

In instances where OCR judged that the final rule would have a significant impact on a substantial number of small entities, we considered alternatives to reduce the burden. To accomplish our task, we first identified all the small entities that may be impacted, and then evaluated whether the economic burden we determined in the RIA represents a significant economic impact.

A. Entities That Will Be Affected

HHS has traditionally classified most health care providers as small entities even though some nonprofit providers would not meet the definition of “small entity” were they proprietary firms. Nonprofit entities are small if they are independently owned and operated and are not dominant in their fields.

The CMS Provider of Service file has indicators for profit and nonprofit entities, but these have proven to be unreliable. The Census data identifies firms' tax status by profit and non-profit status but only reports revenues and does not report them by the profit and non-profit status of the entity.

1. Physicians

One class of providers we do not automatically classify as small businesses is physician practices. Physician practices are businesses and therefore are “small” if they meet the SBA's definition. The current size standard for physicians (excluding mental health specialists) (North American Industry Classification System code 62111) is annual receipts of less than \$11 million.^[384] Using the Census data showing the number of firms, employees and payroll, we selected physicians that reported fewer than 20 employees as the top end for small physician offices. This equaled 17,835 entities or 9.6% of all physician offices defined as “large.” This left 167,814 offices or 90.4% as “small.”^[385]

2. Pharmacies

Pharmacies also are businesses, and the size standard for them is annual receipts of less than \$27.5 million. According to Census Statistics of U.S. Businesses, there are 18,852 pharmacy and drug store firms (North American Industry Classification System code 44611). Because of the lack of revenue or receipt data for pharmacies, we are unable to estimate the number of small pharmacies based on the SBA size standard. However, using the number of employees taken from the Statistics of U.S. Businesses as a proxy for revenues, the data is divided by number of employees per firm and shows the number of employers with fewer than 20 employees and those with more than 20 employees.^[386] The number of firms with fewer than 20 employees is 16,520 and represents 88% of the total number of pharmacy firms. It seemed reasonable to assume that firms with fewer than 20 employees satisfy the SBA size standard and thus we accepted that the number of small pharmacy firms equaled 16,520. As with the number of small physician offices, our method can only identify the minimum number of “small” pharmacies that meet the SBA size standard. We cannot determine the actual number of “small” pharmacies.

3. Health Insurance Issuers

Another class of covered entities that are business enterprises is health insurance issuers. The SBA size standard for health insurance issuers is annual receipts of \$38.5 million. Although the Blue Cross/Blue Shield companies that operate in some markets are organized as nonprofit entities, they often are large enough so as to not meet the definition of “small entity.”

Unfortunately, we cannot use the Census revenue data for estimating the number of small health insurance issuers because the Census data combines life and health insurance. Substituting costs for revenues allows us to obtain a rough estimate of the number of large insurance issuers, realizing that cost will probably be less than revenues, thus giving us a lower count of large issuers. Using the National Health Expenditure for 2013, net cost of health insurance equaled \$173.6 billion. However, the 2012 Census data report a total of 815 health insurance issuers. Dividing the \$174 billion in costs by the number of insurance issuers reported in the census tables yields average costs of over \$213 million, which means that average annual revenues per issuer exceeds \$213 million. We concluded, therefore, that there are almost no small insurance issuers. The above analysis comports with the conclusion CMS published in the Health Insurance Web Portal Requirements.^[387]

4. Local Government Entities

We also excluded local governmental entities from our count of small entities because we lack the data to classify them by populations of fewer than 50,000. The following table shows the number of small covered entities we estimated could be affected by the proposed rule.

Table 6—Small Covered Entities [Back to Top](#)

| NAIC | Entity type | Number of firms |
|-------|--|-----------------|
| 62142 | Outpatient mental health and substance abuse centers | 4,987 |
| 62141 | HMO medical centers | 104 |
| 62142 | Kidney dialysis centers | 492 |
| 62143 | Freestanding ambulatory surgical and emergency centers | 4,121 |

| | | |
|--------|--|---------|
| 621498 | All other outpatient care centers | 5,399 |
| 6215 | Medical and diagnostic laboratories | 7,958 |
| 6216 | Home health care services | 21,668 |
| 6219 | All other ambulatory health care services | 6,956 |
| 62321 | Residential mental retardation facilities | 6,225 |
| 62199 | General medical and surgical hospitals | 3,067 |
| 621991 | Psychiatric and substance abuse hospitals | 411 |
| 6221 | Specialty (except psychiatric and substance abuse) hospitals | 373 |
| 6231 | Nursing care facilities (skilled nursing facilities) | 8,623 |
| 44611 | Pharmacies and drug stores | 16,520 |
| 6211 | Offices of physicians | 167,814 |
| | Navigator grantees | 100 |
| | Total small entities | 254,998 |

