



U.S. Department of Health
and Human Services

OFFICE FOR CIVIL RIGHTS

Beyond LEP: Effectively
Communicating with
Individuals with Disabilities

Know Your Responsibilities



Office for Civil Rights (OCR) U.S. Department of Health and Human Services (HHS) Who We Are and What We Do

OCR . . .

- is the Department's civil rights, conscience and religious freedom, and health privacy rights law enforcement agency
- Provides technical assistance and public education
- Fact-finding agency that receives and investigates complaints from the public alleging discrimination
- Requires violating entities to take corrective actions
- May begin process for terminating receipt of federal financial assistance



Who Must Comply?

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

What is FFA?

CHIP, Medicaid, and Medicare (Parts A, C, and D) recipients.

Human or social services agencies

Health Insurance carriers participating in marketplace exchanges.



Effective Communication for Individuals who are Deaf or Hard of Hearing



Principles for Communicating with Individuals with Disabilities

A public entity shall:

- Take appropriate steps to ensure communications with persons with disabilities are as effective as with others
- Furnish appropriate auxiliary aids and services to afford an individual with a disability an equal opportunity to benefit from services
- When deciding what type of auxiliary aid or service is necessary, give primary consideration to the request of the individual with a disability



The Law

- **Section 504** prohibits discrimination on the basis of disability in programs and activities that receive FFA.
- **Title II of the ADA** prohibits discrimination on the basis of disability by a State or local government and protects against retaliation/intimidation.
 - Title II applies to public entities.
 - Title III of the ADA applies to places of public accommodation
- **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.



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 aids, benefits, or services (unless necessary to provide aids, 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.



"Disability" defined

- 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.



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 in 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



Examples of Auxiliary Aids

- Sign language interpreters
 - Computer Assisted Real-time Transcription
 - Text telephones - TTD/TTY machines
 - Documents in large print type
 - Materials in Braille
 - Large print materials
 - Captioning
 - Screen reader software
 - Video remote interpreting services
- ❖ Note: No fees or surcharges for auxiliary aids and services.



Other Federal Civil Rights Laws OCR Enforces



The Law

- **The Age Discrimination Act** prohibits discrimination on the basis of age in programs and activities that receive FFA.
- **The Health Insurance Portability and Accountability Act (HIPAA) Security, Breach Notification, and Privacy Rules.**



Effective Communication Recap

Covered Entities must Effectively Communicate with:

LEP Individuals

Individuals with Disabilities

Effective Communications Do's

- ❑ Establish and implement Language Access Plans
- ❑ Assemble Auxiliary Aids and Services
- ❑ Document Efforts and Individuals' communications needs in medical records
- ❑ Contact OCR if you have any questions about obligations
- ❑ Be proactive

Effective Communication Don'ts

- ❑ Be reactive
- ❑ Neglect your effective communication obligations
- ❑ Rely on family members, friends, minors
- ❑ Place interpreter burdens on patients/clients.
- ❑ Hesitate to contact OCR if you need assistance understanding obligations



Resources Are Available

- DOJ Language Access Assessment and Planning Tool http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf
- Federal Interagency Working Group on LEP <http://www.lep.gov>
- HHS Office for Civil Rights for information, cases and tools <http://www.hhs.gov/ocr/>
- LEP rights brochure http://www.lep.gov/resources/lep_aug2005.pdf
- Top tips from responses to 2006 language access survey of federal agencies http://www.lep.gov/resources/2008_Conference_Materials/TopTips.pdf
- 2006 Language Access Survey http://www.lep.gov/resources/2008_Conference_Materials/FedLangAccessSurvey.pdf
- I Speak Language Identification flashcards <http://www.lep.gov/ISpeakCards2004.pdf>
- GSA Language Services Schedule <https://www.gsa.gov/portal/content/245623>
- Attorney General's Memorandum http://www.justice.gov/crt/about/cor/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf
- Executive Order 13166 <https://www.justice.gov/crt/executive-order-13166>
- DOJ LEP Guidance https://www.lep.gov/guidance/guidance_DOJ_Guidance.html
- DOJ Language Access Barrier Video: <https://www.justice.gov/crt/video/language-access>



Resources

- <http://www.hhs.gov/ocr>
- <https://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/technical-assistance/index.html>
- For assistance from OCR in other languages, please visit: <https://www.hhs.gov/ocr/get-help-in-other-languages/index.html>
- Business Associate Agreement Information: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>
- OCR's HIPAA website: <https://www.hhs.gov/hipaa/index.html>
- Join us on Twitter @hhsocr



Resources

- <http://adapresentations.org/healthcare/registration.php> (Registration for ADA Webinar May 23, 2019)
- <https://www.ada.gov/effective-comm.htm> (DOJ ADA effective communication website)
- For assistance from OCR in other languages, please visit: <https://www.hhs.gov/ocr/get-help-in-other-languages/index.html>
- Business Associate Agreement Information: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>
- Join us on Twitter @hhsocr



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Questions?

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