



## Affordable Care Act, Section 1557 Fact sheet

The U.S. Department of Health and Human Services (HHS) Office of Civil Rights (OCR) issued a recent final rule implementing Section 1557 of the Affordable Care Act (ACA). Section 1557 makes it unlawful for any health care provider who receives funding from the federal government to refuse to treat an individual—or to otherwise discriminate against the individual—based on race, color, national origin, sex, age or disability. It builds upon longstanding nondiscrimination laws and provides some new civil rights protections. As such, many of the rule’s provisions will be familiar to physicians while others may require physicians to implement new policies and procedures. Covered physicians are strongly encouraged to review the final rule in its entirety.

The OCR’s intent in publishing the final rule is to provide covered physicians with a set of standards to help them understand and comply with Section 1557. That said, many of the final rule’s provisions are flexible. The OCR repeatedly states that many situations will be determined on a fact-specific, context-driven, case-by-case basis. The final rule notes that “OCR has the authority and discretion to consider a range of factors when reviewing cases and determining appropriate remedies, including consideration of steps taken by covered [physicians] to ensure compliance...”<sup>1</sup> Therefore, advance planning will likely go a long way toward helping covered physicians comply with the final rule.

This fact sheet includes a number of highlights of the rule’s provisions, with a focus on requirements surrounding access for individuals with limited English proficiency. It provides guidance on language access plans, the development of which should help physicians ready their practices for compliance with the final rule. In addition, OCR has published a [summary of the rule, factsheets on key provisions](#) and a list of [frequently asked questions](#).

The American Medical Association notes that this fact sheet is not legal advice; physicians are encouraged to consult their own legal counsel regarding the contents of this document.

### Who does Section 1557 affect?

The rule applies to entities receiving [Federal financial assistance](#) from the U.S. Department of Health and Human Services, including physicians. The rule does not apply to physicians who participate only in Medicare Part B, though it does apply to physicians who receive meaningful use incentive payments.<sup>2</sup>

### Meaningful access for individuals with limited English proficiency

A covered physician must take reasonable steps to provide meaningful access to each individual with limited English proficiency (LEP) eligible to be served or likely to be encountered in their health programs and activities. Covered physicians must provide language assistance services free of charge, in an accurate and timely manner, and must protect the privacy and independence of the individual with LEP.<sup>3</sup>

### Creating a language access plan can help

The OCR interprets the requirement that covered physicians take “reasonable steps to provide meaningful access” to mean that “each entity, as an initial step, assess the need to provide language assistance services to each individual with LEP and respond to that need by providing the appropriate language assistance services on a timely basis” (emphasis added).<sup>4</sup>

1. 81 Fed. Reg. 31376, at 31440 (May 18, 2016).

2. Section 1557 applies to a physician for the year(s) that a physician receives the incentive payment. Since 2016 is the last year that meaningful use incentive payments are available, it is the last year that Section 1557 would apply to physicians who only participate in Medicare Part B. Note, though, that individuals have 180 days from the date of alleged discrimination to file a complaint.

3. The OCR states in the final rule that “there is no one definition of ‘timely’ that applies to every type of interaction with every covered physician at all times. Consequently... a determination of whether language assistance services are timely will depend on the specific circumstances of each case.” Generally, OCR will consider language assistance to be timely “when it is provided at a place and time that ensures meaningful access to persons of all national origins and avoids the delay or denial of the right, service, or benefit at issue.” 81 Fed. Reg. 31416.

4. 81 Fed. Reg. 31413.

To accomplish this the AMA strongly recommends that a covered physician create a language access plan to assist with this assessment. Not only will a language access plan help a physician feel prepared in the event that a patient needs to access language assistance services, but it also may help demonstrate to OCR that a physician has taken steps to provide meaningful access to his or her LEP patients.

In fact, when evaluating whether a covered physician has met his or her obligation under the final rule, the director of OCR will “evaluate, and give substantial weight to, the nature and importance of the health program or activity and the particular communication at issue, to the individual with LEP; and take into account other relevant factors, including whether a covered physician has developed and implemented an effective written language access plan that is appropriate to its particular circumstances.”<sup>5</sup>

While the OCR declined to outline the minimum expectations for a language access plan, it noted that, in its experience, effective language plans often address how the physician will:

- Determine an individual’s primary language, particularly if the language is an unfamiliar one
- Identify a telephonic oral interpretation service that offers access to qualified interpreters for when the need arises
- Identify a translation service that offers access to qualified translators for when the need arises
- Identify the types of language assistance services that may be required under particular circumstances
- Identify any documents for which written translations should be routinely available<sup>6</sup>

A language access plan need not be long, complex or burdensome, states OCR. The agency recognizes that the nature and extent of this type of voluntary planning will vary depending on the covered physician practice’s health programs and activities, its size, its geographic location and other factors.

The OCR is considering creating a template to assist covered entities in designing a language access plan, but, in the meantime, has shared [HHS’ language access plan](#) with the AMA as an example of what such a plan might entail. The agency noted that the plan is an example for guidance and that physicians do not need to follow it exactly.