B. Whether the Rule Will Have a Significant Economic Impact on Covered Small Entities

Total undiscounted costs associated with the final rule are an average of \$189 million per year over a five year period. If all of those costs are borne by small entities, this amounts to an average of \$739 each year over that five year period. As a result, we believe that fewer than 5% of all small entities will experience a burden of greater than 3% of their revenues. Ambulatory health care services facilities (North American Industry Classification System 621), for example, are small entities with an average of 13 employees and revenue of \$1.7 million based on 2012 reported data for employees of 6.4 million and total revenues of \$825.7 million for 485,235 firms.¹³⁸⁸ In addition, the majority of the costs associated with this final rule are proportional to the size of entities, meaning that even the smallest of the affected entities are unlikely to face a substantial impact. Thus, we would not consider this regulation a significant burden on a substantial number of small entities, and, therefore, the Secretary certifies that the final rule will not have a significant impact on a substantial number of small entities.

VIII. Conclusion

For the most part, because this regulation is consistent with existing standards applicable to the covered entities, the new burdens created by its issuance are minimal. The major impacts are in the areas of voluntary training, posting of notices, enforcement (where increased caseloads pose incremental costs on covered entities), voluntary development of language access plans, and revisions or development of new policies and procedures. The final rule does not include broad expansions of existing civil rights requirements on covered entities, and therefore minimizes the imposition of new burdens. Nevertheless, it is still a major rule with economically significant costs. The annualized cost of this rule over the first five years following its publication is \$192.5 million using a discount rate of 3%, and \$197.8 million using a discount rate of 7%. This RIA was organized and designed to explain the origin of these cost impacts and to incorporate relevant public comments.

Table 7—Accounting statement [Back to Top](#)

Accounting statement

| Category | Primary estimate | Low estimate | High estimate | Source |
|---------------------------|---|--|---------------|--------|
| BENEFITS | | | | |
| Qualitative Benefits (02) | • Potential health improvements and longevity extensions as a result of reduced barriers to medical care for transgender individuals. | | RIA | |
| COSTS (millions) | | | | |
| Annualized monetized | Covered entities train 40% of their employees on the new regulations | Covered entities train 60% of their employees on the new regulations | | |
| 3% | 192.5 | 177.0 | 208.1 | RIA |
| 7% | 197.8 | 181.4 | 214.2 | RIA |
| Non-quantified costs (02) | Costs of increased provision of health care services as a result of reduced barriers to access for transgender individuals. | | RIA | |

| | | |
|---|---|-----|
| Transfers (02) | Health insurance premium reductions for affected women, with offsetting increases for other premium payers in affected plans. | RIA |
| Effects on State and Local Governments (02) | \$17.8 million costs in the first 2 years (training + enforcement) | RIA |
| Effects on Small Entities (02) | Average of less than \$1,000 per small entity per year | RFA |

List of Subjects in 45 CFR Part 92

- Administrative practice and procedure
- Civil rights
- Discrimination
- Elderly
- Health care
- Health facilities
- Health insurance
- Health programs and activities
- Individuals with disabilities
- Nondiscrimination
- Reporting and recordkeeping requirements
- Sex discrimination

For the reasons set forth in the preamble, the Department of Health and Human Services adds 45 CFR part 92 as follows:

begin regulatory text

PART 92—NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY IN HEALTH PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE AND HEALTH PROGRAMS OR ACTIVITIES ADMINISTERED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OR ENTITIES ESTABLISHED UNDER TITLE I OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

