

Section 1557 Readiness Workshop – Session 1

Resources and Action Items for November 2024 Requirements

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Our Speakers



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A Brief Disclaimer

This presentation is for general informational purposes only. Nothing contained in this presentation or said during this presentation constitutes legal advice.

Full Workshop Objectives

- Provide an in-depth legal summary of Section 1557 of the Affordable Care Act
- Review of compliance requirements while highlighting the key compliance deadlines and changes required
- Offer actionable strategies for healthcare providers to implement the new requirements effectively



Today's Agenda

- Overview and Introduction to Section 1557 of the Affordable Care Act
- Upcoming Action Steps Required under the Biden Administration's new regulation (**November 2024**)
- Discuss Best Practices
 - Appointment of Section 1557 Coordinator
 - Coordinator's responsibilities
 - Establish and implement written grievance procedure
 - Document retention policies
 - Post notices of nondiscrimination
- Answer Questions



Overview and Introduction to Section 1557 of the Affordable Care Act

“Nondiscrimination”

“[A]n individual shall not, on the ground prohibited under [title VI of the Civil Rights Act of 1964, title IX, section 504, or the Age Discrimination Act] be excluded from participation in, be denied the benefits of, or be subjected to discrimination...”

“The enforcement mechanisms provided for and available under such title VI, title IX, section 504, or such Age Discrimination Act shall apply for purposes of violations of this subsection.”



1964

Title VI of the Civil Rights Act of 1964

“No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

1974

Lau v. Nichols

The U.S. Supreme Court recognizes that a failure to provide meaningful access on the basis of language may be discrimination.

“Under these state-imposed standards, there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.”



2001

Alexander v. Sandoval

The U.S. Supreme Court recognizes that Lau interpreted Title VI to proscribe “disparate impact” (unintentional) discrimination.

However, in Sandoval, the U.S. Supreme Court ruled that there is no private right of action to enforce Title VI’s disparate impact regulations.

2003

HHS LEP Guidance

“Flexible and fact-dependent standard” to determine the reasonable steps required to provide meaningful access.

- Number and proportion of LEP persons eligible to be served or likely to be encountered by the program;
- The frequency with which LEP individuals come into contact with the program;
- The nature and importance of the program, activity, or service to people’s lives;
- The resources available to the provider.

Other Important concepts

- Competency considerations for interpreters
- Specific guidance on appropriate use of oral interpretation tools
- Written translation of vital documents
- Guidance on developing language assistance plans
 - Identifying LEP persons in need
 - Determining appropriate language assistance measures
 - Training staff
 - Providing notice to LEP persons
 - Monitoring and updating the plan

Litigation under Title VI of the Civil Rights Act



“To state a claim for damages under 42 U.S.C. § 2000d et seq., a plaintiff must allege that (1) the entity involved is engaging in racial discrimination; and (2) the entity involved is receiving federal financial assistance. Additionally, a private individual making a claim under Title VI must allege intentional discrimination. Language-based discrimination can constitute a form of national-origin discrimination under Title VI.”

**J.D.H. V. LAS VEGAS METRO. POLICE DEP'T,
NO. 2:13-CV-01300-APG, 2014 WL 3809131, AT
*4–5 (D. NEV. AUG. 1, 2014).**

Litigation under Title VI of the Civil Rights Act (cont.)



“The disparate impact of a facially neutral policy is ‘an important starting point’ in determining the motivating factor behind its adoption. As noted in *Almendares*, **intentional discrimination** is often established by circumstantial evidence such as **disparate impact**, **history of the state action** and the **foreseeability and knowledge of the ‘discriminatory onus’** to be placed on the complainants.”

FRANKLIN V. MANSFIELD CITY SCH. DIST., NO. 1:14 CV 1163, 2015 WL 7429046, AT *10 (N.D. OHIO OCT. 30, 2015), REPORT AND RECOMMENDATION ADOPTED, NO. 1:14CV1163, 2015 WL 7430053 (N.D. OHIO NOV. 18, 2015).

Proving Inattentional Discrimination

According to the U.S. Department of Justice Civil Rights Division,
Title VI Legal Manual § VII, 5 (2017)

DISPARATE IMPACT

Does the adverse effect of the policy or practice fall disproportionately on a race, color, or national origin group?

