

## **HHS Nondiscrimination Regulations: Fact Sheet for Pharmacies**

On May 18, 2016, the Department of Health and Human Services (HHS) published a final rule to implement Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination in health coverage and care based on race, color, national origin, age, disability, and sex (including pregnancy, gender identity and sex stereotyping). The regulation is applicable to health care entities and providers receiving federal funds from HHS, such as health insurers, hospitals, clinics, physicians and pharmacies.

Section 1557 was intended to coordinate existing federal non-discrimination laws, regulations, and policy as they apply to health care, and to extend sex discrimination protections to health programs and activities. The rules generally prohibit covered entities from discriminating on the basis of race, color, national origin, sex, age, or disability in healthcare programs or activities. Specifically, covered entities may not:

- Deny an individual any service, financial aid, or other benefit provided under the program;
- Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
- Subject an individual to segregation or separate treatment in any matter related to his/her receipt of any service, financial aid, or other benefit under the program;
- Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
- Treat an individual differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;
- Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him/her an opportunity to do so which is different from that afforded others under the program.

In addition, the Final Rule formalizes long-standing HHS policy guidance about the provision of language assistance services to individuals with limited English proficiency and seeks to ensure effective communication for individuals with disabilities.

The Final Rule is effective on July 18, 2016, and the majority of provisions that apply to pharmacies take effect on that date. However, there are additional requirements that will go into effect on October 16, 2016. More information on the Final Rule can be found [here](#).

## **Summary of Key Pharmacy Requirements**

**Written Notice and Taglines.** Within 90 days of the effective date of the Final Rule (October 16, 2016), covered entities must provide written notice that contains the following information:

- 1) The covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities;
- 2) The covered entity provides 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, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;
- 3) The covered entity provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency;
- 4) How to obtain the aids and services;
- 5) If applicable, identification of, and contact information for, the employee responsible for coordinating the covered entity's compliance;
- 6) If applicable, the availability of the grievance procedure described below and how to file a grievance; and
- 7) How to file a discrimination complaint with the Department of Health and Human Services Office of Civil Rights (OCR).

HHS has published a sample notice, available at:

<http://www.hhs.gov/sites/default/files/sample-ce-notice-english.pdf>.

HHS has also developed a model tagline informing individuals with limited English 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).

Covered entities must post a notice and taglines regarding communication assistance for individuals with limited English proficiency in at least the top 15 non-English languages spoken in the state in which the entity is located or does business. OCR has translated a

simple non-discrimination notice and taglines into dozens of languages, and provides translations on its website: <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>

The required notice and taglines must be posted in a conspicuously-visible font size in significant publications and communications, in conspicuous physical locations, and in a conspicuous location on the covered entity's website (if applicable), such as a link on its home page to the notice, and links written in non-English languages to taglines. Covered entities have discretion in determining the exact size, location, and manner in which they post the notice and taglines so long as they satisfy the regulatory standards. They may be combined with other notices if the combined notice clearly informs individuals of their civil rights per the regulations, and may be included at the beginning of significant documents, or as a separate insert, or on a webpage.

**Written Notice in Small Publications.** While the Final Rule requires covered entities to post taglines in at least the top 15 non-English languages spoken in the state in which the entity is located or does business, those requirements are modified for small-sized significant communications such as postcards, pamphlets and tri-fold brochures; for these, the final rule requires entities to post a nondiscrimination statement and taglines in at least the top two non-English languages spoken by individuals with limited English proficiency in the state.

**Meaningful Access for Individuals with Limited English Proficiency.** Covered entities must take reasonable steps to provide meaningful access to individuals with limited English proficiency. An individual with limited English proficiency is a person whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.

The Final Rule requires that language assistance services be provided free of charge, be accurate and timely, and protect the privacy and independence of the individual with limited English proficiency. HHS will require covered entities to offer a qualified interpreter to an individual with limited English proficiency when oral interpretation is a reasonable step to provide meaningful access, and to use a qualified translator when translating written content in paper or electronic form.

Covered entities may not:

- 1) Require an individual with limited English proficiency to provide his or her own interpreter;
- 2) Rely on an adult accompanying an individual with limited English proficiency to interpret or facilitate communication, except
  - a. in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with limited English proficiency immediately available or

- b. where the individual with limited English proficiency specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances;
- 3) Rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no qualified interpreter for the individual with limited English proficiency immediately available; or
- 4) Rely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with limited English proficiency.

Covered entities are encouraged to implement a language access plan to ensure they are prepared to take reasonable steps to provide meaningful access to each individual that may require assistance. Although a formal language access plan is not mandated by the Final Rule, HHS is expected to take into account relevant factors, including whether a covered entity has developed an effective written language access plan that is appropriate to its particular circumstances in evaluating whether a covered entity has met the meaningful access obligation. HHS has developed a model language access plan: <http://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf>

**Designation of Responsible Employee.** Covered entities with 15 or more employees must designate at least one employee to coordinate and carry out the responsibility to comply with the anti-discrimination efforts, including the investigation of any complaints, grievances or alleged violations.

**Grievance Procedures.** Covered entities with 15 or more employees must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any violations of the regulations. HHS has published a sample grievance procedure, which is available here.

**Employee Training.** Though not required by the Final Rule, HHS is strongly encouraging covered entities to train their employees on compliance with the nondiscrimination requirements. HHS has prepared a study guide and PowerPoint slides to supplement covered entities' trainings on their internal policies and procedures: <http://www.hhs.gov/civil-rights/for-individuals/section-1557/trainingmaterials/index.html>