- Subpart A—General Provisions
- 92.1 Purpose and effective date.
- 92.2 Application.
- 92.3 Relationship to other laws.
- 92.4 Definitions.
- 92.5 Assurances required.
- 92.6 Remedial action and voluntary action.
- 92.7 Designation of responsible employee and adoption of grievance procedures.
- 92.8 Notice requirement.
- Subpart B—Nondiscrimination Provisions
- 92.101 Discrimination prohibited.
- Subpart C—Specific Applications to Health Programs and Activities
- 92.201 Meaningful access for individuals with limited English proficiency.
- 92.202 Effective communication for individuals with disabilities.
- 92.203 Accessibility standards for buildings and facilities.
- 92.204 Accessibility of electronic and information technology.
- 92.205 Requirement to make reasonable modifications.
- 92.206 Equal program access on the basis of sex.
- 92.207 Nondiscrimination in health-related insurance and other health-related coverage.
- 92.208 Employer liability for discrimination in employee health benefit programs.
- 92.209 Nondiscrimination on the basis of association.
- Subpart D—Procedures

- [92.301 Enforcement mechanisms.](#)
- [92.302 Procedures for health programs and activities conducted by recipients and State-based Marketplaces.](#)
- [92.303 Procedures for health programs and activities administered by the Department.](#)

Appendix A to Part 92—Sample Notice Informing Individuals About Nondiscrimination and Accessibility Requirements and Sample Nondiscrimination Statement

Appendix B to Part 92—Sample Tagline Informing Individuals With Limited English Proficiency of Language Assistance Services

Appendix C to Part 92—Sample Section 1557 of the Affordable Care Act Grievance Procedure

Authority:

[42 U.S.C. 18116](#), [5 U.S.C. 301](#).

Subpart A—General Provisions

§ 92.1 Purpose and effective date.

The purpose of this part is to implement Section 1557 of the Patient Protection and Affordable Care Act (ACA) ([42 U.S.C. 18116](#)), which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities. Section 1557 provides that, except as provided in Title I of the ACA, an individual shall not, on the grounds prohibited under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the ACA. This part applies to health programs or activities administered by recipients of Federal financial assistance from the Department, Title I entities that administer health programs or activities, and Department-administered health programs or activities. The effective date of this part shall be July 18, 2016, except to the extent that provisions of this part require changes to health insurance or group health plan benefit design (including covered benefits, benefits limitations or restrictions, and cost-sharing mechanisms, such as coinsurance, copayments, and deductibles), such provisions, as they apply to health insurance or group health plan benefit design, have an applicability date of the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2017.

§ 92.2 Application.

(a) Except as provided otherwise in this part, this part applies to every health program or activity, any part of which receives Federal financial assistance provided or made available by the Department; every health program or activity administered by the Department; and every health program or activity administered by a Title I entity.

(b)(1) Exclusions to the application of the Age Discrimination Act of 1975, as set forth at [45 CFR 91.3\(b\)\(1\)](#), apply to claims of discrimination based on age under Section 1557 or this part.

(2) Insofar as the application of any requirement under this part would violate applicable Federal statutory protections for religious freedom and conscience, such application shall not be required.

(c) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other, dissimilar circumstances.

§ 92.3 Relationship to other laws.

(a) *Rule of interpretation.* Neither Section 1557 nor this part shall be construed to apply a lesser standard for the protection of individuals from discrimination than the standards applied under 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, the Age Discrimination Act of 1975, or the regulations issued pursuant to those laws.

(b) *Other laws.* Nothing in this part shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the Architectural Barriers Act of 1968, Title IX of the Education Amendments of 1972, Sections 504 or 508 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008, or other Federal laws or to supersede State or local laws that provide additional protections against discrimination on any basis described in § 92.1.

§ 92.4 Definitions.

As used in this part, the term—

1991 Standards means the 1991 ADA Standards for Accessible Design, published at Appendix A to 28 CFR part 36 on July 26, 1991, and republished as Appendix D to 28 CFR part 36 on September 15, 2010.

2010 Standards means the 2010 ADA Standards for Accessible Design, as defined at 28 CFR 35.104.

ACA means the Patient Protection and Affordable Care Act (Pub. L. 111-148, 124 Stat. 119 (2010) as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152, 124 Stat. 1029 (codified in scattered sections of U.S.C.)).

ADA means the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as amended.

