



## CLIENT ALERT

Healthcare Practice Group Update

August 4, 2016

### Key Tasks for Compliance with ACA's Nondiscrimination Provisions, Including Public Notice Requirements

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On May 13, 2016, the Office for Civil Rights ("OCR") of the U.S. Department of Health and Human Services ("HHS") issued a final rule ("Final Rule") implementing Section 1557 of the Affordable Care Act ("ACA"). This alert summarizes key points from Section 1557 (codified at 42 U.S.C. § 18116) and the Final Rule (published on May 18, 2016 at 81 Fed. Reg. 31376-31473 and codified at 45 C.F.R. § 92.1 *et seq.*), and outlines the tasks that should be undertaken to ensure compliance.

#### I. Overview of Section 1557 and the Final Rule

##### A. Section 1557

Section 1557 is the nondiscrimination provision of the ACA. Section 1557 is the first Federal civil rights law to broadly prohibit sex discrimination in the health care area. In addition to prohibiting sex discrimination, Section 1557 also builds upon longstanding discrimination laws by prohibiting discrimination on the basis of race, color, national origin, age, or disability in the health care area. See Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975.

Section 1557 has been in effect since its enactment in 2010. OCR's website states that OCR has been enforcing Section 1557 since that time, although the Final Rule clarifies how OCR will implement Section 1557.

##### B. Applicability

Section 1557 extends nondiscrimination protections to individuals participating in:

- Any health program or activity any part of which received funding from HHS.
- Any health program or activity that HHS itself administers.
- Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces.

Specifically, the Final Rule provides that Section 1557 applies to healthcare providers (including hospitals, physician groups and individual physicians) who accept Medicare (except for Part B) reimbursement, Medicaid reimbursement, meaningful use payments, or Federal research funding for clinical research. The Final Rule does not extend Section 1557's application to physicians who only receive reimbursement under Medicare Part B. In comments to the Final Rule, OCR estimates that "the regulation would likely cover almost all licensed physicians because they accept Federal financial assistance from sources other than Medicare Part B."

81 Fed. Reg. at 31445. Entities that are subject to the Final Rule are called “covered entities.” This term should not be confused with the term “covered entities” under HIPAA, as both are separate from each other.

### **C. Effective Date**

The Final Rule has a general effective date of July 18, 2016, for physicians and other health care providers. Covered entities must comply with the Final Rule’s notice and tagline requirements within 90 days of the effective date; however, OCR is allowing covered entities to exhaust their current stock of publications, rather than incur a special printing of the publications to include the new notice. Noteworthy, the comments to the Final Rule state: “Most of the requirements of Section 1557 are not new to covered entities, and 60 days should be sufficient to come into compliance with any new requirements.” 81 Fed. Reg. at 31378.

The Final Rule provides that, where an entity is principally engaged in health services or health coverage, all of the entity’s operations must be in compliance with Section 1557 (*e.g.*, cafeteria and gift shop). The Final Rule also clarifies that Section 1557 does not apply to employment practices.

### **D. Enforcement**

OCR enforces Section 1557, and has a range of enforcement tools. See 81 Fed. Reg. at 31393; 45 C.F.R. § 92.6. When OCR finds violations, a covered entity will be required to take corrective actions, which may include revising policies and procedures, and implementing training and monitoring programs. Covered entities also may be required to pay compensatory damages. If a covered entity refuses to take corrective actions, OCR may undertake proceedings to suspend or terminate Federal financial assistance from HHS (including Medicare reimbursement). OCR also has the authority to refer Section 1557 noncompliance matters to the U.S. Department of Justice for possible enforcement proceedings. Section 1557 also provides private right of action, enabling individuals with the right to sue covered entities in court for discrimination.

### **E. Key Provisions**

The key provisions of the Final Rule for physicians, physician groups and other health care providers include:

1. Extends protections against sex discrimination to health care settings and including gender identity discrimination within the definition of sex discrimination;
2. Codifies long-standing guidance regarding meaningful access for individuals with Limited English Proficiency (“LEP”), including the provision of free, accurate, and timely language assistance services and the requirement to publish and post taglines;
3. Requires posting and publishing of nondiscriminatory notice and statement; and
4. Incorporates existing law that requires reasonable modifications, effective communication, and readily accessible buildings and information technology to avoid disability-based discrimination.

