

**PACHC Memo 16-06**

**Please share with:** Executive Management

Site Managers

 Compliance Officer

**December 15, 2016**

**TO:** Chief Executive Officers of Pennsylvania Community Health Centers  and Rural Health Clinics

**FROM:** Cheri Rinehart, President & CEO

**SUBJECT:** Limited English Proficiency Regulatory Requirements

**SUMMARY:** Section 1557 of the Affordable Care Act (ACA) put in place requirements for healthcare facilities, including Community Health Centers  and Rural Health Clinics, to provide language assistance to patients in written communications, signage and services. The Final Rule implementing Section 1557 went into effect July 18, 2016 but provided a grace period until Oct. 16, 2016 for covered entities to comply with the notice requirements.

**BACKGROUND:**

On May 18, 2016, the Office for Civil Rights (OCR) for the Department of Health and Human Services (HHS) issued the Nondiscrimination in Health Programs and Activities Final Rule (“Final Rule”) implementing Section 1557 of the ACA.  The Final Rule went into effect on July 18, 2016 but gave covered entities until Oct. 16, 2016, to comply with the notice requirements. The rule was met with consternation by a number of organizations, including the American Academy of Family Physicians, and there was hope that it would be reversed or delayed, but that did not happen.

Section 1557 of the ACA was intended to ensure that there will be no segregation, delay or denial of services/benefits nor discrimination on the basis of race, color, national origin, sex (including gender identity), age, or disability status. The Act spells out expectations for communication, prohibited activities and enforcement tools that can be implemented by the Office of Civil Rights, Department of Human Services (HHS) and Department of Justice.

**SUMMARY:**

Section 1557 of the ACA applies to ***any*** health program or activity that receives funding from HHS. Specifically, the rule applies to:

* Health programs and activities that receive federal financial assistance from HHS (including grants from the Substance Abuse and Mental Health Services Administration (SAMHSA), Health Resources and Services Administration (HRSA), and the Administration for Children and Families (ACF));
* Health programs and activities administered by HHS; and
* Health insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces.

Based on the above criteria, the requirements apply to all Community Health Centers  and Rural Health Clinics. Effective Oct. 16, 2016, all affected entities must comply with these requirements and when applying for federal financial assistance, which includes grants, contracts or other arrangements by which the federal government provides funding, will have to submit assurances that their programs and activities are operated in compliance with Section 1557 and with the Final Rule.

PACHC recognizes that due to your mission, all health centers have staff and resources available to be culturally sensitive and linguistically responsive to the communities you serve. However, the law expands this foundation by specifying information that must be available in a variety of languages, regardless of whether those languages are reflected in your community.

Interpretive Services Requirements

The Final Rule requires covered entities to provide language assistance services free of charge, in an accurate and timely fashion and to protect the privacy and independence of the individual with limited English proficiency (LEP).  An individual with LEP is a person whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.  Under the Final Rule, covered entities must take reasonable steps to provide meaningful access for individuals with LEP who are eligible to be served or likely to encounter their programs and activities.

Language assistance services include both oral interpretation and direct communication through the use of qualified bilingual or multilingual staff. A qualified interpreter must (1) adhere to ethics principles, including 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.  Covered entities must also use a qualified translator when translating written content in paper or electronic form.

In delivering language assistance services, the law specifies that you may not:

* Require the individual to provide their own interpreter;
* Rely on a minor child to interpret UNLESS it is a life-threatening emergency;
* Rely on an interpreter if there is a question of competency or confidentiality;
* Rely on staff that is unqualified in a language; or
* Use low-quality video remote services for interpretation

Mandated Languages

A primary goal of Section 1557 of the ACA is to provide clear information to individuals with limited English proficiency so they are aware of their nondiscrimination rights as well as their right to assistance in the event of limited English proficiency. Section 1557 specifies that the required information be provided by covered entities in the 15 primary languages of the state or territory and HHS provides a list of the 15 languages by state. The requirement is an addition to any translation services you currently provide. In Pennsylvania, the 15 languages are:

* Spanish
* Chinese (no dialect specified)
* Vietnamese
* Russian
* Pennsylvania Dutch
* Korean
* Italian
* Arabic
* French
* German
* Gujarti
* Polish
* French Creole
* Mon-Khmer, Cambodian
* Portuguese

Written Notices in Mandated Languages

In addition to language assistance for services, two forms of written communication are required in the above languages: 1) a notice of nondiscrimination; and 2) a “tagline” to inform the public that interpretive services are available in the listed 15 languages. A notice of nondiscrimination and tagline must be posted in English for the public as well as in the languages listed above.

Notices and taglines must be posted in a conspicuously visible font size and be posted prominently and noticeably. Taglines that state language services are available must appear in all publications and communications, i.e. treatment plans, termination of coverage, etc. Electronic communications (for example, email or website) may use a link that directs individuals to a notice of nondiscrimination and tagline for language assistance. In the event that a printed communication itself is small, for example a postcard, that information must be posted in the top two non-English languages, which are Spanish and Chinese for Pennsylvania.