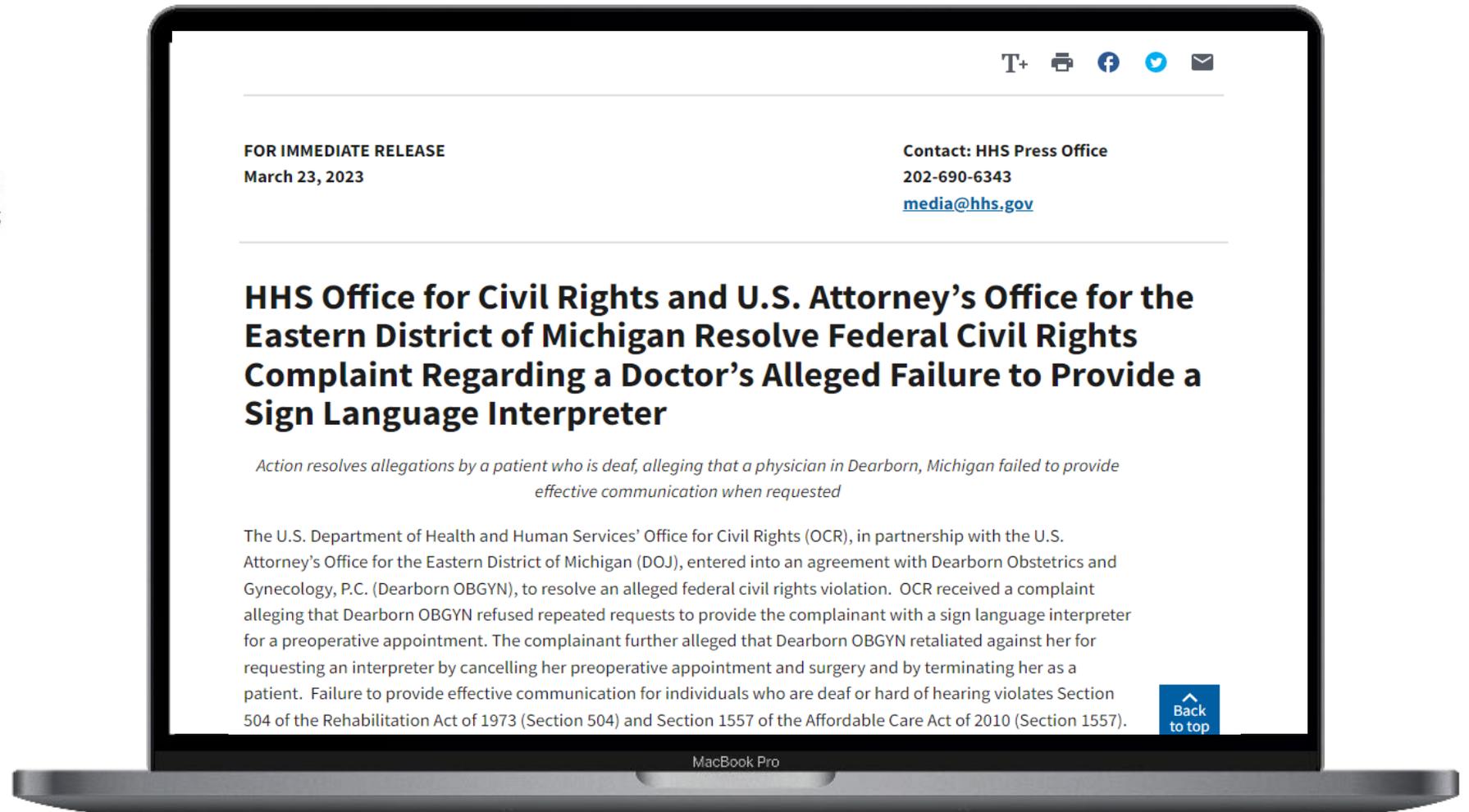
JUSTIFICATION

If so, does the record establish a substantial legitimate justification for the policy or practice?

LESS DISCRIMINATORY ALTERNATIVE

Is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect?

