

Virtual Forum for Migrant and Community Health

**Office for Civil Rights (OCR)
U.S. Department of Health and Human Services**

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March 24, 2021



**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights**

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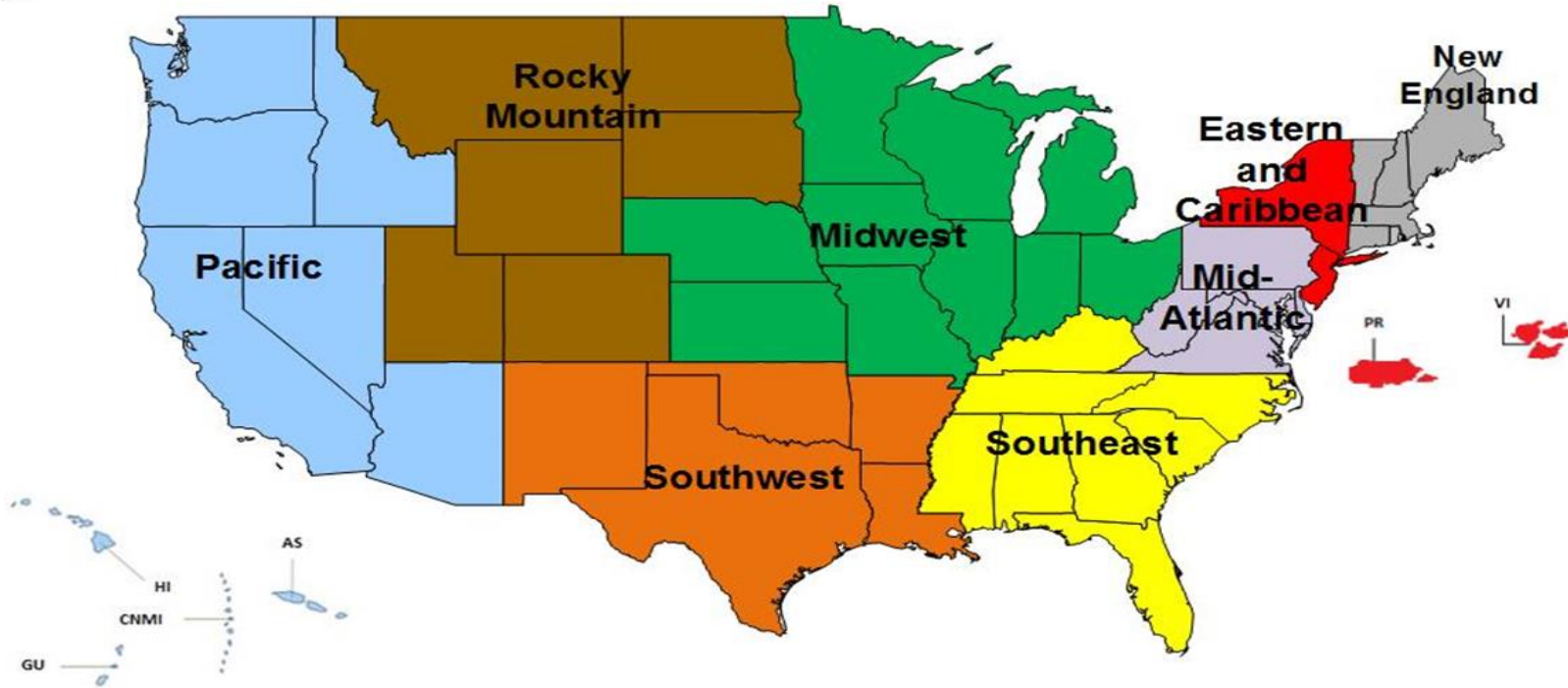
OCR Background

U.S. Department of Health and Human Services, Office for Civil Rights (OCR/HHS)

- OCR is the Department's civil rights, conscience and religious freedom, and health privacy rights law enforcement agency
- Ensure understanding of and compliance with non-discrimination and health privacy laws, OCR:
 - Investigates complaints
 - Enforces rights
 - Promulgates regulations
 - Develops policy
 - Provides technical assistance and public education