## **II. Key Tasks**

The key tasks to comply with Section 1557 and the Final Rule are:

Key Tasks for Compliance with ACA's Nondiscrimination Provisions, Including Public Notice Requirements

1. Determine whether Section 1557 and the Final Rule are applicable. In short, this analysis involves determining whether financial assistance is received from HHS. For instance, if Medicare (except Part B) or Medicaid reimbursement is accepted, then Section 1557 and the Final Rule are applicable. Most health care providers likely will qualify, so any conclusion to the contrary should be carefully reviewed.
2. Once it is determined that Section 1557 and the Final Rule are applicable, perform the following tasks:
  - a. Designate an employee responsible for compliance and adopt grievance procedures, per 45 C.F.R. § 92.7 (applies only to covered entities employing 15 or more persons).
  - b. Post and publish nondiscrimination notice, nondiscrimination statement and taglines, per 45 C.F.R. § 92.8.
  - c. Review access to language assistance services, for compliance with 45 C.F.R. § 92.201.
  - d. Review access to auxiliary aids and services, for compliance with 45 C.F.R. § 92.202.
  - e. Develop and implement a language access plan, recommended per 45 C.F.R. § 92.201.
  - f. Review and update, as necessary, policies and procedures to ensure protections against discrimination are documented and implemented, including ensuring sex discrimination protections are delineated within policies and procedures.
  - g. Review existing sex discrimination protections, per 45 C.F.R. § 92.206.
  - h. Train employees on Section 1557 and the Final Rule.
  - i. Submission of an assurance of compliance form, per 45 C.F.R. § 92.5.

Each task is described in more detail below.

**A. Designate an employee responsible for compliance and adopt grievance procedures (§ 92.7) (applies only to covered entities employing 15 or more persons)**

In Section 92.7(a) of the Final Rule, OCR requires a covered entity that employs 15 or more persons to: (i) designate at least one employee to coordinate compliance with Section 1557 and the Final Rule (referred to OCR as a "Section 1557 Coordinator"); and (ii) adopt a grievance procedure that incorporates appropriate due process standards and allows for the prompt and equitable resolution of complaints concerning actions prohibited by Section 1557 and the Final Rule. See 81 Fed. Reg. at 31394-31395.

The comments to the Final Rule state that a covered entity has flexibility to increase the responsibilities of an already-designated coordinator to include the responsibilities of Section 1557 compliance. The comments also provide that the Section 1557 grievance procedures could be combined with existing grievance procedures. See 81 Fed. Reg. at 31394. Appendix C to the Final Rule contains a sample grievance procedure. *Id.* at 31473.

**B. Post and Publish Nondiscrimination Notice, Nondiscrimination Statement and Taglines (§ 92.8)**

Section 92.8 of the Final Rule contains documentation requirements for the purpose of notifying patients and other members of the public that: (i) the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities; (ii) the covered entity provides appropriate auxiliary aids and services (including qualified interpreters and information in alternative formats); (iii) the covered entity provides language assistance services (including translated documents and oral interpretation); (iv) how to obtain the auxiliary aids and services, materials in other formats, translated materials and interpreters; (v) the contact information for the Section 1557 Coordinator (required for entities with 15 or more employees); (vi) the availability of a grievance procedure and how to file a grievance (required for entities with 15 or more employees); and (vii) how to file a discrimination complaint with OCR.

The comments to the Final Rule provide that OCR modeled its notice requirements on those required by other Federal civil rights regulations, including Title VI, Title IX, Section 504, and the Age Act. See 81 Fed. Reg. at 31395. The comments further provide that covered entities have some flexibility in determining the exact size and location of the notifications, provided that the content is sufficiently conspicuous and visible that individuals seeking services could reasonably be expected to see and be able to read the information. See 81 Fed. Reg. at 31397. The comments also note that the notice requirements establish a floor. See, e.g., *id.* at 31400.

The Final Rule provides three avenues by which this information is conveyed in writing to patients and the public: (i) a nondiscrimination notice; (ii) a nondiscrimination statement; and (iii) taglines. OCR has provided a sample nondiscrimination notice, nondiscrimination statement and a sample tagline in the appendices to the Final Rule. See Appendix A (Nondiscrimination Notice and Statement) and Appendix B (Tagline). OCR also has provided translated resources concerning these documents on its Web site at the following link: <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>. The Web site has the sample nondiscrimination notice, nondiscrimination statement and tagline translated into 64 languages.