Age means how old an individual is, or the number of elapsed years from the date of an individual's birth.

Age Act means the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as amended.

Applicant means an individual who applies to participate in a health program or activity.

Auxiliary aids and services include:

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services, as defined in 28 CFR 35.104 and 36.303(b); note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment and devices; and

(4) Other similar services and actions.

Covered entity means:

(1) An entity that operates a health program or activity, any part of which receives Federal financial assistance;

(2) An entity established under Title I of the ACA that administers a health program or activity; and

(3) The Department.

Department means the U.S. Department of Health and Human Services.

Director means the Director of the Office for Civil Rights (OCR) of the Department.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment, as defined and construed in the Rehabilitation Act, 29 U.S.C. 705(9)(B), which incorporates the definition of disability in the ADA, 42 U.S.C. 12102, as amended. Where this part cross-references regulatory provisions that use the term “handicap,” “handicap” means “disability” as defined in this section.

Electronic and information technology means the same as “electronic and information technology,” or any term that replaces “electronic and information technology,” as it is defined in 36 CFR 1194.4.

Employee health benefit program means:

(1) Health benefits coverage or health insurance coverage provided to employees and/or their dependents established, operated, sponsored or administered by, for, or on behalf of one or more employers, whether provided or administered by entities including but not limited to an employer, group health plan (as defined in the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1191b(a)(1)), third party administrator, or health insurance issuer.

(2) An employer-provided or employer-sponsored wellness program;

(3) An employer-provided health clinic; or

(4) Long term care coverage or insurance provided or administered by an employer, group health plan, third party administrator, or health insurance issuer for the benefit of an employer's employees.

Federal financial assistance. (1) Federal financial assistance means any grant, loan, credit, subsidy, contract (other than a procurement contract but including a contract of insurance), or any other arrangement by which the Federal government provides or otherwise makes available assistance in the form of:

- (i) Funds;
- (ii) Services of Federal personnel; or
- (iii) Real and personal property or any interest in or use of such property, including:
 - (A) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (B) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal government.

(2) Federal financial assistance the Department provides or otherwise makes available includes Federal financial assistance that the Department plays a role in providing or administering, including all tax credits under Title I of the ACA, as well as payments, subsidies, or other funds extended by the Department to any entity providing health-related insurance coverage for payment to or on behalf of an individual obtaining health-related insurance coverage from that entity or extended by the Department directly to such individual for payment to any entity providing health-related insurance coverage.

Federally-facilitated MarketplaceSM means the same as “Federally-facilitated Exchange” defined in [45 CFR 155.20](#).

Gender identity means an individual's internal sense of gender, which may be male, female, neither, or a combination of male and female, and which may be different from an individual's sex assigned at birth. The way an individual expresses gender identity is frequently called “gender expression,” and may or may not conform to social stereotypes associated with a particular gender. A transgender individual is an individual whose gender identity is different from the sex assigned to that person at birth.

Health Insurance MarketplaceSM means the same as “Exchange” defined in [45 CFR 155.20](#).

Health program or activity means the provision or administration of health-related services, health-related insurance coverage, or other health-related coverage, and the provision of assistance to individuals in obtaining health-related services or health-related insurance coverage. For an entity principally engaged in providing or administering health services or health insurance coverage or other health coverage, all of its operations are considered part of the health program or activity, except as specifically set forth otherwise in this part. Such entities include a hospital, health clinic, group health plan, health insurance issuer, physician's practice, community health center, nursing facility, residential or community-based treatment facility, or other similar entity. A health program or activity also includes all of the operations of a State Medicaid program, a Children's Health Insurance Program, and the Basic Health Program.

HHS means the U.S. Department of Health and Human Services.

Individual with a disability means any individual who has a disability as defined for the purpose of Section 504 of the Rehabilitation Act of 1973, [29 U.S.C. 705\(20\)\(B\)-\(F\)](#), as amended. Where this part cross-references regulatory provisions applicable to a “handicapped individual,” “handicapped individual” means “individual with a disability” as defined in this section.

Individual with limited English proficiency means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.

Language assistance services may include, but are not limited to:

- (1) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with limited English proficiency, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with limited English proficiency;
- (2) Written translation, performed by a qualified translator, of written content in paper or electronic form into languages other than English; and
- (3) Taglines.

