What is required under Title VI and Section 1557 to ensure Language Access for Individuals with Limited English Proficiency?

By Mara Youdelman

Over 25.6 million individuals in the United States are limited English proficient (LEP) and the number continues to increase.[1] Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act both prevent discrimination against individuals who are limited English proficient (LEP). These federal requirements ensure that entities covered by these laws ensure effective communication with individuals who need assistance communicating with health care providers, scheduling appointments, interacting with health insurers, obtaining prescription medication, accessing telehealth, and engaging with all aspects of the health care system. While the requirements not to discriminate against individuals with LEP have been in place since 1964, health care providers and entities may not understand these requirements and many Individual with LEPs may not know their right to obtain language assistance services.

This issue brief provides an explanation of these laws and offers guidance for language assistance services providers, health care providers, and policymakers. The issue brief addresses the following questions:

[1] Natalia Ramirez et al., *Access to Care Among Adults with Limited English Proficiency*, 38 J. Gen. Internal Med. 592 (2023), accessed at https://link.springer.com/article/10.1007/s11606-022-07690-3.

Q 1. Is there a federal requirement that health care providers, insurers, and others operating in the health care system offer language assistance services to individuals who do not speak English well?

A. Yes. Two federal statutes prohibiting discrimination against people with limited English proficiency. In 1964, Title VI of the Civil Rights Act was enacted. This is a civil rights law that prohibits discrimination based on race, color, and national origin.[2]

The Patient Protection and Affordable Care Act ("ACA") was enacted in 2010. This broad health reform law also contains key civil rights protections including Section 1557.[3] In addition to applying to recipients of federal funds, Section 1557 expands beyond Title VI to apply directly to federally administered health programs and activities and to entities created under Title I of the ACA (these include marketplaces and qualified health plans).[4]

In April 2024, HHS' Office for Civil Rights (OCR) finalized regulations (hereinafter Section 1557 Final Rule) governing all "covered entities"[5] – those subject to Section 1557, which includes virtually all entities operating in the health care system. These covered entities must:

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[2] 42 U.S.C. § 2000d.
[3] 42 U.S.C. § 18116(a).
[4] 42 U.S.C. § 18031.
[5] HHS, *Nondiscrimination in Health Programs and Activities*, 89 Fed. Reg. 37522 (May 6, 2024). A "covered entity" is a recipient of federal financial assistance, the Department of Health and Human Services, and entities established under Title I of the Affordable Care Act. 45 C.F.R. § 92.4. Note: all references are to where the provisions of the final rule will be codified in the Code of Federal Regulations when effective. The rule is effective July 5, 2024 although implementation of some provisions will take longer.

take reasonable steps to provide meaningful access to each individual with limited English proficiency (including companions with limited English proficiency) eligible to be served or likely to be directly affected by its health programs or activities.[6]

In addition, some program-specific regulations also require language assistance services in Medicaid, CHIP and Medicare.

Q 2. Who is covered by these federal requirements?

A. Covered entities are those who operate health programs or activities, any part of which receives federal financial assistance.[7] Examples of entities covered under Section 1557 and Title VI include:

- state, county, and local agencies (including Medicaid and CHIP agencies and public health departments);
- hospitals, clinics, and clinicians' offices;
- refugee resettlement agencies;
- nursing homes;
- insurers and managed care organizations;
- mental health centers; and
- all entities receiving federal funds or under contract to those receiving federal funds.

Entities covered **only** by Section 1557 include:

- federally administered programs and activities including Medicare operations;
- the federally facilitated marketplace (healthcare.gov);
- state marketplaces; and
- qualified health plans.

A covered entity must ensure that each limited English proficient person "eligible to be served or likely to be directly affected" by its health program or activity receives language assistance services. Persons "eligible to be served" and "likely to be directly affected" are persons who are in the covered entity's service area.[8]

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[6] 45 C.F.R. § 92.201.
[7] For a definition of federal financial assistance, see 45 C.F.R. § 45.4.
[8] 45 C.F.R. § 92.201(b).

Q 3. What if a covered entity unintentionally discriminates against individuals?