Please note that, while OCR provides translations of the nondiscrimination notice and nondiscrimination statement in numerous languages, a covered entity is not required to post or publish these documents in non-English languages. Only the taglines are required to be posted and published in non-English languages. Taglines are defined in the Final Rule as “short statements written in non-English languages that indicate the availability of language assistance services free of charge.” See 45 C.F.R. § 92.4.

**(i) *Nondiscrimination Notice (§ 92.8(a)(1)-(7), (b)(1), (f), (h))***

The nondiscrimination notice is the most detailed publication to the public, requiring all of the seven topics described above to be communicated (provided the last two are required applicable to those entities employing 15 or more individuals). See 45 C.F.R. § 92.8(a)(1)-(7), (b)(1). The Final Rule details this notice requirement as follows:

- The notice is not required to be posted in non-English languages. OCR’s comments state the following: “Although we encourage covered entities to post the notice of individuals’ rights in one or more of the most prevalent non-English languages frequently encountered by covered entities in their geographic service areas, we decline to require such posting in the final rule because of the resource burdens and

opportunity costs to covered entities.” In contrast, the taglines, discussed below, are required to be posted in other languages.

- The notice must be posted in a “conspicuously-visible font size” in:
  - significant publications and significant communications targeted to patients and members of the public. The notice is not required to be in publications or communications that are small-sized, such as postcards and tri-fold brochures (that is where the shorter statement will be published). OCR gives the following examples of where the notice should be posted – patient handbooks, outreach publications, marketing materials, or written notices pertaining to rights or benefits or requiring a response from an individual. 81 Fed. Reg. at 31396, 31402. OCR also states that it intends for the notice to be included in vital documents as that term is used by the HHS LEP Guidance, which includes consent and complaint forms, written notices or applications. *Id.* at 31402. Accordingly, we recommend including the notice in new patient packets.
  - conspicuous physical locations where the entity interacts with the public. Although OCR does not provide examples, these physical locations likely include the waiting room or reception area.
  - a conspicuous location on the covered entity’s Web site that is accessible from the home page of the Web site. OCR does not require that the notice be placed on the home page of the Web site, but covered entities can comply by posting a Web link on the home page that will take the user to the notice. See 81 Fed. Reg. at 31396.
- The content of the notice can be combined with other notices, such as other notices required under other Federal civil rights laws, as long as the combined notice clearly informs individuals of their civil rights under Section 1557 and the Final Rule. See 45 C.F.R. § 92.8(h).
- OCR suggests that, for lengthy publications, it may be necessary to include the notice at the beginning of the document or on a separate insert. See 81 Fed. Reg. at 31401.

**(ii) Nondiscrimination Statement (§ 92.8(a)(1), (b)(2), (g)(1))**

The nondiscrimination statement is a one sentence statement, providing:

[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.

See Appendix A to Final Rule, at 81 Fed. Reg. at 31473. The comments provide that “OCR intended the nondiscrimination statement in § 92.8(a)(1) to convey covered entities’ overarching nondiscrimination obligations in a simple and streamlined manner. . . .” 81 Fed. Reg. at 31397.

The Final Rule details this statement requirement as follows:

- The statement is not required to be posted in non-English languages. Similar to the nondiscrimination notice, OCR states that the non-English translated statements on its Web site are for discretionary use

only. See 81 Fed. Reg. at 31399. In contrast, the taglines, discussed below, are required to be posted in other languages.

- The statement must be posted in a “conspicuously-visible font size” in:
  - significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures.

**(iii) Taglines (§ 92.8(b)(2), (d), (f), (g)(2))**

The purpose of the tagline requirement is to inform LEP individuals of language assistance services. An individual with LEP is defined in the Final Rule as a person whose primary language for communication is not English and who has a limited ability to read, write, speak or understand English. A sample English tagline is provided in Appendix B to the Final Rule, and states:

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).

See Appendix B to Final Rule, at 81 Fed. Reg. at 31473.

The requirements to post and publish the taglines are similar to those set forth above regarding the nondiscrimination notice and statement, as taglines for the top 15 languages spoken by LEP individuals will follow the same requirements of those for the nondiscrimination notice and taglines for the top 2 languages spoken by LEP individuals will follow the same requirements for the nondiscrimination statement.