National origin includes, but is not limited to, an individual's, or his or her ancestor's, place of origin (such as country or world region) or an individual's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.

On the basis of sex includes, but is not limited to, discrimination on the basis of pregnancy, false pregnancy, termination of pregnancy, or recovery therefrom, childbirth or related medical conditions, sex stereotyping, and gender identity.

Qualified bilingual/multilingual staff means a member of a covered entity's workforce who is designated by the covered entity to provide oral language assistance as part of the individual's current, assigned job responsibilities and who has demonstrated to the covered entity that he or she:

- (1) Is proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology, and

(2) is able to effectively, accurately, and impartially communicate directly with individuals with limited English proficiency in their primary languages.

Qualified individual with a disability means, with respect to a health program or activity, an individual with a disability who, with or without reasonable modifications to policies, practices, or procedures, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of aids, benefits, or services offered or provided by the health program or activity.

Qualified interpreter for an individual with a disability. (1) A qualified interpreter for an individual with a disability means an interpreter who via a remote interpreting service or an on-site appearance:

(i) Adheres to generally accepted interpreter ethics principles, including client confidentiality; and

(ii) is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology and phraseology.

(2) For an individual with a disability, qualified interpreters can include, for example, sign language interpreters, oral transliterators (individuals who represent or spell in the characters of another alphabet), and cued language transliterators (individuals who represent or spell by using a small number of handshapes).

Qualified interpreter for an individual with limited English proficiency means an interpreter who via a remote interpreting service or an on-site appearance:

(1) Adheres to generally accepted interpreter ethics principles, including client confidentiality;

(2) has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; and

(3) is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

Qualified translator means a translator who:

(1) Adheres to generally accepted translator ethics principles, including client confidentiality;

(2) has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and

(3) is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

Recipient means any State or its political subdivision, or any instrumentality of a State or its political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, to whom Federal financial assistance is extended directly or through another recipient and which operates a health program or activity, including any subunit, successor, assignee, or transferee of a recipient.

Section 504 means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112; [29 U.S.C. 794](#)), as amended.

Section 1557 means Section 1557 of the ACA ([42 U.S.C. 18116](#)).

Sex stereotypes means stereotypical notions of masculinity or femininity, including expectations of how individuals represent or communicate their gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics. These stereotypes can include the expectation that individuals will consistently identify with only one gender and that they will act in conformity with the gender-related expressions stereotypically associated with that gender. Sex stereotypes also include gendered expectations related to the appropriate roles of a certain sex.

*State-based Marketplace*SM means a Health Insurance MarketplaceSM established by a State pursuant to [45 CFR 155.100](#) and approved by the Department pursuant to [45 CFR 155.105](#).

Taglines mean short statements written in non-English languages that indicate the availability of language assistance services free of charge.

Title I entity means any entity established under Title I of the ACA, including State-based Marketplaces and Federally-facilitated Marketplaces.

Title VI means Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; [42 U.S.C. 2000d](#) *et seq.*), as amended.

Title IX means Title IX of the Education Amendments of 1972 (Pub. L. 92-318; [20 U.S.C. 1681](#) *et seq.*), as amended.

§ 92.5 Assurances required.

(a) *Assurances.* An entity applying for Federal financial assistance to which this part applies shall, as a condition of any application for Federal financial assistance, submit an assurance, on a form specified by the Director, that the entity's health programs and activities will be operated in compliance with Section 1557 and this part. A health insurance issuer seeking certification to participate in a Health Insurance MarketplaceSM or a State seeking approval to operate a State-based MarketplaceSM to which Section 1557 or this part applies shall, as a condition of certification or approval, submit an assurance,

on a form specified by the Director, that the health program or activity will be operated in compliance with Section 1557 and this part. An applicant or entity may incorporate this assurance by reference in subsequent applications to the Department for Federal financial assistance or requests for certification to participate in a Health Insurance MarketplaceSM or approval to operate a State-based MarketplaceSM.

(b) *Duration of obligation.* The duration of the assurances required by this subpart is the same as the duration of the assurances required in the Department's regulations implementing Section 504, 45 CFR 84.5(b).