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
Office for Civil Rights Regional Offices¹



¹ U.S. Department of Health and Human Services Regional Offices

| | |
|--|-------------------------------------|
| New England Region: HHS Region 1 | Midwest Region: HHS Region 5 and 7 |
| Eastern and Caribbean Region: HHS Region 2 | Southwest Region: HHS Region 6 |
| Mid-Atlantic Region: HHS Region 3 | Rocky Mountain Region: HHS Region 8 |
| Southeast Region: HHS Region 4 | Pacific Region: HHS Region 9 and 10 |



OCR Authorities

Civil Rights Authorities

- Title VI of Civil Rights Act of 1964
- Title II of the Americans With Disabilities Act of 1990
- Title IX of the Education Amendments of 1972
- Section 504 and 508 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Multiethnic Placement Act of 1994
- Section 1557 of the Patient Protection and Affordable Care Act
- Church and Weldon Amendments
- Miscellaneous others

HIPAA/HITECH Authorities

- Privacy Rule
- Security Rule
- Enforcement Rule
- Breach Notification Rule
- Patient Safety Rule

*For More Info.:

<http://www.hhs.gov/ocr/civilrights/resources/laws/index.html>

Federal Enforcement

- OCR enforces Federal civil rights laws as to programs that receive funding from HHS.
- OCR is a fact-finding agency that receives, investigates and resolves thousands of complaints from the public alleging discrimination in health and human services.
- When OCR finds a violation, a covered entity will be required to take corrective actions, which may include revising policies and procedures and implementing training and monitoring programs.
- When a covered entity fails to take corrective actions, OCR may undertake proceedings to suspend or terminate Federal financial assistance from HHS. OCR may also refer the matter to the U.S. Department of Justice for possible enforcement proceedings.

Language Access Regulations

Discrimination on the Basis of Race, Color, and National Origin

- Title VI of the Civil Rights Act of 1964 (Title VI) prohibits discrimination on the basis of race, color, or national origin in all programs assisted by Federal money.
 - *Lau v. Nichols*, 414 U.S. 563 (1974) held that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.
- Section 1557 of the Affordable Care Act prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities.

Who Is Covered?

All recipients of HHS Federal financial assistance (FFA), either directly or indirectly, through a grant, contract or subcontract.

Program Jurisdiction

HHS/OCR has jurisdiction over providers of health and human service benefits such as:

- State agencies
- Medical schools & other health care programs
- Welfare programs
- Hospitals
- Nursing homes
- Substance abuse treatment centers
- Day care centers
- Medicaid Health Mgt. Organizations (HMOs)
- Child service agencies
- Outpatient rehabilitation clinics
- Public health clinics
- Rural health agencies
- Adult day activity programs
- Home health agencies and hospices
- Area agencies on aging

Practices Prohibited on the Basis of Race, Color, or National Origin

- Deny an individual a service, aid or other benefit
- Provide a benefit, etc. which is different or provided in a different manner
- Subject an individual to segregation or separate treatment
- Restrict an individual in the enjoyment of benefits, privileges, etc.
- Treat an individual differently in determining eligibility
- Deny a person the opportunity to participate on a planning board

Practices Prohibited on the Basis of Race, Color, or National Origin

- Use any criteria or methods of administration
 - that have the effect of subjecting individuals to discrimination or have the effect of defeating or substantially impairing accomplishment of a program's objective(s)
 - with respect to persons of a particular race, color, or national origin
- Select sites or locations of facilities that will exclude individuals on the basis of race, color, or national origin

Example of National Origin Discrimination

- A physician at a hospital's emergency department denied an LEP mother a Spanish interpreter when she requested language assistance. Instead, the physician used the mother's 13-year-old son as the interpreter, while he was being treated for a dog bite. The hospital also failed to translate or orally explain the discharge instructions in Spanish.
- A social worker at social services agency required a mother to disclose her immigration status when she applies for health services for her eligible child.