The Final Rule details this tagline requirement as follows:

- The taglines must be posted in “conspicuously-visible font size” in at least the top 15 languages spoken by LEP individuals of the relevant State or States, as follows:
  - significant publications and significant communications targeted to patients and members of the public. This does not include publications or communications that are small-sized, such as postcards and tri-fold brochures (that is where the taglines will be published in the top two languages). OCR gives the following examples of where the notice should be posted – patient handbooks, outreach publications, marketing materials or written notices pertaining to rights or benefits or requiring a response from an individual. 81 Fed. Reg. at 31396, 31402. OCR also states that it intends for the notice to be included in vital documents as that term is used by the HHS LEP Guidance, which includes consent and complaint forms, written notices or applications. *Id.* at 31402. Accordingly, as with the nondiscrimination notice, we recommend including the taglines in new patient packets. In addition, similar to the nondiscrimination notice, OCR suggests that, for lengthy publications, it may be necessary to include the taglines at the beginning of the document or including a separate insert. 81 Fed. Reg. at 31401.
  - conspicuous physical locations where the entity interacts with the public. Although OCR does not provide examples, these physical locations likely include the waiting room or reception area.

- a conspicuous location on the covered entity's Web site accessible from the home page of the Web site. OCR does not require that the taglines be placed on the home page of the Web site, but covered entities can comply by posting "in language" Web links on the home page that will take the user to each tagline. See 81 Fed. Reg. at 31396. OCR's comments provide that "in language" Web links are links written in each of the 15 non-English languages posted on the home page that direct the individual to the full text of the tagline (*e.g.*, link directing to Spanish tagline should state "Español" rather than "Spanish"). *Id.*
- The taglines must be posted in "conspicuously-visible font size" in at least the top 2 languages spoken by LEP individuals of the relevant State or States, as follows:
  - significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures.
- As shown above, the Final Rule employs a State-based methodology rather than a national methodology for identifying the top 15 non-English languages or top 2 non-English languages. For providers operating in multiple States, OCR permits such a provider to aggregate the LEP populations in those States, rather than of each individual State. The provider does have the flexibility of not aggregating. See 81 Fed. Reg. at 31400.

In summary, as shown above, a covered entity must include a nondiscrimination statement (instead of the full notice) and taglines in 2 non-English languages (instead of 15 non-English taglines) on small-size significant publications and communications.

### **C. Review Access to Language Assistance Services (§ 92.201)**

Section 92.201 requires covered entities to take reasonable steps to provide meaningful access to LEP individuals. In addition to the posting and publishing of the taglines discussed above, reasonable steps include the provision of language assistance services, such as oral language assistance or written translations. OCR's comments provide that this requirement codifies long-standing principles from the HHS LEP Guidance. See 81 Fed. Reg. at 31453; *see also* HHS LEP Guidance, 68 Fed. Reg. 47311 (Aug. 8, 2003) and [www.LEP.gov](http://www.LEP.gov).

The type of language assistance to be provided is fact-based. See, *e.g.*, 81 Fed. Reg. at 31416. The Final Rule requires a covered entity to offer a qualified interpreter when it is a reasonable step to provide meaningful access and use a qualified translator when translating written content in paper or electronic format is necessary to provide an LEP individual with meaningful access to the information. See 45 C.F.R. § 92.201(d)(1), (2). There is no specific requirement concerning the types of documents that should be translated in writing, as opposed to being orally summarized by an interpreter. The comments provide that long and complex documents may need to be translated in writing, whereas shorter documents may be summarized orally for an interpreter to convey to the LEP individual. See 81 Fed. Reg. at 31416.

OCR's comments note that factors relating to the scope of language services to be provided, include the size of the covered entity and the diversity of the area that the covered entity serves. See 81 Fed. Reg. at 31416, 31420. We recommend that covered entities analyze the number of LEP persons they have historically served and consider having translated key documents in stock for those non-English languages they frequently

encounter. Key documents include, for instance, informed consent forms and required notices, such as a Notice of Privacy Practices.

