



Legal Alert

Healthcare Providers Must Post Nondiscrimination Notice by Oct. 16

October 4, 2016

By October 16, 2016, healthcare providers and other covered entities must publish and disseminate nondiscrimination notices, including disclosures that they provide language assistance services for individuals with limited English proficiency (LEP). Public disclosure is an area easily missed and one many providers may not have prepared to address. To assist, this legal alert describes the Section 1557 notice requirements as well as the Department of Health and Human Services (HHS) Office for Civil Rights (OCR) sample notifications and taglines that providers can leverage to meet these obligations.

OCR issued a final rule on May 18, 2016, implementing Section 1557 of the Affordable Care Act (ACA). Section 1557 "prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities." As part of the final rule, OCR included mandatory public notice requirements with which covered entities must comply. While the final rule was effective July 18, 2016, covered entities were given until October 16, 2016, to meet the notice requirements. Covered entities include health programs that receive federal funds from programs operated by HHS, such as Medicare and Medicaid, which means the rule applies to hospitals, clinics, physician practices, nursing homes, other healthcare entities and insurers.

While there are a number of other steps covered entities must take to comply with Section 1557 and the final rule — such as designating an employee responsible for compliance, adopting grievance procedures, and determining the most effective way to provide language assistance and interpreter services to LEPs — this client alert focuses on the specific notice requirements. **Simply stated, covered entities are required to widely display their non-discrimination policy, which must include a short tagline stating the entities' policy against discrimination in 15 different languages.** The following outlines six specific components of the notice requirement that covered entities must meet:

1. Where Must the Notice Be Posted. Covered entities must take initial and continuing steps to inform patients, enrollees, members of the public, applicants, and beneficiaries about the covered entity's nondiscrimination policy. This notice must be displayed in the following three places:

- a. In a prominent area within the entity's physical location
- b. On its homepage website
- c. On all "significant communications and significant publications"

Each of these is discussed in more detail below.

2. What Must the Notice Contain. To minimize an entity's burden in creating these new notifications, OCR has provided a [sample notice](#) online. An entity is not required to use or mimic OCR's notice, but the notice used must contain information regarding the following:

- a. The entity does not discriminate on the basis of race, color, national origin, sex, age or disability.
- b. Appropriate auxiliary aids and services are available free of charge.
- c. Language assistance services such as translated documents and oral interpreters are available free of charge and in a timely manner.
- d. Information on how to obtain auxiliary aids or translations.
- e. Contact information for the designated employee responsible for compliance.
- f. Complaint procedures and how to file a grievance.
- g. Information on how to file a discrimination complaint with the OCR.
- h. A nondiscrimination tagline translated into at least 15 different languages.

3. Physical Notice and Webpage . The physical notice must be in a conspicuous location and easily readable by a member of the public, not behind private office doors (e.g., in a patient waiting area). Providers may also want to include the notice with their standard patient registration forms. Additionally, these notifications should be posted on the homepage of an entity's website in legible font. The full notice can be available from a link on the front page, but the link must be conspicuous. (For example, the front page's link could say, "We do not discriminate. View our policy.")

4. Publications and Qualifying Notification Material . Publications that must display the notice include "significant communications and significant publications," which covers a broad scope not defined by Section 1557 or the final rule. The OCR has provided some examples, however: educational and marketing resources, patient handbooks, patient applications, notices of patient benefits or rights, consent forms, notices regarding eligibility, outreach material and even patient letters. OCR's interpretation is not constrained by these examples and additional guidelines can be found online. OCR's touchstone will be whether current or future patients could reasonably be expected to see and be able to read the notice. That said, while notification must begin this October, a covered entity may continue to use materials currently manufactured without the notice until its supply of those materials is exhausted.

5. Taglines . A provider must publish taglines in a minimum of 15 non-English languages most prevalent within the state as part of its notice. Taglines are short statements describing the entity's ability to provide free language assistance services (e.g., "ATTENTION: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx, or TTY: 1-xxx-xxx-xxxx."). To assist providers, OCR has provided a list of the top 15 non-English languages per state and has published a notice of nondiscrimination, statement of nondiscrimination, and taglines translated into 64 different languages.

6. Small Communications . There is an exception to the full notice requirement for small printed publications, such as flyers or pamphlets. Small communications that are significant publications need only state that the entity (1) does not discriminate on the basis of sex, age, national origin, disability, or race in its health programs, and (2) provides taglines in *two* non-English languages. OCR has provided examples of this statement online. OCR's commentary in the final rule suggests this may include social media posts if they are "significant communications."

The final rule already requires entities to take reasonable steps to allow individuals with LEP meaningful access to health services. The notice requirements mandate that providers inform the public of this right, including notice of mandatory language assistance services. If your entity is not already offering such services, it is out of compliance. There are vendors that offer these services. Providers can consider oral interpreters, including telephone video remote interpretation services and bilingual employees (depending on their accuracy, privacy and ability to speak English and the non-English language). Family members should not be used, except for emergencies. To determine if a service complies, the OCR will weigh the nature and importance of the health program and compare these factors against the communication at issue. While this test is not a bright-line rule, the OCR has clarified that all language assistance services must (1) be accurate, (2) be timely, and (3) maintain the privacy of the LEP individual without any charge.

The final rule has a number of other requirements that took effect earlier this summer. Please consult with one of the authors to discuss compliance with these rules.

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Appendix A to Part 92—Sample Notice Informing Individuals About Nondiscrimination and Accessibility Requirements and Sample Nondiscrimination Statement: Discrimination is Against the Law

Paragon Surgical Specialists complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex. Paragon Surgical Specialists does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.

Paragon Surgical Specialists:

- 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 Paragon Surgical Specialists 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>.