(c) *Covenants.* When Federal financial assistance is provided in the form of real property or interest, the same conditions apply as those contained in the Department's regulations implementing Section 504, at 45 CFR 84.5(c), except that the nondiscrimination obligation applies to discrimination on all bases covered under Section 1557 and this part.

§ 92.6 Remedial action and voluntary action.

(a) *Remedial action.* (1) If the Director finds that a recipient or State-based MarketplaceSM has discriminated against an individual on the basis of race, color, national origin, sex, age, or disability, in violation of Section 1557 or this part, such recipient or State-based MarketplaceSM shall take such remedial action as the Director may require to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against an individual on the basis of race, color, national origin, sex, age, or disability, in violation of Section 1557 or this part, and where another recipient exercises control over the recipient that has discriminated, the Director, where appropriate, may require either or both entities to take remedial action.

(3) The Director may, where necessary to overcome the effects of discrimination in violation of Section 1557 or this part, require a recipient or State-based MarketplaceSM to take remedial action with respect to:

(i) Individuals who are no longer participants in the recipient's or State-based MarketplaceSM's health program or activity but who were participants in the health program or activity when such discrimination occurred; or

(ii) Individuals who would have been participants in the health program or activity had the discrimination not occurred.

(b) *Voluntary action.* A covered entity may take steps, in addition to any action that is required by Section 1557 or this part, to overcome the effects of conditions that result or resulted in limited participation in the covered entity's health programs or activities by individuals on the basis of race, color, national origin, sex, age, or disability.

§ 92.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each covered entity that employs 15 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Section 1557 and this part, including the investigation of any grievance communicated to it alleging noncompliance with Section 1557 or this part or alleging any action that would be prohibited by Section 1557 or this part. For the Department, including the Federally-facilitated Marketplaces, the Director will be deemed the responsible employee under this section.

(b) *Adoption of grievance procedures.* Each covered entity that employs 15 or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of grievances alleging any action that would be prohibited by Section 1557 or this part. For the Department, including the Federally-facilitated Marketplaces, the procedures for addressing complaints of discrimination on the grounds covered under Section 1557 or this part will be deemed grievance procedures under this section.

§ 92.8 Notice requirement.

(a) Each covered entity shall take appropriate initial and continuing steps to notify beneficiaries, enrollees, applicants, and members of the public of the following:

(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 in paragraphs (a)(2) and (3) of this section;

(5) An identification of, and contact information for, the responsible employee designated pursuant to § 92.7(a), if applicable;

(6) The availability of the grievance procedure and how to file a grievance, pursuant to § 92.7(b), if applicable; and

(7) How to file a discrimination complaint with OCR in the Department.

(b) Within 90 days of the effective date of this part, each covered entity shall:

(1) As described in paragraph (f)(1) of this section, post a notice that conveys the information in paragraphs (a)(1) through (7) of this section; and

(2) As described in paragraph (g)(1) of this section, if applicable, post a nondiscrimination statement that conveys the information in paragraph (a)(1) of this section.

(c) For use by covered entities, the Director shall make available, electronically and in any other manner that the Director determines appropriate, the content of a sample notice that conveys the information in paragraphs (a)(1) through (7) of this section, and the content of a sample nondiscrimination statement that conveys the information in paragraph (a)(1) of this section, in English and in the languages triggered by the obligation in paragraph (d)(1) of this section.

(d) Within 90 days of the effective date of this part, each covered entity shall:

(1) As described in paragraph (f)(1) of this section, post taglines in at least the top 15 languages spoken by individuals with limited English proficiency of the relevant State or States; and

(2) As described in paragraph (g)(2) of this section, if applicable, post taglines in at least the top two languages spoken by individuals with limited English proficiency of the relevant State or States.

(e) For use by covered entities, the Director shall make available, electronically and in any other manner that the Director determines appropriate, taglines in the languages triggered by the obligation in paragraph (d)(1) of this section.

(f)(1) Each covered entity shall post the notice required by paragraph (a) of this section and the taglines required by paragraph (d)(1) of this section in a conspicuously-visible font size:

(i) In significant publications and significant communications targeted to beneficiaries, enrollees, applicants, and members of the public, except for significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures;

(ii) In conspicuous physical locations where the entity interacts with the public; and

(iii) In a conspicuous location on the covered entity's Web site accessible from the home page of the covered entity's Web site.