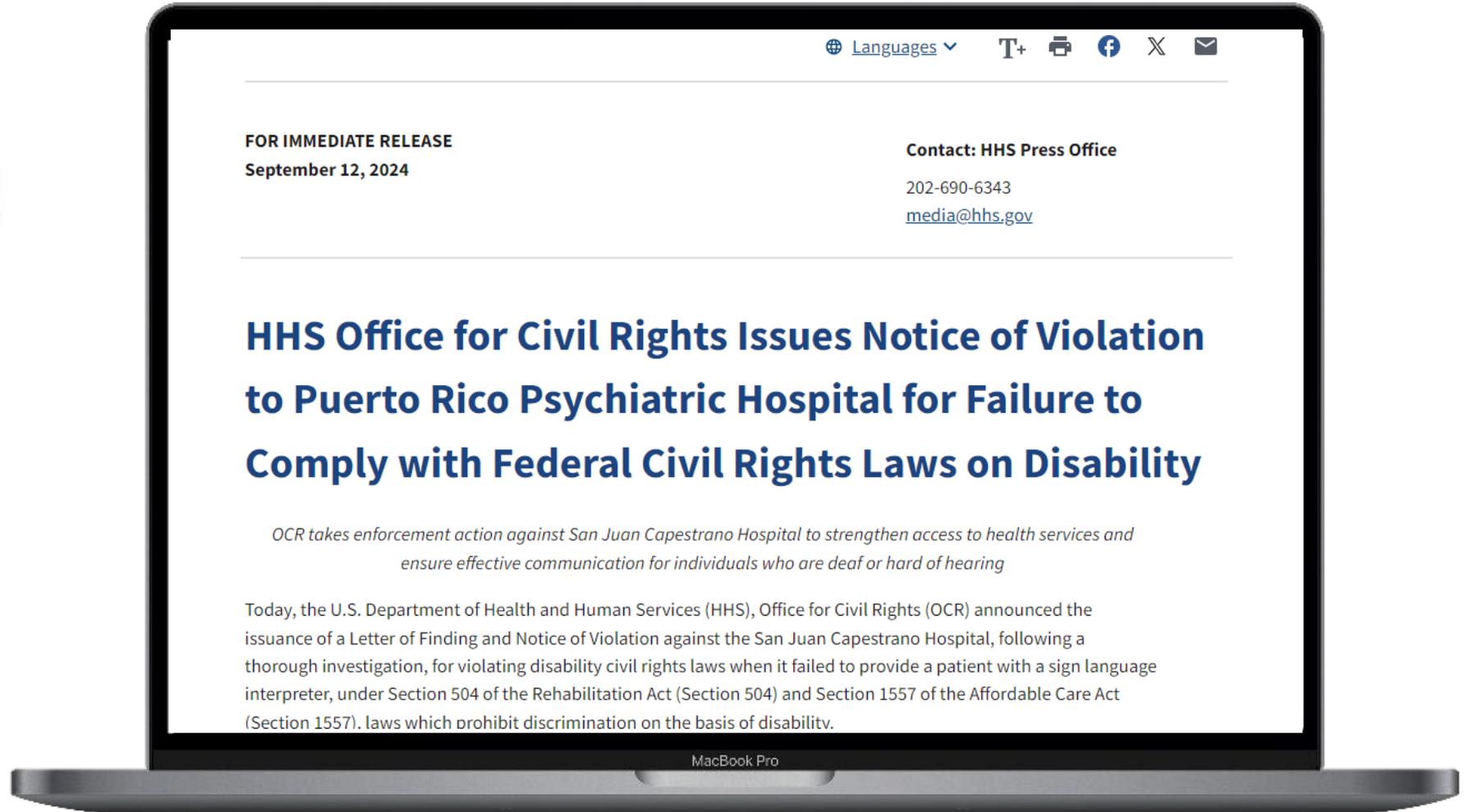
Recent enforcement actions



Recent enforcement actions



Recent enforcement actions



Voluntary Resolution Agreements with HHS OCR

Copies may be accessed on HHS OCR's website

1

ASSESSMENT OF LEP
NEEDS

2

SPECIFIC AGREEMENTS
RELATED TO SERVICES

3

TRAINING OF STAFF

DOCUMENTING
PATIENT
ENCOUNTERS

4

REPORTING AND
MONITORING

5

CIVIL MONETARY
PENALTY

6

Regulatory Requirements under Section 1557 of the ACA

New regulatory requirements for language access in healthcare

The Obama-era regulation codified several explicit requirements related to language access:

- A covered entity must take reasonable steps to provide meaningful access to LEP individuals.
 - Oral interpretation or written translation through “qualified” interpreters or translators
 - Free of charge and in a timely manner
 - Specific standards for remote audio or video-remote interpretation



New regulatory requirements for language access in healthcare (cont.)



