligible to be served or likely to be encountered in their health programs and activities. This longstanding obligation is not waived during a National Emergency. Reasonable steps may include written translations of documents, or oral language assistance from a qualified interpreter,<sup>3</sup> either in-person or using remote communication technology.

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<sup>1</sup> HHS Secretary Alex M. Azar II declared a Public Health Emergency, January 31, 2020, under Section 319 of the Public Health Service Act (42 U.S.C. 247d) in response to COVID-19. *See*: <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>. The President issued the *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, on March 13, 2020, under Sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 *et seq.*). <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>. On April 21, 2020, HHS Secretary Alex M. Azar II renewed the Public Health Emergency, effective April 26, 2020. <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx>.

<sup>2</sup> This guidance is a statement of agency policy not subject to the notice and comment requirements of the Administrative Procedure Act (APA). 5 U.S.C. § 553(b)(A). For the same reasons explained above, OCR also finds that, even if this guidance were subject to the public participation provisions of the APA, prior notice of, and comment on, this guidance is impracticable, and there is good cause to issue this guidance without prior public comment and without a delayed effective date. 5 U.S.C. § 553(b)(B) & (d)(3).

<sup>3</sup> There is no requirement that an interpreter be “certified” in any specific way. Rather, covered entities are required to offer a “qualified interpreter” when oral interpretation is a reasonable step in providing meaningful access. A qualified

“Because we are a diverse country, removing language barriers in health care delivery is crucial to addressing this public health emergency,” said Roger Severino, OCR Director. “We are committed to working with the medical community to make sure people of every national origin have meaningful access to health care without discrimination and consistent with the law,” Severino added.

To ensure meaningful access for persons with LEP under a variety of circumstances, recipients can, among other things:

- Contract with entities qualified to provide language access services through multiple types of media (telephonic interpretation, video remote interpreting, etc.);
- Disseminate COVID-19 information and messaging about testing and treatment in plain language and in the non-English languages prevalent in the affected area through all forms of media, including online, television, or social media, and through targeted outreach to community and faith-based organizations that can reach individuals with LEP;<sup>4</sup>
- Post COVID-19 documents in multiple languages in multiple locations, including at providers’ initial point of contact;
- Offer services in multiple languages and provide notices of such language access services online, in advertisements, and at points of service;<sup>5</sup>
- Designate a person on every shift to be responsible for ensuring and coordinating the delivery of language access services for patients with LEP at every stage of contact, from intake and admission to treatment and discharge;<sup>6</sup>
- Create and disseminate widely to staff an up to date list of in-person and remote translation and interpreter services and of bilingual staff who are qualified to respond quickly to the needs of patients with LEP;
- Use “I Speak” resources or ask open-ended questions to determine an individual’s written and spoken language preference at the first point of contact;<sup>7</sup>
- Upon identifying a patient with LEP, make sure critical information is communicated in the patient’s preferred language by using a qualified interpreter or translated materials, remotely if necessary;

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interpreter for an individual with limited English proficiency is an interpreter who: (1) Adheres to generally accepted interpreter ethics principles, including client confidentiality; (2) has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; and (3) is able to 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.

<sup>4</sup> To ascertain the most frequently spoken non-English languages by LEP individuals in your service area, consider the [DOJ Map App](https://www.lep.gov/maps) available at <https://www.lep.gov/maps> and the Census ACS website. Please see the Centers for Disease Control and Prevention (CDC) guidance available in multiple languages: <http://www.coronavirus.gov>.

<sup>5</sup> Among other things, translated information might include basic instructions at the intake stage for people who have COVID-19 and whom a health care provider must admit for treatment, for people who have COVID-19 but are stable and must self-isolate at home, and for people who do not have COVID-19 but should practice social distancing.

<sup>6</sup> OCR can provide technical assistance and resources to help individuals accomplish this task. To contact OCR, visit: <https://www.hhs.gov/ocr/about-us/contact-us/index.html>.

<sup>7</sup> For example, consider the Department of Homeland Security’s “I Speak” list posted at [LEP.gov](https://www.lep.gov/sites/lep/files/media/document/2020-02/crcl-i-speak-booklet.pdf): <https://www.lep.gov/sites/lep/files/media/document/2020-02/crcl-i-speak-booklet.pdf>.