(2) A covered entity may also post the notice and taglines in additional publications and communications.

(g) Each covered entity shall post, in a conspicuously-visible font size, in significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures:

(1) The nondiscrimination statement required by paragraph (b)(2) of this section; and

(2) The taglines required by paragraph (d)(2) of this section.

(h) A covered entity may combine the content of the notice required in paragraph (a) of this section with the content of other notices if the combined notice clearly informs individuals of their civil rights under Section 1557 and this part.

Subpart B—Nondiscrimination Provisions

§ 92.101 Discrimination prohibited.

(a) *General.* (1) Except as provided in Title I of the ACA, an individual shall not, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any health program or activity to which this part applies.

(2) This part does not apply to employment, except as provided in § 92.208.

(b) *Specific discriminatory actions prohibited.* Under any health program or activity to which this part applies:

(1)(i) Each covered entity must comply with the regulation implementing Title VI, at § 80.3(b)(1) through (6) of this subchapter.

(ii) No covered entity shall, on the basis of race, color, or national origin, aid or perpetuate discrimination against any person by providing significant assistance to any entity or person that discriminates on the basis of race, color, or national origin in providing any aid, benefit, or service to beneficiaries of the covered entity's health program or activity.

(2)(i) Each recipient and State-based MarketplaceSM must comply with the regulation implementing Section 504, at §§ 84.4(b), 84.21 through 84.23(b),

84.31, 84.34, 84.37, 84.38, and 84.41 through 84.52(c) and 84.53 through 84.55 of this subchapter. Where this paragraph cross-references regulatory provisions that use the term “recipient,” the term “recipient or State-based MarketplaceSM” shall apply in its place.

(ii) The Department, including the Federally-facilitated Marketplaces, must comply with the regulation implementing Section 504, at §§ 85.21(b), 85.41 through 85.42, and 85.44 through 85.51 of this subchapter.

(3)(i) Each covered entity must comply with the regulation implementing Title IX, at § 86.31(b)(1) through (8) of this subchapter. Where this paragraph cross-references regulatory provisions that use the term “student,” “employee,” or “applicant,” these terms shall be replaced with “individual.”

(ii) A covered entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals on the basis of sex.

(iii) In determining the site or location of a facility, a covered entity may not make selections that have the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the basis of sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity on the basis of sex.

(iv) A covered entity may operate a sex-specific health program or activity (a health program or activity that is restricted to members of one sex) only if the covered entity can demonstrate an exceedingly persuasive justification, that is, that the sex-specific health program or activity is substantially related to the achievement of an important health-related or scientific objective.

(4)(i) Each covered entity must comply with the regulation implementing the Age Act, at § 91.11(b) of this subchapter.

(ii) No covered entity shall, on the basis of age, aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of age in providing any aid, benefit, or service to beneficiaries of the covered entity's health program or activity.

(5) The enumeration of specific forms of discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(c) The exceptions applicable to Title VI apply to discrimination on the basis of race, color, or national origin under this part. The exceptions applicable to Section 504 apply to discrimination on the basis of disability under this part. The exceptions applicable to the Age Act apply to discrimination on the basis of age under this part. These provisions are found at §§ 80.3(d), 84.4(c), 85.21(c), 91.12, 91.15, and 91.17-18 of this subchapter.

(d) Where the regulatory provisions referenced in paragraphs (b)(1), (b)(3), and (b)(4), and paragraph (c) of this section use the term “recipient,” the term “covered entity” shall apply in its place. Where the regulatory provisions referenced in paragraphs (b)(1), (b)(3), and (b)(4) and paragraph (c) of this section use the terms “program or activity” or “program” or “education program,” the term “health program or activity” shall apply in their place.

Subpart C—Specific Applications to Health Programs and Activities

§ 92.201 Meaningful access for individuals with limited English proficiency.

(a) *General requirement.* A covered entity shall take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities.

(b) *Evaluation of compliance.* In evaluating whether a covered entity has met its obligation under paragraph (a) of this section, the Director shall:

(1) Evaluate, and give substantial weight to, the nature and importance of the health program or activity and the particular communication at issue, to the individual with limited English proficiency; and

(2) Take into account other relevant factors, including whether a covered entity has developed and implemented an effective written language access plan, that is appropriate to its particular circumstances, to be prepared to meet its obligations in § 92.201(a).

