DEPARTMENT OF HEALTH & HUMAN SERVICES Office of the Secretary

Director

Office for Civil Rights

Washington, D.C. 20201

December 5, 2024

Re: Language Access Provisions of the Final Rule Implementing Section 1557 of the Affordable Care Act

Dear Colleagues:

The U.S. Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) is committed to working to ensure the health and human services communities understand their obligations and rights under federal law. OCR is also committed to working with these organizations in eliminating barriers to accessing health programs and activities. We stand ready to assist you as you provide critical services to those in need, regardless of sex, color, race, national origin, religion, age, or disability. It is in this spirit of support and partnership that we write this letter.

On May 6, 2024, OCR published a final rule updating regulations implementing Section 1557 of the Affordable Care Act (Section 1557),[1] which prohibits discrimination based on race, color, national origin, sex, age, or disability in covered health programs and activities. Among other important provisions, the rule outlines specific requirements to ensure meaningful access for individuals whose primary language for communication is not English and who have a limited ability to read, write, speak, or understand English (sometimes referred to as an individual with limited English proficiency, or LEP).[2] This rule went into effect on July 5, 2024.[3]

It is imperative that every person in America can access the vital services and information they need for their health and well-being. Approximately 68 million people in the United States speak a language other than English at home, and of those, 8.2 percent speak English less than very well.[4] Data show there are higher rates of individuals whose primary language for communication is not English in certain communities of color and among people with lower

[1] *See* "Nondiscrimination in Health Programs and Activities," 89 Fed. Reg. 37522 (May 6, 2024).
[2] This document does not bind the public. Rather, it advises the public of how the Department understands and may apply binding laws and regulations. *See Kisor v. Wilkie*, 139 S. Ct. 2400, 2420 (2019) (plurality opinion) (quoting *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015)).
[3] Pursuant to decisions by various courts regarding the 2024 Final Rule implementing Section 1557, entitled *Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37,522 (May 6, 2024) ("2024 Final Rule"), certain provisions are stayed or enjoined as indicated at www.hhs.gov/1557.
[4] U.S. Census Bureau 2021 American Community Survey, Why We Ask Questions About Languages Spoken At Home (Nov. 14, 2022), https://www.census.gov/acs/www/about/why-we-ask-each-question/language/.

incomes.[5] Accordingly, matters of language access affect the most vulnerable members of society who are likely to participate in health programs.[6] Numerous studies also show that patients' inability to communicate with their providers is a barrier to quality care, resulting in worse health outcomes.[7] Thus, the provision of language access services is not only a legal obligation but necessary for patient care.

Although many covered entities (e.g., recipients of Federal financial assistance, programs administered by HHS, and entities established under Title I of the Affordable Care Act (ACA)) have already begun planning and preparing to implement Section 1557, this letter is intended to assist covered entities in understanding and fulfilling their obligations under these provisions. This letter outlines key requirements for language access, which must be fully implemented by July 5, 2025.

Overview of Language Access Provisions in Section 1557

Definition of an Individual with LEP

An individual with LEP is an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.[8] An individual with LEP may be competent in English for certain types of communication (e.g., speaking or understanding), but still be limited English proficient for other purposes (e.g., reading or writing). This context is important, as some services, such as health care, may use technical vocabulary that is not readily understood. Accordingly, a covered entity should not assume that merely because an individual speaks some English, the individual is proficient in English as it concerns the service at issue.

Definition of Meaningful Access

Entities covered by the Section 1557 final rule "must take reasonable steps to provide meaningful access to each individual" with LEP who is "eligible to be served or likely to be directly affected by their health programs and activities."[9] This means ensuring that language barriers do not prevent individuals from obtaining necessary health services and care.[10] Cultural competency, including considerations of variations in dialects, expressions, or "regionalisms," is a key factor in providing accurate interpretation and translation.

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[5] *See* Ana Gonzalez-Barrera, Liz Hamel, Samantha Artiga, and Marley Presiado, *Language Barriers in Health Care: Findings from the KFF Survey on Racism, Discrimination, and Health*, KFF, (May 16, 2024), https://www.kff.org/racial-equity-and-health-policy/poll-finding/language-barriers-in-health-care-findings-from-the-kff-survey-on-racism-discrimination-and-health/.

[6] *See* HHS, Programs that Use the Poverty Guidelines as a Part of Eligibility Determination, https://www.hhs.gov/answers/hhs-administrative/what-programs-use-the-poverty-guidelines/index.html.

[7] *See* Lisa Diamond et al., *A Systematic Review of the Impact of Patient-Physician Non-English Language Concordance on Quality of Care and Outcomes,* 34(8) J. Gen. Internal Med. 1591 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6667611/.