- Clearly mark patient charts (or EHR records) with their LEP status and preferred written and spoken language; and
- Where feasible, respect patients' wishes to use their own interpreter, such as an adult friend or family member, if they are qualified and if appropriate under the circumstances.

Health providers may encounter circumstances where, in their professional judgment, using or allowing in-person interpreters for persons with LEP would pose a health risk, such as by increasing the potential for spreading COVID-19. Under this nationwide public health emergency, government officials, health care providers, other recipients, and professional medical and hospital associations should utilize the flexibility allowed under the law, such as the use of remote interpretation through audio or video technologies, to ensure persons of all national origins are served, including persons with LEP.<sup>8,9</sup>

In addition, HHS Secretary Alex M. Azar II's March 17, 2020, Declaration under the Public Readiness and Emergency Preparedness (PREP) Act for Medical Countermeasures Against COVID-19<sup>10</sup> may apply with respect to some private claims arising from the use or administration of a covered countermeasure and may provide immunity from certain liability under civil rights laws. Questions regarding the scope of the PREP Act under this guidance document should be directed to the HHS Office of the General Counsel.

For additional information, consider these resources:

### **Department of Health and Human Services**

- [Information Regarding how Federal Civil Rights Laws Apply in an Emergency](#)
- [HHS Emergency Preparedness Resources for Persons from Diverse Cultural Origins](#)
- [HHS Ensuring Language Access and Effective Communication During Response and Recovery: A Checklist for Emergency Responders \(Español\)](#)
- [HHS Assistant Secretary for Preparedness Resources for Serving Persons with Limited English Proficiency](#) [HHS Administration for Community Living Resources in Spanish:](#)
  - o [¿Qué deben saber los adultos mayores y las personas con discapacidad?](#)
  - o [Directrices del presidente sobre el coronavirus para los Estados Unidos](#)
  - o [CDC: Lo que necesita saber sobre la enfermedad del coronavirus 2019 \(COVID-19\)](#)
  - o [FDA: Preguntas más frecuentes acerca de la enfermedad del coronavirus 2019 \(COVID-19\)](#)

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<sup>8</sup> Under OCR's March 17, 2020, Notice of Enforcement Discretion for Telehealth Remote Communications, OCR will not impose penalties for HIPAA violations against health care providers when using common remote communication technologies, such as Zoom, FaceTime, and Skype, in connection with the good faith provision of telehealth services to patients during the COVID-19 public health emergency.

<sup>9</sup> Providers should also consider their obligations to provide effective communication to individuals who are deaf or hard of hearing or who have intellectual or developmental disabilities. See [HHS Bulletin: Civil Rights, HIPAA and the Coronavirus Disease 2019](#).

<sup>10</sup> HHS Secretary Alex Azar issued the *Notice of Declaration under the Public Readiness and Emergency Preparedness Act for medical countermeasures against COVID-19*, effective February 4, 2020. See: <https://www.phe.gov/Preparedness/legal/prepact/Pages/COVID19.aspx>.

## Centers for Disease Control and Prevention

- [CDC Web page for Resources in Languages Other Than English](#)
- [CDC Print Resources in Multiple Languages](#)
- [COVID-19 health videos in Spanish](#)
- [Reducing Stigma Related to COVID-19](#)

## Department of Justice

- [LEP.gov](#)
- [Language Identification and “I Speak” Cards](#)
- [LEP Map APP](#) - An interactive mapping tool that helps users find out the concentration of and languages spoken by LEP individuals in a community.
- [Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response, and Recovery](#)
- [Title VI Interagency Guidance on Nondiscrimination in Emergency and Disaster Preparedness, Response, and Recovery \(Español\) \(Tiếng Việt\) \(Kreyòl Ayisyen\)](#)
- [List of Federal Civil Rights Enforcement Agencies and How to File A Complaint with Them](#)

## Department of Homeland Security

- [Tips for Effectively Communicating with the Whole Community in Disasters](#), August 29, 2017 (disability, race, color, national origin, and language)

### **Filing a Complaint with OCR:**

If you believe that an entity covered by HHS civil rights, conscience and religious freedom, or health information privacy laws violated your rights protected under these authorities, you may file a complaint at <https://www.hhs.gov/ocr/complaints/index.html>.

DISCLAIMER: This guidance document is not a final agency action and may be rescinded or modified in the Department’s discretion. Noncompliance with any voluntary standards or suggested practices contained in guidance documents not required by law will not, in itself, result in any enforcement action.

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