When language services are required, they must be provided free of charge and in a timely manner. The Final Rule provides specific guidance on actions that a covered entity may not take. A covered entity may not:

- (i) require an individual to provide his or her own interpreter;
- (ii) rely on a minor child to interpret, except in a life threatening emergency when there is no qualified interpreter immediately available;
- (iii) rely on interpreters that the individual prefers when there are competency, confidentiality or other concerns;
- (iv) rely on unqualified bilingual or multilingual staff; or
- (v) use low-quality video remote interpreting services.

See 45 C.F.R. § 92.201(e), (f).

OCR's comments provide that, in most instances, a qualified interpreter will be a business associate or a workforce member of the covered entity. Therefore, covered entities should review OCR's HIPAA Frequently Asked Questions (FAQ) regarding business associates at [http://www.hhs.gov/ocr/privacy/hipaa/faq/business\\_associates/760.html](http://www.hhs.gov/ocr/privacy/hipaa/faq/business_associates/760.html) and OCR's HIPAA FAQ regarding interpreters at <http://www.hhs.gov/hipaa/for-individuals/faq/528/can-my-health-care-provider-discuss-my-health-information-with-an-interpreter>. See 81 Fed. Reg. at 31418.

The key takeaway is that covered entities may not discourage individuals with LEP from accepting language assistance services or require them to rely upon family or friends for interpretative services. LEP individuals must be provided a qualified interpreter or a translation when reasonably necessary to communicate information to them.

#### **D. Review Access to Auxiliary Aids and Services (§ 92.202)**

Section 92.202 sets forth the steps a covered entity must perform to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities. Specifically, the Final Rule requires covered entities to "provide appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills" if needed to have equal opportunity to benefit from the service. 45 C.F.R. § 92.202(b).

The auxiliary aids and services must be provided free of charge and in a timely manner. Auxiliary aids and services include, but are not limited to: (i) Qualified sign language interpreters; (ii) Large print materials; (iii) Text telephones (TTYs); (iv) Captioning; (v) Screen reader software; (vi) Video remote interpreting services.

#### **E. Develop and Implement a Language Access Plan (§ 92.201)**

A written language access plan is not required by the Final Rule, but rather strongly encouraged. The Final Rule provides that this "voluntary" language access plan may be taken into account by OCR in determining a covered entity's compliance with the meaningful access requirements for LEP individuals. See 45 C.F.R. § 92.201(b)(2).

A language access plan is a written document that outlines how an entity will serve individuals with LEP on a timely basis. In OCR's experience, effective language access plans address: (i) how an entity will determine an individual's primary language, particularly if the language is an unfamiliar one; (ii) identify a telephonic oral interpretation service to be able to access qualified interpreters when the need arises; (iii) identify a translation service to be able to access qualified translators when the need arises; (iv) identify the types of language assistance services that may be required under particular circumstances; and (v) identify any documents for which written translations should be routinely available. See 81 Fed. Reg. at 31415.

The Final Rule's comments provides guidance, including citations to model plans and other resources, which it encourages covered entities to rely upon in their advance planning. See 81 Fed. Reg. at 31415. Specifically, the Final Rule recommends the following model plans:

- HHS, Language Access Plan (2013), <http://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf>;
- U.S. Dep't of Justice, Civil Rights Div., Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs (May 2011), [http://www.lep.gov/resources/2011 Language Access Assessment and Planning Tool.pdf](http://www.lep.gov/resources/2011%20Language%20Access%20Assessment%20and%20Planning%20Tool.pdf).

#### **F. Review and Update, as Necessary, Policies and Procedures**

Covered entities should review and make any necessary changes to policies and procedures to ensure compliance with Section 1557 and the Final Rule. The written policies and procedures should document and implement protections against discrimination, including ensuring sex discrimination protections are delineated. They should inform employees and staff on who to contact internally within the covered entity to contact regarding questions.

At a minimum, there should be policies and procedures addressing:

- Nondiscriminatory services, including notification procedures for the public as well as grievance coordination procedures that address complaints of discrimination from the public and who they should contact if they have further questions (e.g., nondiscrimination notices and statements, grievance coordination procedures).
- How staff should obtain language assistance services for individuals with LEP, and auxiliary aids and services for individuals with disabilities, as well as describing the process for identifying individual's communication or accessibility needs and how to obtain qualified interpreters or translators in a timely manner (e.g., provision of language assistance services and provision of auxiliary aids and services).