[8] 45 CFR § 92.4.

[9] 45 CFR § 92.201(a).

[10] 45 CFR § 92.8(d).

Language Assistance Services

Language assistance services must be provided free of charge, must be accurate and timely, and must protect the privacy and independent decision-making ability of the individual with LEP. These services may include, but are not limited to, qualified interpreters and translated materials.[11] For example, if a patient with LEP at a covered hospital needs an interpreter, the hospital must provide one in a timely manner, at no cost to the patient. The interpreter should facilitate in-language communication between the provider and the patient while maintaining the patient's confidentiality and independent decision-making authority. If the patient is being presented with a treatment option, the interpreter must convey the information in such a manner that the patient fully understands the consequences of either consenting to or rejecting the proposed treatment. These communications should take place in settings that preserve patient privacy.

Requirements and Use of a Qualified Interpreter

When interpretation is requested, a covered entity, such as a hospital, a state health department, or a non-profit funded by an HHS grant, must offer a qualified interpreter, which is defined under the rule as someone who, via a remote interpreting service or an on-site appearance, "[h]as demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language (qualified interpreters for relay interpretation must demonstrate proficiency in two non-English spoken languages); [i]s able to interpret effectively, accurately, and impartially to and from such language(s) and English (or between two non-English languages for relay interpretation), using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and [a]dheres to generally accepted interpreter ethics principles, including client confidentiality."[12] Covered entities are reminded that to maintain confidentiality, if the interpreter and individual with LEP are known to each other, a different interpreter should generally be requested.

Covered entities should be mindful about their choice of interpreters since a person who speaks both English and the target language may not necessarily be comfortable serving as an interpreter and may not be qualified as an interpreter under Section 1557. Covered entities are reminded that an individual self-identified as proficient in the target language alone is insufficient to determine whether they meet the level of proficiency required under Section 1557.

Requirements and Use of a Qualified Translator

When translation services are requested, a covered entity must use a qualified translator, which is defined under the rule as someone who "[h]as demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; [i]s able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions

[11] 45 CFR § 92.201(b).
[12] 45 CFR §§ 92.201(c)(1); 92.4.

and while preserving the tone, sentiment, and emotional level of the original written statement; and [a]dheres to generally accepted translator ethics principles, including client confidentiality."[13]

Covered entities should be mindful when relying on bilingual employees to translate, especially when the employee has self-identified as proficient in the target language. Covered entities are reminded that an individual's self-identified proficiency in the target language alone is insufficient to determine whether they meet the proficiency required under Section 1557.

Requirements and Use of Machine Translation

Advances in the availability of artificial intelligence present significant opportunities to enhance public benefits programs to better serve those in need and to improve the efficiency and effectiveness of those programs. The potential use of such technology does not come without risk, however, and it is incumbent upon covered entities to ensure that artificial intelligence technologies are deployed in a responsible manner that does not negatively impact the rights of those being served.[14] In language assistance services, these issues frequently arise in the context of translating documents. If a covered entity uses "machine translation" (i.e., automated translation that is text based and provides instant translations between various languages) for critical documents, those translations must be reviewed by a qualified human translator to ensure accuracy, "when accuracy is essential," "when the source documents or materials contain complex, nonliteral or technical language," or "when the underlying text is critical to the rights, benefits, or meaningful access" of individuals with LEP.[15]

There may, however, be exigent circumstances where it is not feasible for a qualified translator to proofread a machine-generated translation until after the exigency has passed. For example, if an emergency medical technician must provide urgent medical care to an individual with LEP, and no other language assistance services are available, it may be reasonable to use machine translation technology to communicate with that person while a qualified interpreter is identified. However, given the importance of communication and understanding in the health care and services setting, in such circumstances, the machine translation must be subsequently checked by a qualified human translator as soon as practicable. Nevertheless, not all documents and not every circumstance pose the same level of risk to patients' rights or safety. If machine translation is used in circumstances that do not require a qualified translator's review, i.e., where it is not critical to the rights, benefits, or meaningful access of an individual with LEP; accuracy is not essential; or the source documents or materials do not contain complex, non-literal or technical language, the patients should be warned that the translated document may contain errors.

Restrictions on Use of Interpreters

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[13] 45 CFR §§ 92.201(c)(2); 92.4.
[14] *See* HHS, Plan for Promoting Responsible Use of Artificial Intelligence in Automated and Algorithmic Systems by State, Local, Tribal, and Territorial Governments in Public Benefit Administration, https://www.hhs.gov/sites/default/files/public-benefits-and-ai.pdf.
[15] 45 CFR § 92.201(c)(3).