Principles of Language Access

Who Is a Limited English Proficient (LEP) Person?

- An LEP individual is a person
 - whose primary language for communication is not English; and
 - who has a limited ability to read, write, speak or understand English.

Communicating with LEP Individuals

- A covered entity must take reasonable steps to provide meaningful access to each LEP individual eligible to be served or likely to be encountered in its health programs and activities. Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translations.
- A covered entity is expected to offer a qualified interpreter when oral interpretation is a reasonable step to provide an individual with meaningful access.
- Where language services are required, they should be provided free of charge and in a timely manner.

Example of a Language Assistance Program

- Regular assessments of language needs
- Correct identification of LEP persons
- Policies and procedures
- Notice of language assistance services
- Staff training
- Ongoing monitoring of the language assistance services provided

Options for Providing Language Assistance Services

- Bilingual staff
- Staff interpreters
- Contractors
- Telephone lines and video teleconferencing
- Community volunteers
- Written translation

Selecting Language Assistance Services

There are two major considerations to be addressed in selecting services:

- Competency
- Timeliness

Note: Recipients have flexibility in determining the appropriate mix of language assistance services provided, but must ensure the quality and accuracy of such services.

Competency of Services

- A covered entity must adhere to certain quality standards in delivering language assistance services.
- For instance, a covered entity may not:
 - Require an individual to provide his or her own interpreter
 - Rely on a minor child to interpret, except in a life threatening emergency where there is no qualified interpreter immediately available
 - Rely on interpreters that the individual prefers when there are competency, confidentiality or other concerns
 - Rely on unqualified bilingual or multilingual staff
 - Use low-quality video remote interpreting services

Competency of Services

- Qualified interpreter for an individual with limited English proficiency means an interpreter who via a remote interpreting service or an on-site appearance:
 - Adheres to generally accepted interpreter ethics principles, including client confidentiality;
 - has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; and
 - 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.

Competency of Services

- Qualified bilingual/multilingual staff means a member of a covered entity's workforce who is designated by the covered entity to provide oral language assistance as part of the individual's current, assigned job responsibilities and who has demonstrated to the covered entity that he or she:
 - Is proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology, and
 - is able to effectively, accurately, and impartially communicate directly with individuals with limited English proficiency in their primary languages.

Competency of Services

- Qualified translator means a translator who:
 - Adheres to generally accepted translator ethics principles, including client confidentiality;
 - has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and
 - is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

Risk of Using Family Members or Friends as Interpreters

- Family and friends may:
 - Not be proficient in complex terminology
 - Fail to possess the necessary skills and ethical training to interpret
 - Not be emotionally able to handle sensitive personal information being conveyed (especially children)
 - Un/intentionally omit or alter critical information (circumstances involving domestic violence)

Use of Family Members or Companions as Interpreters

An adult family member or companion may be used:

- In an emergency involving an imminent threat to safety or welfare where there is no qualified interpreter immediately available; or
- Where the LEP individual specifically requests that the family member or companion interpret, the person agrees, and reliance on the family member or companion is appropriate under the circumstances.

Use of Family Members or Companions as Interpreters

A minor child family member or companion may be used only:

- In an emergency involving an imminent threat to safety or welfare where there is no qualified interpreter immediately available

Video Remote Interpreting (VRI)

- Definition: An interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images
- VRI Standards require:
 - Video and audio that is high quality, clear, real-time, with clear uninterrupted images.
 - Dedicated high-speed connection.
 - A picture that is clear, sufficiently large, and sharply delineated, showing face, arms, hands and fingers
 - Voices that are clear and easily understood
 - Quick set-up and training of users.

Timeliness of Services

When language assistance is needed, it should be provided at a time and place that avoids the effective denial or delay of the service, or benefit.