Significant publications and communications, i.e. brochures, postcards, etc., must include the nondiscrimination notice and the taglines in at least the top two non-English languages.

[**Sample Notice of Nondiscrimination**](http://www.hhs.gov/sites/default/files/sample-ce-notice-english.pdf)**:**

[Name of covered entity] complies with applicable Federal civil rights laws and does not

discriminate on the basis of race, color, national origin, age, disability, or sex. [Name of covered

entity] does not exclude people or treat them differently because of race, color, national origin,

age, disability, or sex.

[Name of covered entity]:

• Provides free aids and services to people with disabilities to communicate effectively

with us, such as:

○ Qualified sign language interpreters

○ Written information in other formats (large print, audio, accessible electronic formats, other formats)

• Provides free language services to people whose primary language is not English, such

as:

○Qualified interpreters

○ Information written in other languages

If you need these services, contact [Name of Civil Rights Coordinator] if you believe that [Name of covered entity] 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: [Name and Title of Civil Rights Coordinator], [Mailing Address], [Telephone number], [TTY number—if covered entity has one], [Fax], [Email]. You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, [Name and Title of Civil Rights 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>.

[**Sample Tagline for Language Services**](http://www.hhs.gov/sites/default/files/sample-ce-tagline-english.pdf):

Proficiency of Language Assistance Services

ATTENTION:

If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).

Grievance Process for Individuals Citing Nondiscrimination

The final rule of Section 1557 states that entities with 15+ employees must also have a grievance procedure and a compliance coordinator available to the public. Examples of a grievance procedure and a complaint form are available by [clicking here](http://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/example-grievance-procedure/).

**Sample Grievance Procedure Notice:**

It is the policy of [Name of Covered Entity] not to discriminate on the basis of race, color, national origin, sex, age or disability. [Name of Covered Entity] has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Section 1557 of the Affordable Care Act (42 U.S.C. § 18116) and its implementing regulations at 45 C.F.R. pt. 92, issued by the U.S. Department of Health and Human Services. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability in certain health programs and activities. Section 1557 and its implementing regulations may be examined in the office of [Name and Title of Section 1557 Coordinator], [Mailing Address], [Telephone number], [TTY number—if covered entity has one], [Fax], [Email], who has been designated to coordinate the efforts of [Name of Covered Entity] to comply with Section 1557.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, sex, age or disability may file a grievance under this procedure. It is against the law for [Name of Covered Entity] to retaliate against anyone who opposes discrimination, files a grievance, or participates in the investigation of a grievance.

Enforcement of the law in the event of noncompliance includes: suspension, termination or refusal to grant federal financial assistance; and referral to the Department of Justice for review or civil action.

**ACTION REQUIRED:**

1. Review the [final rule](https://www.federalregister.gov/documents/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov).
2. Take necessary steps to ensure that your translation services and staff are able to competently serve individuals in the identified languages. If not, seek assistance for development of appropriate written materials.
3. As you evaluate your translation services capacity, consider the portfolio of translation services offered through the “PACHC Preferred” group purchasing organization(GPO), Commonwealth Purchasing Group (CPG), the leading GPO for health centers. MedVia, the CPG vendor that offers a portfolio of translation and other patient communication services, will be the focus of a CPG webinar on Wednesday, Dec. 21, 11:00 am – Noon. [Click here to register and learn more.](https://attendee.gotowebinar.com/register/7071844762440751874?source=newsletter) CPG participation offers significant savings and there is no fee to sign up to participate in the GPO; the agreement is non-exclusive, meaning you have the freedom to use vendors outside of CPG and other GPOs. For more information, contact George Stiles at CPG; (704) 576-5600.
4. Replace any brochures, etc. with redesigned versions so that you are in compliance with the law. A [sample notice of non-discrimination](http://www.hhs.gov/sites/default/files/section1557-sample-grievance-procedure.pdf) for significant publications is available.
5. If you have 15 or more employees, identify a member of staff to act as the compliance officer and begin implementation of a grievance procedure and policy. A [sample grievance procedure](http://www.hhs.gov/sites/default/files/section1557-sample-grievance-procedure.pdf) is available.
6. Ensure that the two mandatory notices in Pennsylvania’s top 15 languages are posted in each of your health center sites. **NOTE:** To make it easier for you, PACHC has had posters of the two notices in the top 15 Pennsylvania languages created. **An order form is attached and can be accessed on the PACHC website on the** [Resources](http://pachc.org/resources.html) **and the** [PACHC Policy Memos](http://pachc.org/resources_policy.html) **pages.**

**FOR MORE INFORMATION:**  HHS has a webpage dedicated to Section 1557 of the ACA available on [their website](http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html). HHS has also made available [training documents](http://www.hhs.gov/civil-rights/for-individuals/section-1557/trainingmaterials/index.html) for staff of affected health entities.

Please continue to follow PACHC’s *News You Can Use* newsletter for updates and information. You may also contact our Director of Policy & Partnership, Jim Willshier at jim@pachc.org or (717) 761-6443, ext. 206 with questions or for additional information.