A. Both Section 1557 and Title VI of the Civil Rights Act prohibit acts of intentional and unintentional discrimination against individuals with limited English proficiency (LEP).[9] According to Title VI regulations, acts of intentional and unintentional discrimination prohibited include:

- denying an individual any service, financial aid or other benefit;
- providing any service, financial aid or other benefit which is different or provided differently than provided to others;
- subjecting an individual to separate treatment in any way related to the receipt of any service, financial aid or other benefit;
- restricting an individual in any way in the enjoyment of anything related to the receipt of any service, financial aid, or other benefit;
- treating an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet to be provided any service, financial aid or other benefit;
- denying an individual an opportunity to participate through the provision of services or opportunities which are different than afforded others;
- denying a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.[10]

A covered entity that discriminates against individuals may be subject to investigation by the federal Department of Health and Human Services' ("HHS") Office for Civil Rights or, in certain circumstances, civil suit by affected individuals.[11]

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[9] 45 C.F.R. § 80.3(b); *see also Alexander v. Sandoval*, 532 U.S. 275, 281 (2001) (permitting lawsuits for cases of intentional discrimination and administrative enforcement for cases of unintentional discrimination under Title VI).
[10] 45 C.F.R. § 80.3(b).
[11] 45 C.F.R. § 92.303, 304. For health programs and activities conducted by recipients and State exchanges, *see* 45 C.F.R. §§ 80.6-11; 45 C.F.R. Part 81. For health programs and activities administered by HHS, *see* 45 C.F.R. §§ 85.61, 85.61.

Q 4. Are there specific guidelines for covered entities?

A. The Section 1557 final rule describes expectations for covered entities to take "reasonable steps" to provide "meaningful access" to individuals with limited English proficiency or likely to be directly affected by its health programs. In addition, language access services must be provided free of charge, accurately, and timely, and protect the privacy and decision-making abilities of limited English proficient individuals.[12]

For examples of ways to provide effective language access, covered entities can look to a guide developed by the Agency for Healthcare Research and Quality**.** It describes general recommendations a covered entity may implement to achieve health equity for individuals with limited English proficiency. These recommendations include:

- assess language preferences;
- let patients know about language access services;
- use only acceptable language access services;
- never use unacceptable language access services;
- plan for language access in advance;
- provide written materials and videos in patients' languages;
- finance language assistance services; and
- track progress.[13]

The Section 1557 final rule requires covered entities develop specific nondiscrimination policies and procedures but does not require a formal language access plan. The preamble to the proposed rule says OCR continues to "strongly encourage" entities to develop language access plans[14] and the final rule preamble notes: "[c]overed entities with language access plans are often better prepared to provide individuals with LEP

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[12] 87 Fed. Reg. 47824, 47826 (Aug. 4, 2022), *Nondiscrimination in Health Programs and Activities, Notice of Proposed Rulemaking,* https://www.govinfo.gov/content/pkg/FR-2022-08-04/pdf/2022-16217.pdf**.**

[13] Agency for Healthcare Research and Quality, *Address Language Difference: Tool 9,* https://www.ahrq.gov/health-literacy/improve/precautions/tool9.html. The federal website, www.lep.gov**,** also includes resources for language access such as planning tools, commonly asked questions, I Speak Cards and Language Posters, and agency-specific guidance.

[14] 87 Fed. Reg. at 47862.

with meaningful access to their health programs and activities."[15] HHS has its own language access plan, which may help guide covered entities interested in developing their own plan.[16]

For additional resources on how to provide language access, see https://www.lep.gov.

Q 5. What is a covered entity required to do to provide language access?