Grievance Procedure & Coordinator

- Applies to covered entities with 15 or more employees
- Requires the covered entity to adopt a grievance procedure
 - Must afford due process and prompt and equitable resolution of grievances
 - Appendix C to the final rule is a sample
- Requires the covered entity to designate an employee to serve as the entity's compliance coordinator and investigate complaints

Notice Requirement

Covered entities must post notice advising individuals of their right to free language assistance in conspicuous physical locations where services are provided.

Notice Requirement

- Recipient does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities
- Recipient provides appropriate auxiliary aids and service
- provides language assistance services
- How to obtain auxiliary aids & services and language assistance services
- If applicable, name and contact information for compliance coordinator required in
- If applicable, availability of CE's grievance procedure and how to file a grievance
- How to file a discrimination complaint with OCR

Language Access Enforcement Examples

Resurrection Health Care (RHC)

- Complainant alleged that RHC, a group of six Chicago hospitals with 2000 beds, failed to provide language assistance services to Spanish and Polish speaking patients in violation of Title VI
- Complaint voluntarily resolved in March 2012
- Robust corrective action for RHC:
 - Created and appointed a language assistance coordinator
 - Implemented a revised language assistance policy
 - Trained 37 employees to become proficient in medical interpretation
 - Contracted with an interpreter registry for medical interpretation back-up capability
 - Established comprehensive staff training program (including language assessment and how to obtain emergency interpreters)
 - Certified its ability to translate vital documents with via Language, Care Notes, and i-Med software

Maryvale Hospital

- With funding from HRSA, Maryvale Hospital, a 226 bed facility in Phoenix, opened a Family Education Center in September 2011
- Complaint alleged that Hospital failed to provide LEP individuals with meaningful access to ER services, in violation of Title VI
- To resolve the complaint, Hospital voluntarily agreed to:
 - Post signs (in various languages) regarding the availability of interpreters, free of charge
 - Contract with an in-person interpreter service with 100+ qualified interpreters and translators in 60 languages
 - Contract with a language line that can provide telephone/video interpretation in many languages, including Spanish and ASL
 - Train staff members to access language assistance services

Mee Memorial Hospital (MMH)

- MMH 119 bed community hospital in Southern Monterey County
- Complaint alleged chronic failure to provide interpreters for Triqui Bajo
- MMH agrees to:
 - Establish Central Coordinating Office
 - Establish Community Advisory Board
 - Partner with non-profit for interpreters

Health Insurance Portability and Accountability Act (HIPAA) and Language Access

HIPAA: Privacy and Security Rules

HIPAA provides regulations that protect the privacy and security of certain health information

- Privacy Rule: national standards for the protection of health information
- Security Rule: national set of security standards for protecting certain health information that is held or transferred in electronic form.

Addresses the technical and non-technical safeguards covered entities must put in place to secure individuals ePHI.

Predominant HIPAA Protections

- Prohibits covered entities and business associates from impermissibly using/disclosing PHI.
 - Example: Provider cannot disclose individual's PHI (including diagnosis, demographics, etc.) to individual's ex-spouse.
- Requires covered entities implement safeguards to prevent impermissible uses and disclosures
- Provides individuals with the right to access a copy of their PHI (medical records).

Use of Interpreters and the Privacy Rule

- HIPAA allows your health care provider to share your health information with an interpreter who works for the provider to help communicate with you or your family, friends, or others involved in your care.
- If the interpreter is someone who does not work for your health care provider (like a family member or friend), HIPAA also allows your provider to discuss your health information with the interpreter so long as you do not object.

Disclosures to Family and Friends

The Privacy Rule permits covered entities to share information that is directly relevant to the involvement of a spouse, family members, friends, or other persons identified by a patient, in the patient's care or payment for health care.

Disclosures to Family and Friends

- If the patient is present, or is otherwise available prior to the disclosure, and has the capacity to make health care decisions, the covered entity may discuss this information with the family and these other persons if the patient agrees or, when given the opportunity, does not object.
- If the individual is not present, or the opportunity to agree or object cannot practicably be provided due to an individual's incapacity or an emergency, the covered entity may use professional judgment to determine whether the disclosure of relevant information to family or close friends is in the best interests of the individual.

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