

## Access to Healthcare

OCR's Enforcement of  
Title VI of the Civil Rights Act,  
Section 504 of the Rehabilitation Act,  
Title II of the Americans with Disabilities Act,  
and Section 1557 of the Affordable Care Act

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 the Department's civil rights, conscience and religious freedom, and health privacy rights law enforcement agency, 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.

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## OCR What We Do

- Ensure that the privacy and security practices of several million health care providers, plans, and clearinghouses – and their contractors - adhere to Federal privacy, security, and breach notification requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Ensure that the more than 245,000 recipients of Federal financial assistance comply with the nation's civil rights laws
- Enforce Federal Health Care Conscience Rights

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### 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.

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### Who Is Covered?

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

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### 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.

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**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

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**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

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**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

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### The Connection

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

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### 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.

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### 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.

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### 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.

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### 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

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### 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.

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### 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

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### 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.

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### Options for Providing Language Assistance Services

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

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### 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.

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### 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)

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### Discrimination on the Basis of Disability

- **Section 504 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in programs and activities that receive FFA.
- **Title II of the Americans with Disabilities Act (ADA)** prohibits discrimination on the basis of disability by a State or local government and protects against retaliation/intimidation.
- **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 and activities.

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### Discrimination on the Basis of Disability

These laws were designed to ensure that all covered programs, activities, and services treat people with disabilities equally.

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### Discrimination on the Basis of Disability

For the purpose of these civil rights laws, disability is defined as a physical or mental impairment that substantially limits one or more major life activities.

Definition includes an individual who:

- Has a disability;
- Has a history of having a disability; or
- Is regarded as having a disability.

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### Prohibited Activities

Recipients may not, on the basis of disability:

- Deny the opportunity to participate in or benefit from any aid, benefit, or service;
- Provide an aid, benefit, or service, that is not equal to that provided to others, or that is not as effective as that provided to others;
- Provide different or separate aid, benefits, or services (unless necessary to provide aid, benefits, or services that are as effective as those provided to others);
- Deny the opportunity to participate on planning or advisory boards;
- Otherwise limit the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

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### Equal Opportunity for People with Disabilities

In general, covered entities must:

- Make reasonable changes to policies, practices, and procedures, based on an individual's needs to allow access to the program or activity, unless it would fundamentally alter the program or activity.
- Conduct an individualized assessment.
- Consider the first choice of the individual, unless another effective means is available.

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### Effective Communication

- Covered entities must ensure effective communication with individuals with disabilities. The goal is to ensure that communication with people with disabilities is equally effective as communication with people without disabilities.
- Auxiliary aids and services include a wide variety of technologies, including but not limited to:
  - Qualified sign language interpreters
  - Large print materials
  - Text telephones (TTYs)
  - Captioning
  - Screen reader software
  - Video remote interpreting services

Note: No fees or surcharges for auxiliary aids and services.

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### Auxiliary aids and services

- A covered entity must provide auxiliary aids and services to individuals with disabilities free of charge and in a timely manner when necessary to ensure an equal opportunity to participate and benefit from the entity's health programs or activities.
- 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 staff interpreters
  - Use low-quality video remote interpreting services

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## 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.

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## 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.

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## VISIT OUR WEBSITE!

[www.hhs.gov/ocr](http://www.hhs.gov/ocr)



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!

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