- The Obama-era regulation codified several explicit *prohibitions* related to language access:
- A covered entity may *not*:
 - Require an individual to provide his or her own interpreter.
 - Rely on a minor child to interpret, unless it is an emergency.
 - Rely on interpreters the individual prefers where there are competency or confidentiality concerns.
 - Rely on unqualified bilingual or multilingual staff.

New regulatory requirements for language access in healthcare (cont.)

- The Obama-era regulation also set a standard by which HHS would evaluate a covered entity’s compliance with its meaningful access obligations:
 - “Evaluate and give substantial weight to, the nature and importance of the health program of activity and the particular communication at issue, to the individual with limited English proficiency; and
 - Take into account other relevant factors, including whether a covered entity has developed and implemented effective written language access **plan procedures**, that is appropriate to its particular circumstances.”



New regulatory requirements in 2024-2025

- Discrimination on the basis of sex includes sexual orientation and gender identity.
- Explicitly prohibits discrimination in the use of healthcare AI
- Interprets Medicare Part B as federal financial assistance.
- Requirement for qualified human translator to review machine translation

New regulatory requirements for language access in healthcare (cont.)

- General requirements are back
- Written policies and procedures
- Nondiscrimination policy
- Notice of Availability of Language Assistance Services in Top 15 Languages
- Grievance procedure
 - Record retention
 - Confidentiality

Language Assistance and Auxiliary Aids & Services Available

Please point to the language you speak and an interpreter will be provided free of charge. Appropriate auxiliary aids and services to provide information in accessible formats are also available free of charge. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx) or speak to your provider.

Spanish (Español): Yo hablo español. Se ofrecen servicios lingüísticos en español de forma gratuita.	Croatian (Hrvatski): Govorim hrvatski. Jezične usluge su besplatno dostupne na hrvatskom.
French (Français): Je parle Français. Services linguistiques disponible gratuitement en Français.	Indonesian (Bahasa Indonesia): Saya Berbicara Bahasa Indonesia. Layanan Bahasa tersedia gratis dalam Bahasa Indonesia.
Chinese Cantonese (中文粵語): 我說中文粵語，能提供免費的中文粵語服務。	Korean (한국어): 저는 한국어를 합니다. 언어 서비스는 한국어로 무료로 제공됩니다.
Chinese Mandarin (中文普通話): 我說中文普通話，能提供免費的中文普通話服務。	Nepali (नेपाली): म नेपाली बोल्छु। भाषा सेवाहरू [नेपाली]मा नि:शुल्क उपलब्ध छन्।
Russian (Русском): Я разговариваю на русском языке. Языковые услуги на русском предоставляются бесплатно.	Haitian Creole (Kreyòl Ayisyen): Mwen pale Kreyòl Ayisyen. Sèvis lang yo disponib nan Kreyòl Ayisyen san ou p ap peye anyen.
Vietnamese (Tiếng Việt): Tôi nói tiếng Việt. Dịch vụ ngôn ngữ được cung cấp miễn phí bằng tiếng Việt.	Polish (Polski): Ja mówię po polsku. Usługi językowe są dostępne bezpłatnie w języku polski.*
Portuguese (Português): Eu falo Português. Os serviços lingüísticos estão disponíveis gratuitamente em Português.	Swahili (Kiswahili): I Ongea Kiswahili. Huduma za Lugha zinapatikana katika Kiswahili bila malipo.
Greek (Ελληνικά): Μιλώ Ελληνικά. Οι Γλωσσικές Υπηρεσίες διατίθενται δωρεάν στα Ελληνικά.	Kirundi (Kirundi): Mvuga ikirundi. Serivisi z'ururimi ziboneka mu Kirundi nta kiguzi.
Arabic (اللغة العربية): أنا أتحدث اللغة العربية. الخدمات اللغوية متوفرة باللغة العربية مجاناً.	Khmer (ខ្មែរ): ខ្ញុំនិយាយ ខ្មែរ ។ សេវាប្រឹក្សាភាសាខ្មែរ ផ្តោល ដោយឥតគិតថ្លៃ។
Serbian (Српски): Govorim српски. Језичке услуге су доступне на српском бесплатно.	Lingala (Lingala): Nalobaka Lingala. Baservice ya Lonkota ezalaka nango na Lingala ya ofele.
American Sign Language:	

855-865-8778
AMNHealthcare.com/Language-Services

LANGUAGE SERVICES

New proposed regulatory requirements in 2024-2025

Providers “**must implement written** language access procedures” and **train** relevant employees.