A. The Section 1557 final rule outlines a number of different requirements for covered entities. These entities must:

- ensure only qualified interpreters, translators, and bi-/multi-lingual staff provide language assistance services;[17]
- designate a Section 1557 coordinator and develop grievance policies (applicable to entities with 15 or more employees);[18]
- develop certain policies and procedures including a nondiscrimination policy, language access procedures, effective communication procedures, and reasonable modification procedures;[19]
- train relevant employees on these policies and procedures;[20]

[15] *See* 89 Fed. Reg. at 37560.
[16] See *HHS Language Access Plan*, https://www.hhs.gov/sites/default/files/language-access-plan-2023.pdf.
[17] 45 C.F.R. § 92.4.
[18] 45 C.F.R. § 92.7. The responsibilities of the Section 1557 coordinator include: receive, review and process grievances; coordinate record-keeping requirements; coordinates effective implementation of the covered entity's language access procedures, effective communication procedures and reasonable modification procedures; and coordinates training of relevant employees. With respect to employees who will count towards the 15 or more employee threshold, OCR will consider full- and part-time employees and independent contractors and all employees, regardless of job classification (e.g. clinical versus clerical) will count towards the threshold. *See* 89 Fed. Reg. at 37553.
[19] 45 C.F.R. § 92.8.
[20] 45 C.F.R. § 92.9

- disseminate a Notice of Nondiscrimination to participants, beneficiaries, enrollees and applicants of health programs and activities and members of the public;[21] and
- provide a Notice of Availability of language assistance services and auxiliary aids and services.[22]

The Notice of Nondiscrimination must include the following information:

- the covered entity does not discriminate;
- the covered entity provides reasonable modifications for individuals with disabilities and 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 modifications, aids, and services are necessary to ensure accessibility and an equal opportunity to participate to individuals with disabilities;
- the covered entity provides language assistance services including electronic and written translated documents and oral interpretation, free of charge and in a timely manner when such services are a reasonable step to provide meaningful access to an individual with limited English proficiency;
- how to request language assistance services, reasonable modifications, and auxiliary aids and services;
- contact information for the covered entity's Section 1557 coordinator (if applicable);
- the availability of the covered entity's grievance procedure and how to file a grievance (if applicable);
- how to file a discrimination complaint with OCR; and
- how to access the covered entity's website, if it has one, that provides the Notice of Nondiscrimination.[23]

[21] 45 C.F.R. § 92.10.
[22] 45 C.F.R. § 92.11.
[23] 45 C.F.R. § 92.10.

Q 6. What qualifications must individuals have to provide language assistance services?

A. The Section 1557 final rule establishes specific requirements that must be met to be considered a qualified interpreter. A qualified interpreter must be:

- proficient in speaking and understanding both spoken English and at least one other language (or two non-English languages for relay interpreters);
- able to interpret effectively, accurately and impartially 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
- adhere to generally accepted interpreter ethics principles, including client confidentiality.[24]

A similar definition applies to a qualified translator requiring proficiency in writing (rather than speaking). Further, only qualified bilingual or multilingual staff members can provide language access services directly in a non-English language (that is, without an interpreter). These individuals must be designated to provide in-language oral assistance as part of the person's assigned job responsibilities as well as be:

- proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology; and
- able to effectively, accurately, and impartially communicate directly with individuals with limited English proficiency in their primary languages.[25]

Qualified interpreters and translators that covered entities contract with from third parties (*e.g.* over-the-phone interpreting or video interpreting companies) must also demonstrate these abilities.[26] The Section 1557 final rule also recognizes that relay interpreting may be needed and adds a definition of relay interpretation and includes relay interpreters in the definition of qualified interpreter so that a qualified relay interpreter may know two non-English languages rather than English and one non-English language.[27]

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[24] 45 C.F.R. § 92.4.
[25] *Id.*
[26] *Id.*
[27] *Id.*

Furthermore, the final rule establishes certain quality standards for a covered entity that chooses to use video or audio remote interpreting. This includes providing:

- real-time, high-quality video and audio over a dedicated high-speed, wide-bandwidth video or wireless connection without lags, choppy, blurry or grainy images, or irregular pauses in communication;
- a sharply delineated image that it large enough to display the interpreter's face and participation person's face regardless of the person's body position
- a clear, audible transmission of voices; and
- adequate training to users of the technology and other involved persons so they may quickly and efficiently set up and operate the system.[28]

If an entity chooses to use machine or "automated" translations (which includes speech-based and text-based machine translations), a qualified human translator must review the translation when the communication is critical to a limited English proficient individual's:

- rights, benefits, or meaningful access;
- accuracy is essential; or
- the documents or materials contain complex, technical, or non-literal language.[29]

Q 7. How should a covered entity offer oral interpreting services?