To help ensure meaningful access, there are a few restrictions on interpreter use. For example, covered entities must not require individuals with LEP to provide their own interpreters or to pay the cost of their interpreters.[16]

Additionally, covered entities must not rely on unqualified adults to interpret or facilitate communication, except: (i) as a "temporary measure while finding a qualified interpreter" in emergency situations involving "imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with [LEP] immediately available and the qualified interpreter that arrives confirms or supplements the initial communications with an initial adult interpreter" or (2) when specifically requested in private by the individual with LEP, without an accompanying adult present and provided a qualified interpreter is also present to confirm the request and that such reliance is appropriate under the circumstances.

Finally, the use of minor children to interpret or facilitate communication is prohibited "except as a temporary measure while finding a qualified interpreter in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter . . . immediately available and the qualified interpreter that arrives confirms or supplements the initial communications with the minor child."

Notice of Nondiscrimination Requirements and Notice of Availability Requirements

Notice of Nondiscrimination

Covered entities must provide a notice of nondiscrimination to participants, beneficiaries, enrollees, and applicants of their health programs and activities, as well as members of the public.[17] This notice must include:

- *Nondiscrimination Statement:* Information stating that the covered entity does not discriminate based on race, color, national origin (including LEP and primary language), sex, age, or disability.
- *Accessibility Services:* Details about the provision of reasonable modifications and appropriate auxiliary aids and services for individuals with disabilities, including qualified interpreters and alternate formats such as braille or large print, free of charge and in a timely manner.
- *Language Assistance:* Information on the availability of language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner for individuals with LEP.
- *Access Information:* How to obtain reasonable modifications, appropriate auxiliary aids and services, and language assistance services.
- *Contact Information:* Contact details for the covered entity's Section 1557 Coordinator (if applicable).
- *Grievance Procedure*: Information on the availability of the grievance procedure and how to file a grievance (if applicable).

[16] 45 CFR § 92.201(e).
[17] 45 CFR § 92.10(a).

- *OCR Complaint Information:* Details on how to file a discrimination complaint with OCR.
- *Website Access:* How to access the covered entity's website, if it has one, for further information.

This notice must be provided annually to participants, beneficiaries, enrollees, and applicants, in a covered entity's health program or activity upon request, and in conspicuous locations on the covered entity's health program or activity website and in clear and prominent physical locations where it is reasonable to expect individuals to seek services, in no smaller than 20-point sans serif font. Sample notices are available on OCR's website.

Note, although the 2016 version of Section 1557 required short, "tagline" statements written in non-English languages indicating the availability of language assistance services free of charge, the current version of the rule does not require taglines.

Notice of Availability

Covered entities must also provide a notice of availability of language assistance services and auxiliary aids and services, stating at a minimum that these are provided free of charge when necessary for compliance with Section 1557.[18] This notice must be provided in English and at least the 15 most commonly spoken languages by individuals with LEP in the relevant state or states in which a covered entity operates, as well as in alternate formats for individuals with disabilities. For example, if a covered entity is operating in five states, they must provide notices of the availability of translation services in the top 15 most commonly spoken languages in those five states. The top languages can be determined by consulting resources and tools such as those available at lep.gov and data from the Census and American Community Survey.

Similar to the notice of nondiscrimination, this notice must be provided annually to participants, beneficiaries, enrollees, and applicants, in a covered entity's health program or activity upon request, in conspicuous locations on the covered entity's health program or activity website and in clear and prominent physical locations where it is reasonable to expect individuals to seek services, in no smaller than 20-point sans serif font, and in various electronic and written communications, including application forms, notices of eligibility, and communications related to public health emergencies and medical procedures. Sample notices are available on OCR's website.

Conclusion

This letter highlights some of the language access obligations described in the Section 1557 final rule. To comply with these provisions, covered entities may consider: (1) identifying and assessing the language needs of the populations they serve or are likely to serve, (2) establishing and implementing clear policies and procedures for providing language assistance services, (3) ensuring all staff members are trained on the requirements of the final rule and understand how to access and provide language assistance services, (4) providing qualified translators and interpreters to ensure accurate and meaningful communication, and (5) regularly monitoring and

[18] 45 CFR § 92.11(a).

evaluating the effectiveness of language assistance services and make necessary adjustments to improve access.

For further information and resources on compliance with Section 1557, please visit the OCR Section 1557 webpage. For general information and resources on language access, please visit OCR's Language Access webpage. OCR remains committed to ensuring that all individuals, regardless of language proficiency, have meaningful access to health care services and will continue to provide guidance and technical assistance to covered entities.

OCR supports wide dissemination of this letter.

Sincerely,

/s/

Melanie Fontes Rainer
Director, Office for Civil Rights