



Access to Health and Human Services

OCR's Enforcement of Federal Civil Rights Laws and Implications for Persons Who Are Limited English Proficient

Content provided by the U.S. Department of Health and Human Services,
Office for Civil Rights

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What is the Office for Civil Rights (OCR)?

As HHS's law enforcement agency for civil rights, conscience and religious freedom rights, and health information privacy rights, OCR investigates complaints, enforces rights, promulgates regulations, develops policy, and provides technical assistance and public education to ensure understanding of and compliance with non-discrimination and health information privacy laws.



OCR

What We Do

OCR accomplishes this by:

- Ensuring that recipients of HHS federal financial assistance comply with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and religion.
- Ensuring that federal agencies, state and local governments, health care providers, health plans, and others comply with federal laws protecting conscience and the free exercise of religion and prohibiting coercion and discrimination in health and human services.
- Ensuring the practices of health care providers, health plans, healthcare clearinghouses, and their business associates adhere to federal privacy, security, and breach notification laws under the Health Insurance Portability and Accountability Act (HIPAA), as amended, through the investigation of complaints, self-reports of breaches, compliance reviews, and audits.



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.
- 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.

Note: The failure of a covered entity to provide language assistance services to limited English proficient (LEP) individuals may constitute national origin discrimination.



Who Is Covered?

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



Federal Financial Assistance

- A state Department of Social Services uses funds from its Community Services Block Grant to support job training centers.
- A local private refugee resettlement agency operates in a building that was built with FFA.
- A Commission Corp Officer is detailed to a state office of emergency preparedness.



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



Practices Prohibited on the basis of Race, Color, or National Origin Cont'd.

- Restrict an individual in the enjoyment of benefits, privileges, etc.
- Treat an individual differently in determining eligibility
- Deny a person opportunity to participate on planning board



Practices Prohibited on the basis of Race, Color, or National Origin Cont'd.

- 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



The Connection

How do the protections against national origin discrimination apply to LEP persons?



Who Is a Limited English Proficient Person?

An LEP individual is a person who does not speak English as his or her primary language and who has a limited ability to read, write, speak or understand English.



U.S. Supreme Court

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.



Principles for Communicating with LEP Individuals

- A covered entity must take reasonable steps to provide meaningful access to LEP persons eligible to be served or likely to be encountered in its 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



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.



Interpreter Competency

The recipient should take reasonable steps to assess that the interpreter is able to:

- Demonstrate proficiency in both English and in the other language
- Demonstrate knowledge of specialized terms or concepts
- Demonstrate an understanding of the need for confidentiality and impartiality
- Understand the role of interpreter



Timeliness

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.



Options for Providing Language Assistance Services

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



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.



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)



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.



VISIT OUR WEBSITE!

www.hhs.gov/ocr

The screenshot shows the top navigation bar of the HHS.gov Office for Civil Rights website. It includes the HHS.gov logo, the Office for Civil Rights name, and the U.S. Department of Health & Human Services text. Below the navigation bar is a search bar with the placeholder text "I'm looking for..." and a magnifying glass icon. To the right of the search bar is a link to the "HHS A-Z Index". Below the search bar is a row of four navigation buttons: "About Us" (with a people icon), "Filing with OCR" (with a document icon), "Civil Rights" (with a shield icon), and "Health Information Privacy" (with a shield icon). Below this row is a "Newsroom" button (with a document icon). At the bottom of the screenshot is a breadcrumb trail: "HHS Home > Office for Civil Rights (OCR)". To the right of the breadcrumb trail are utility links: "Text Resize" (with a font size icon), "Print" (with a printer icon), "Share" (with social media icons for Facebook, Twitter, and a plus sign).

Office for Civil Rights (OCR)

The screenshot shows the main content area of the HHS.gov Office for Civil Rights website. On the left is a sidebar with the heading "I would like info on. . ." and three links: "Contact the Office for Civil Rights", "Section 1557: Nondiscrimination", and "Health Information Privacy". To the right of the sidebar is a large image of a diverse group of people. Below the image is a dark grey box with the heading "Section 1557" and the text "Civil Rights Provision of the Affordable Care Act".

On OCR's website....

- Read about civil rights and HIPAA laws
- Download fact sheets
- Access sample policies and resources in English and other languages
- File a complaint
- Contact us!