A. HHS' Title VI guidance describes options for providing oral interpreting services, which may include hiring staff interpreters, contracting interpreters, or using telephone interpreters.[30] Similarly, the Section 1557 final rule does not prescribe how to provide language access services but does require that all language assistance services be provided by "qualified" individuals.[31] Covered entities can decide whether to utilize in-person or remote (video or audio) interpreters. They can decide whether to hire staff interpreters or use contract interpreters.

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[28] 45 C.F.R. § 92.201(f), (g).
[29] 45 C.F.R. § 92.201(c)(3).
[30] U.S. Dep't of Health & Hum. Servs., *Guidance for Federal Financial Assistance Recipients on Title VI Obligations Regarding Limited English Proficiency*, HHS.gov, accessed at https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-vi/index.html.
[31] 45 C.F.R. § 92.4.

The Section 1557 final rule prohibits covered entities from:

- requiring limited English proficient individuals to provide or pay for their own interpreters;
- relying on an adult not qualified to interpret;
- relying on minors to interpret;
- relying on staff other than qualified interpreters, qualified translators, or qualified bilingual or multilingual staff.[32]

In very limited circumstances, an entity can utilize a non-qualified interpreter. These situations include:

- emergencies involving an imminent threat to the safety or welfare of an individual or the public when no qualified interpreter is immediately available – *e.g.*, a trauma department or emergency room visit; or
- a limited English proficient patient specifically requests that an accompanying adult interpret or facilitate communication – provided that the accompanying adult agrees to render such assistance, the request and agreement by the accompanying adult is documented, and reliance on the accompanying adult for such assistance is appropriate under the circumstances.[33]

Q 8. When should a covered entity translate written materials?

A. The Section 1557 final rule requires covered entities to offer a "Notice of Availability of Language Assistance Services and Auxiliary Aids and Services" (hereinafter "Notice of Availability"), provided in English and at least 15 of the most common languages spoken by limited English proficient individuals in the relevant state, and in alternate formats for individuals with disabilities who request auxiliary aids.[34]

The Notice of Availability is similar to the "tagline" requirement from an earlier Section 1557 Rule. However, the Notice of Availability includes a statement regarding the availability of appropriate auxiliary aids and services to reduce barriers

[32] 45 C.F.R. § 92.201(e).
[33] 45 C.F.R. § 92.201(e)(2).
[34] 45 C.F.R. § 92.11.

of access for people with disabilities.[35] In addition, this notice must be provided annually and upon request at any time. In addition, the notice would be on the entity's website in a visible and in prominent physical locations in no smaller than 20-point sans serif font.[36]

To alleviate burdens of cost, the Section 1557 final rule provides a list of the materials where the Notice of Availability would be included and allows an option for people to "opt out" of receiving the Notice of Availability. The Notice of Availability must accompany the following electronic or written documents:

- notice of nondiscrimination;
- notice of privacy practices;
- application and intake forms;
- notices of denials or termination of eligibility, benefits or services, including Explanation of Benefits, and notices of appeal and grievance rights;
- communication related to person's rights, eligibility benefits, or services that require or request a response;
- communications related to a public health emergency;
- consent forms and certain instructions related to medical procedures or operations, medical power of attorney or living will;
- discharge papers;
- communications related to the cost and payment of care including medical billing and collections materials and good faith estimates required by the No Surprises Act;
- complaint forms; and
- patient and member handbooks.[37]

Q 9. How does the Office for Civil Rights determine if discrimination occurs?

A. The HHS Office for Civil Rights (OCR) engages in a case-by-case analysis and weighs various factors when determining whether a health care provider is discriminating. OCR gives particularly significant weight to the nature and importance of the provider's health care program or activity and the communication

[35] *Id.*
[36] 45 C.F.R. § 92.11(c).
[37] 45 C.F.R. § 92.11(c)(5).

involved in the alleged incident of discrimination. OCR may consider other relevant factors, such as the effectiveness of the provider's language access procedures.[38]

Q 10. What are the benefits of providing language assistance services?