- **Current** information detailing the contact information for the Section 1557 Coordinator;
- **How an employee identifies** whether an individual is limited English proficient;
- **How an employee obtains** the services of qualified interpreters and translators the covered entity uses to communicate with a limited English proficient individual;
- The **names** of any qualified bilingual staff members;
- A **list** and the **location** of any electronic and written **translated materials** the covered entity has and the **languages** they are translated into, and the **publication date**.

New regulatory requirements for language access in healthcare (cont.)

- Standards for Video Remote Interpreting services are back
- Evaluation of Compliance resembles the Obama-era standard
- New standard for use of “machine translation” requires review by “qualified human translator” in certain instances
- New specific prohibitions of discrimination in telehealth and use of healthcare AI



What do you need to do and by when?

§ 92.10 Post Notice of nondiscrimination	Within 120 days of effective date (November 2, 2024)
§ 92.7 Appoint a Section 1557 Coordinator	Within 120 days of effective date (November 2, 2024)
§ 92.207(b)(1) through (5) Nondiscrimination in health insurance coverage and other health-related coverage	For health insurance coverage or other health-related coverage that was not subject to this part as of the date of publication of this rule, by the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025
§ 92.207(b)(6) Nondiscrimination in health insurance coverage and other health-related coverage	By the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025
§ 92.210(b), (c) Use of patient care decision support tools	Within 300 days of effective date (May 1, 2025)
§ 92.11 Notice of availability of language assistance services and auxiliary aids and services	Within one year of effective date (July 5, 2025)
§ 92.8 Policies and Procedures	Within one year of effective date (July 5, 2025)
§ 92.9 Training	Following a covered entity's implementation of the policies and procedures required by § 92.8, and no later than one year of effective date (July 5, 2025)

Short Break

The November 2024 Requirements

Appointment of Section 1557 Coordinator



“A covered entity that employs fifteen or more persons must designate and authorize **at least one** employee, a “Section 1557 Coordinator,” to coordinate the covered entity's compliance with its responsibilities under section 1557 and this part in its health programs and activities, including the investigation of any grievance communicated to it alleging noncompliance with section 1557...”

AFFORDABLE CARE ACT, SECTION 1557
§ 92.7 DESIGNATION AND RESPONSIBILITIES
OF A SECTION 1557 COORDINATOR.

Responsibilities of a Section 1557 Coordinator :

1. Receives, reviews, and **processes grievances**, filed under the grievance procedure
2. Coordinates the covered entity's **recordkeeping** requirements
3. Coordinates effective implementation of the covered entity's **language access procedures**
4. Coordinates effective implementation of the covered entity's effective **communication procedures**
5. Coordinates effective implementation of the covered entity's **reasonable modification procedures**
6. Coordinates **training of relevant employees**, including maintaining required documentation

Responsibilities of a Section 1557 Coordinator (cont.)

Grievance Process Requirements:

Entities with 15 or more employees must establish written grievance procedures to ensure timely and fair resolution of complaints related to potential violations of Section 1557 (prohibiting discrimination based on race, color, national origin, sex, age, or disability).

Record-Keeping Requirements:

Entities must retain all grievance records for a minimum of three years from date complaint was resolved, including:

- Complaint details (e.g., name, contact info, and discrimination claims)
- Date filed and resolved
- Grievance outcome and supporting documentation

Confidentiality:

The identity of individuals filing grievances must be kept confidential, unless disclosure is required by law or necessary to complete the investigation.