### Translation services requirements

Compliance actions include offering a qualified interpreter<sup>7</sup> to an individual with LEP for oral interpretation and a qualified translator<sup>8</sup> when translating written content in paper or electronic form. Covered physicians may not:

- Require an individual with LEP to provide his or her own interpreter
- Rely on an adult accompanying an individual with LEP to interpret, except:
  - 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 for the individual with LEP 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
- Rely on a minor child to interpret or facilitate communication, except:
  - In an emergency involving an 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
- Rely on unqualified staff members to communicate with individuals with LEP
- Utilize poor-quality video interpreting services to provide language assistance services<sup>9</sup>

Because the translation services are required by civil rights laws, costs for the services cannot be passed on to the patient. Covered physicians may wish to explore cost-sharing agreements with other covered physicians. For example, a group of covered physicians could contract with a telephonic translation services and pay for the services on a pro-rated basis. In addition, covered physicians may try to negotiate with translation service providers whether the provider must pay a charge in the event that the patient is late or does not show up for his or her appointment.

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5. 45 CFR §92.201(b).

6. 81 Fed. Reg. 31415.

7. A qualified interpreter must (1) adhere to ethics principles, including patient confidentiality, (2) demonstrate proficiency in speaking and understanding both spoken English and at least one other spoken language, and (3) be able to interpret effectively, accurately, and impartially to and from such languages and English, using any necessary specialized vocabulary, terminology and phraseology. 45 CFR §92.4.

8. A qualified translator is someone who (1) translates effectively, accurately and impartially, (2) adheres to generally accepted translator ethics principles, and (3) is proficient in both written English and at least one other written non-English language, including any necessary specialized vocabulary, terminology and phraseology. 45 CFR §92.4.

9. The final rule does not prohibit the use of automated translation technologies, but because written translation must be provided by a qualified translator, a quality check by a qualified translator would likely be necessary and automated translation alone likely would not be sufficient. The final rule has a discussion of this issue in the preamble at 81 Fed. Reg. 31416 to 31417 (May 18, 2016).

## Required notices

Covered physicians must post a notice informing patients and the public of the following:

- The physician does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities
- The physician provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities—as well as how to obtain such aids
- The physician provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with LEP—as well as how to obtain such aids<sup>10</sup>
- An identification of, and contact information for, the employee responsible for Section 1557 compliance, if applicable
- The availability of the grievance procedure and how to file a grievance, if applicable
- How to file a discrimination complaint with OCR

In addition to the notice described above, covered physicians must post *taglines*<sup>11</sup> indicating the availability of language assistance services free-of-charge in at least the top 15 languages spoken in the practice's state. The notice and taglines must be written in a conspicuously-visible font size in significant publications and significant communications targeted to beneficiaries, enrollees, applicants and members of the public. Significant communications and significant publications that are small in size, such as postcards, tri-fold brochures and pamphlets only require a nondiscrimination statement (which is shorter than the full notice) and taglines in at least the top two languages spoken by individuals with LEP in the state.<sup>12</sup>

The notice and taglines must be posted in conspicuous physical locations where the physician practice interacts with the public (e.g., a waiting room) and, if applicable, in a conspicuous location on the covered physician's Web site accessible from the home page of the covered physician's website.

To help reduce burden and costs to practices, OCR has translated into 64 languages a [sample notice, statement, and taglines](#) for use by covered physicians.

## Assurance of compliance

Entities applying for federal financial assistance must submit an "Assurance of Compliance" with the final rule's requirements. Providers who already have an "Assurance of Compliance" on file with HHS do not need to submit a new assurance to replace their existing one. However, entities applying for new federal financial assistance from HHS must submit the new updated "Assurance of Compliance" form.<sup>13</sup>

## Compliance coordinator and grievance procedures

Covered physician practices employing 15 or more individuals must designate at least one employee to coordinate its Section 1557 compliance efforts. This coordinator must investigate any grievance communicated to the practice alleging non-compliance with the final rule. In addition, covered practices employing 15 or more persons must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by the final rule.<sup>14</sup>

## What is the penalty for non-compliance?

The OCR is a neutral, fact-finding agency that has been receiving, investigating and resolving complaints under Section 1557 since the ACA was passed in 2010. The OCR is incorporating its existing procedures for administrative processing of complaints, including, but not limited to, requiring covered physicians to take corrective actions such as revising policies and procedures and implementing training and monitoring programs. In the event that a covered physician refuses to take corrective actions, OCR may undertake additional proceedings to suspend or terminate federal financial assistance from HHS. Non-compliant covered physicians may be required to pay compensatory damages. In addition, a private right of action is available under the final rule.

10. Note that because oral interpretation involves three parties, a phone number on the notice describing how to access translation services should go to the practice, and the practice will access a qualified interpreter via a telephonic service.

11. Taglines are short statements written in non-English languages that indicate the availability of language assistance services free of charge. 45 CFR §92.4.

12. The "significant publication" obligation does not trigger a requirement for translation of documents. Rather, it identifies which publications and communications must have the nondiscrimination notice/statement and taglines. The following are not significant publications and significant communications under Section 1557: radio or television ads; identification cards (used to access benefits or services); appointment cards; business cards; banners and banner-like ads; envelopes; or outdoor advertising, such as billboard ads. Additional guidance on significant publications and significant communications is available in the Section 1557 FAQs, found here: <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html>.

13. The "Assurance of Compliance" must be filled out on this portal: <https://ocrportal.hhs.gov/ocr/aoc/instruction.jsf>.

14. A sample grievance procedure is available here: <http://www.hhs.gov/sites/default/files/section-1557-sample-grievance-procedure.pdf>.