A. The Office of Management and Budget reported to Congress that benefits from access to language assistance services, which avoid long-term accrual of costs to the government and society, include:

- increased patient satisfaction;
- decreased medical costs;
- improved health;
- sufficient patient confidentiality in medical procedures; and
- true "informed consent."[39]

Failure to provide access to language assistance services has been associated with malpractice claims. A study commissioned by NHeLP identified thirty-five cases that involved significant language barriers from 2005 to 2009. In thirty-two of those cases, providers did not use competent interpreters, and in twelve cases, family members or friends, including two minors, were used as interpreters.[40]

Providing access to language assistance services has proven to reduce costs by reducing readmissions. A 2017 study found that increasing access to interpreters during a patient's hospital stay decreased readmission rates and estimated hospital expenses. The estimated net savings, subtracting the cost of interpreting services, was $161,404 monthly per hospital.[41]

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[38] 45 C.F.R. § 92.201.
[39] Off. of Mgmt. & Budget, Report to Congress: Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency 20–23 (2002), accessed at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/OMB/inforeg/lepfinal3-14.pdf.
[40] Nat'l Health Law Prog., *The High Costs of Language Barriers in Medical Malpractice* 5 (2010), accessed at https://healthlaw.org/resource/the-high-costs-of-language-barriers-in-medical-malpractice/.
[41] Leah S. Karliner et al., *Convenient Access to Professional Interpreters in the Hospital Decreases Readmission Rates and Estimated Hospital Expenditures for Patients With*

Q 11. How can covered entities pay for language assistance services?

A. States can pay for language assistance services in Medicaid and CHIP. But before Medicaid and CHIP providers can seek payment or reimbursement, states must set up processes to do so. Eighteen states provide for reimbursement in Medicaid and CHIP fee-for-service programs and some states have specific requirements for Medicaid managed care organizations.[42] Medicare and most private insurance do not currently reimburse for language assistance services.

Q 12. What if a state has an English-only law – do these federal requirements still apply?

A. Yes. Federal law applies regardless of whether state law makes English its only recognized language because federal law preempts any conflicting state law. Because Section 1557 and Title VI apply when any part of a covered entity's health program or activity is federally funded,[43] that covered entity cannot forgo his or her obligations under federal law. In addition, a state's English-only laws may have a specific exemption for health care/social services and/or may only apply to government activities.

The Section 1557 final rule notes that state or local laws that offer lesser protections are preempted by Federal law.[44]

Limited English Proficiency, 55 Med. Care 199, 203 (2017), accessed at https://journals.lww.com/lww-medicalcare/pages/articleviewer.aspx?year=2017&issue=03000&article=00001&type=Fulltext.

[42] Mara Youdelman, *Medicaid and CHIP Reimbursement Models for Language Services: 2024 Update,* Nat'l Health Law Prog. (Mar. 2024), https://healthlaw.org/resource/medicaid-and-chip-reimbursement-models-for-language-services-2024-update/. For more information, see Mara Youdelman, *How Can States Get Federal Funds to Help Pay for Language Services for Medicaid and CHIP Enrollees?,* Nat'l Health Law Prog (2016) https://healthlaw.org/resource/how-can-states-get-federal-funds-to-help-pay-for-language-services/.

[43] *See* definition of "health program or activity", 45 C.F.R. § 92.4.

[44] *See* 89 Fed. Reg. 37535 and 42 U.S.C. § 18041(d).

Q 13. Where can one find additional resources related to language access?

A. The federal government hosts a website called “Let Everyone Participate,” http://www.lep.gov. In addition to tracking federal activities, the website offers direct assistance to advocates and covered entities. For example, covered entities can download “I Speak” cards that allow LEP persons to identify their primary language. HHS offers covered entities resources on Section 1557, including the top fifteen languages spoken by limited English proficient individuals in every state and U.S. territory, at https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html.