1. REVIEWS AND PROCESSES GRIEVANCES

2. COORDINATES REQUIRED RECORD KEEPING

3. COORDINATES LANGUAGE ACCESS PROCEDURES

4. COORDINATES COMMUNICATION PROCEDURES

5. COORDINATES REASONABLE MODIFICATION PROCEDURES

6. COORDINATES TRAINING OF EMPLOYEES AND MAINTAINS REQUIRED DOCUMENTATION

Responsibilities of a Section 1557 Coordinator (cont.)

Written Procedures:

Covered entities must implement written language access procedures to support individuals with limited English proficiency (LEP), as required by § 92.201.

Key Elements:

- 1557 Coordinator Contact Info (if applicable)
- Steps to identify LEP individuals
- How to obtain qualified interpreters and translators
- Names of qualified bilingual staff
- List of translated materials (including languages, issuance dates, and access methods)

1. REVIEWS AND PROCESSES GRIEVANCES

2. COORDINATES REQUIRED RECORD KEEPING

3. COORDINATES LANGUAGE ACCESS PROCEDURES

4. COORDINATES COMMUNICATION PROCEDURES

5. COORDINATES REASONABLE MODIFICATION PROCEDURES

6. COORDINATES TRAINING OF EMPLOYEES AND MAINTAINS REQUIRED DOCUMENTATION

Responsibilities of a Section 1557 Coordinator (cont.)

Effective Communication Procedures:

A covered entity must establish clear, written procedures to ensure effective communication for individuals with disabilities as required by § 92.202. These procedures should include:

- Section 1557 Coordinator: Current contact information for the Section 1557 Coordinator (if applicable) to manage and oversee compliance.
- Accessing Interpreter Services: A detailed process on how staff can request and access qualified interpreters to facilitate communication with individuals with disabilities, including a list of available interpreter staff members.
- Auxiliary Aids & Services: Clear instructions on how to access appropriate auxiliary aids and services (e.g., hearing aids, captioning, etc.) to ensure all individuals can effectively communicate during their care.

1. REVIEWS AND PROCESSES GRIEVANCES

2. COORDINATES REQUIRED RECORD KEEPING

3. COORDINATES LANGUAGE ACCESS PROCEDURES

4. COORDINATES COMMUNICATION PROCEDURES

5. COORDINATES REASONABLE MODIFICATION PROCEDURES

6. COORDINATES TRAINING OF EMPLOYEES AND MAINTAINS REQUIRED DOCUMENTATION

Responsibilities of a Section 1557 Coordinator (cont.)

Reasonable Modification Procedures

A covered entity must have written procedures to guide reasonable modifications in its health programs and activities to prevent discrimination based on disability (§ 92.205). These procedures should include:

- **Section 1557 Coordinator:** Current contact details for the Section 1557 Coordinator (if applicable), responsible for overseeing compliance and handling modification requests.
- **Request Process:** A step-by-step outline for responding to requests from individuals with disabilities seeking modifications, exceptions, or adjustments to policies, practices, or services.
- **Modification Assessment:** A clear process for evaluating whether a requested modification would fundamentally alter the health program or activity, and how to identify alternative solutions to ensure individuals with disabilities still receive the required services or benefits without causing significant changes to the program.

1. REVIEWS AND PROCESSES GRIEVANCES

2. COORDINATES REQUIRED RECORD KEEPING

3. COORDINATES LANGUAGE ACCESS PROCEDURES

4. COORDINATES COMMUNICATION PROCEDURES

5. COORDINATES REASONABLE MODIFICATION PROCEDURES

6. COORDINATES TRAINING OF EMPLOYEES AND MAINTAINS REQUIRED DOCUMENTATION

Responsibilities of a Section 1557 Coordinator

Mandatory Employee Training:

Covered entities must train relevant employees on civil rights policies and procedures as per § 92.8 to ensure they can effectively carry out their roles within the organization.

Training Timeline:

- **Initial Training:** All relevant employees must receive training within 30 days of implementing the policies, but no later than 300 days after July 5, 2024.
- **New Employees:** New employees must be trained within a reasonable time after joining.

Training Documentation: Covered entities must document the employees' completion of the above training in written or electronic form and maintain said documentation for at least 3 calendar years.