As noted above, we recommend that the policies and procedures contain a language access plan, which should cover some of these topics. With regard to nondiscriminatory services, it is likely that existing policies and procedures will need to be updated to address sex discrimination because Section 1557's prohibition on sex discrimination in health care settings is a new civil rights protection. OCR's sample training materials also provide examples of changes that may need to be made to policies and procedures, such as modifying a "no pets" policy to permit an individual with a disability to be accompanied by a service animal.

#### **G. Review Existing Sex Discrimination Protections (§ 92.206)**

Existing policies and procedures as well as operating practices of a covered entity should be reviewed to ensure they are compliant with Section 1557's prohibition on sex discrimination, which extends certain sex discrimination protections to health care for the first time. In particular, any existing gender identity protections utilized by a covered entity should be assessed to determine conformity with the Final Rule.

The prohibition on sex discrimination protects individuals from discrimination based on the following factors:

1. An individual's sex;
2. Pregnancy, childbirth and related medical conditions;
3. Gender identity; and
4. Sex stereotyping, including the stereotype that an individual must identify as either male or female.

The Final Rule details this prohibition as follows:

- Individuals cannot be denied health care based on their sex, including their gender identity, pregnancy or sex stereotypes.
- Individuals must be treated consistent with their gender identity, including in access to facilities (such as bathrooms and patient rooms).
- Providers may not deny or limit treatment for any health services that are ordinarily or exclusively available to individuals of one gender based on the fact that a person seeking such services identifies as belonging to another gender, provided that the service is necessary or appropriate. For instance, a covered entity may not deny, based on an individual's identification as a transgender male, treatment for ovarian cancer where the treatment is medically indicated. *See* 81 Fed. Reg. at 31427-31428; § 92.206.
- Sex-specific health programs or activities (those limited exclusively to one sex) are permissible only if the provider can demonstrate an exceedingly persuasive justification, which requires the sex-specific health program or activity to be substantially related to the achievement of an important health-related or scientific objective. *See* 81 Fed. Reg. at 31377, 31408-31409; § 92.101. For example, a breast cancer program cannot refuse to treat men with breast cancer solely because its female patients would feel uncomfortable.
- Categorical limitations for all health care services related to gender transition are facially discriminatory.

The comments to the Final Rule provide the following guidance on sex discrimination based on gender identity:

Nothing in the rule would, for example, require a covered entity to provide a traditional prostate exam to an individual who does not have a prostate, regardless of that individual's gender identity. But for health services that are appropriately provided to an individual, the covered entity must provide coverage for those health services on the same terms regardless of an individual's sex assigned at birth, gender identity, or recorded gender.

**H. Train Employees on Section 1557 and the Final Rule**

Covered entities should require employees and other staff to complete mandatory training on Section 1557 and the Final Rule. OCR has developed a training presentation, which can be tailored to the mandatory training. The PowerPoint training presentation, along with notes to assist in presentation, can be found at <http://www.hhs.gov/civil-rights/for-individuals/section-1557/trainingmaterials/index.html>.

The sample training materials contain examples that will assist staff and providers in compliance. Also, as recommended by OCR, the training materials should insert slides regarding a covered entity's internal policies and procedures addressing Section 1557 compliance, and include:

- Slides explaining policies and procedures for notifying the public about their rights to nondiscriminatory services as well as grievance coordination procedures that address complaints of discrimination from the public and who they should contact if they have further questions.
- Slides explaining policies and procedures addressing how staff should obtain language assistance services for individuals with LEP, and auxiliary aids and services for individuals with disabilities, as well as describing the process for identifying individual's communication needs and obtaining qualified interpreters or translators in a timely manner.

We recommend that this training be mandatory for all employees and staff of a health care provider. As with any training, the completion of training should be documented through a signed attestation form.

**I. Submission of an Assurance of Compliance Form (§ 92.5)**

Covered entities are required to file an assurance of compliance with OCR, as a condition of any application for Federal financial assistance. See 45 C.F.R. § 92.5. The assurance will be on a form developed by OCR. The comments provide that, if a recipient fails to provide OCR with a requested form, OCR may find noncompliance with Section 1557 and initiate appropriate enforcement procedures. See 45 C.F.R. § 92.302(c); 81 Fed. Reg. at 31392-31393.

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