1. REVIEWS AND PROCESSES GRIEVANCES

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6. COORDINATES TRAINING OF EMPLOYEES AND MAINTAINS REQUIRED DOCUMENTATION

Post Notices of Nondiscrimination



Providers must publish a notice of non-discrimination to patients and members of the public. The notice must contain the elements listed in 45 C.F.R. § 92.10. The notice **must be posted on the provider's website and in prominent physical locations and provided upon request.**

**AFFORDABLE CARE ACT, SECTION 1557
NOTICE OF NON-DISCRIMINATION**

Notice of Non-Discrimination

The notice must be provided to participants, beneficiaries, enrollees, and applicants of its health programs and activities, and members of the public.

The notice must be provided or posted:

- On an annual basis;
- Upon request;
- At a conspicuous location on the covered entity’s website; and
- “In clear and prominent physical locations, in no smaller than 20-point sans serif font, where it is reasonable to expect individuals seeking service from the health program or activity to read or hear the notice”. 45 CFR 92.10(a)

Discrimination is Against the Law

ABC Regional Health System (ABC Regional) complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex (consistent with the scope of sex discrimination described at 45 CFR § 92.101(a)(2)). ABC Regional does not exclude people or treat them less favorably because of race, color, national origin, age, disability, or sex.

ABC Regional:

- Provides people with disabilities reasonable modifications and free appropriate auxiliary aids and services to communicate effectively with us, such as:
- Qualified sign language interpreters
- Written information in other formats (large print, audio, accessible electronic formats, and other formats).
- Provides free language assistance services to people whose primary language is not English, which may include:
 - Qualified interpreters
 - Information written in other languages.

If you need reasonable modifications, appropriate auxiliary aids and services, or language assistance services, contact the Section 1557 coordinator at 1-999-999-9999.

If you believe that ABC Regional has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with the Section 1557 coordinator at:

1234 Health Way, Fogarencville, TX 90436, 1-999-999-9999, 1-888-888-8888, 1-777-777-7777, section1557@acawebsite.org. You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, the Section 1557 coordinator is available to help you.

You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services
 200 Independence Avenue, SW
 Room 509F, HHH Building
 Washington, D.C. 20201
 1-800-368-1019, 800-537-7697 (TDD)
 Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

This notice is available at our website: www.abcregional.com.

Notice of Non-Discrimination

Notice must contain(?):

- Does not discriminate on the basis of race, color, national origin (including limited English proficiency and primary language), sex, age, or disability;
- 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;
- Provides language assistance services to individuals with limited English proficiency, including electronic and written translated documents and oral interpretation free of charge and in a timely manner;

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855-865-8778
AMNHealthcare.com/Language-Services


LANGUAGE SERVICES

Notice of Non-Discrimination

- How to obtain the reasonable modifications, appropriate auxiliary aids and services, and language assistance services;
- The contact information for the Section 1557 Coordinator (if applicable);
- The availability of the grievance procedure, including how to file a grievance (if applicable);
- How to file a discrimination complaint with HHS, Office of Civil Rights; and
- How to access the covered entity's website that provides the contents of this notice

Discrimination is Against the Law

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Legal Commentary on Compliance Best Practices

- Coordinating with legal, compliance, and operations
- Best practices in resolving grievances
- Best practices in preparing for investigations or defending against claims

Q & A



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Post-Webinar Actions



Get the Slide Deck & Resources

The slide deck, your certificate of completion and all linked resources **will be sent to your email.**



Sign up for the Next Sec. 1557 Workshop (Nov 13)

Joint us for our next session taking place at **11:00 AM CST on November 13th**. All registrants for this session will receive an invitation and registration link **via email next week.**



Get in Touch / schedule a consult

Current clients can reach out to their Client Account Manager

Non-clients can reach out to Moira Kelly at: moira.kelly@amnhealthcare.com

Resources

- [Section 1557 Coordinator Responsibilities](#)
- [Written Grievance Procedure example/template](#)
- Document Retention Policies bullets *(included in Coordinator Responsibilities document , pgs. 1 & 3)*
- [Notice of Nondiscrimination sample](#)
- [Nondiscrimination Policy Sample](#)
- [Translation in 47 languages of Notice of Nondiscrimination](#)
- [Translation in 47 languages of Notice of Availability \(formerly known as taglines\)](#)

Bonus Resource

- [Notice Of Non-discrimination Template 11x17 \[Fillable\] – Example](#)
- [Notice of Non-discrimination Template 11x17 \[Fillable\] – Empty](#)



www.AMNHealthcare.com/language-services