(c) *Language assistance services requirements.* Language assistance services required under paragraph (a) of this section must be provided free of charge, be accurate and timely, and protect the privacy and independence of the individual with limited English proficiency.

(d) *Specific requirements for interpreter and translation services.* Subject to paragraph (a) of this section:

(1) A covered entity shall offer a qualified interpreter to an individual with limited English proficiency when oral interpretation is a reasonable step to provide meaningful access for that individual with limited English proficiency; and

(2) A covered entity shall use a qualified translator when translating written content in paper or electronic form.

(e) *Restricted use of certain persons to interpret or facilitate communication.* A covered entity shall 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:
- (i) 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
 - (ii) 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.
- (f) *Video remote interpreting services.* A covered entity that provides a qualified interpreter for an individual with limited English proficiency through video remote interpreting services in the covered entity's health programs and activities shall provide:
- (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
 - (2) A sharply delineated image that is large enough to display the interpreter's face and the participating individual's face regardless of the individual's body position;
 - (3) A clear, audible transmission of voices; and
 - (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the video remote interpreting.
- (g) *Acceptance of language assistance services is not required.* Nothing in this section shall be construed to require an individual with limited English proficiency to accept language assistance services.

§ 92.202 Effective communication for individuals with disabilities.

- (a) A covered entity shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in health programs and activities, in accordance with the standards found at [28 CFR 35.160](#) through 35.164. Where the regulatory provisions referenced in this section use the term “public entity,” the term “covered entity” shall apply in its place.
- (b) A recipient or State-based MarketplaceSM shall provide appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

§ 92.203 Accessibility standards for buildings and facilities.

- (a) Each facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State-based MarketplaceSM shall comply with the 2010 Standards as defined in § 92.4, if the construction or alteration was commenced on or after July 18, 2016, except that if a facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State-based MarketplaceSM, was not covered by the 2010 Standards prior to July 18, 2016, such facility or part of a facility shall comply with the 2010 Standards, as defined in § 92.4, if the construction was commenced after January 18, 2018. Departures from particular technical and scoping requirements by the use of other methods are permitted where substantially equivalent or greater access to and usability of the facility is provided. All newly constructed or altered buildings or facilities subject to this section shall comply with the requirements for a “public building or facility” as defined in Section 106.5 of the 2010 Standards.
- (b) Each facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State-based MarketplaceSM in conformance with the 1991 Standards or the 2010 Standards as defined in § 92.4 shall be deemed to comply with the requirements of this section and with [45 CFR 84.23\(a\)](#) and (b), cross-referenced in § 92.101(b)(2)(i) with respect to those facilities, if the construction or alteration was commenced on or before July 18, 2016. Each facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State-based MarketplaceSM in conformance with the Uniform Federal Accessibility Standards as defined in § 92.4, shall be deemed to comply with the requirements of this section and with [45 CFR 84.23\(a\)](#) and (b), cross-referenced in § 92.101(b)(2)(i) with respect to those facilities, if the construction was commenced before July 18, 2016 and such facility was not covered by the 1991 Standards or 2010 Standards.

§ 92.204 Accessibility of electronic and information technology.

- (a) Covered entities shall ensure that their health programs or activities provided through electronic and information technology are accessible to individuals with disabilities, unless doing so would result in undue financial and administrative burdens or a fundamental alteration in the nature of the health programs or activities. When undue financial and administrative burdens or a fundamental alteration exist, the covered entity shall provide

information in a format other than an electronic format that would not result in such undue financial and administrative burdens or a fundamental alteration but would ensure, to the maximum extent possible, that individuals with disabilities receive the benefits or services of the health program or activity that are provided through electronic and information technology.

(b) Recipients and State-based Marketplaces shall ensure that their health programs and activities provided through Web sites comply with the requirements of Title II of the ADA.

§ 92.205 Requirement to make reasonable modifications.

A covered entity shall make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. For the purposes of this section, the term “reasonable modifications” shall be interpreted in a manner consistent with the term as set forth in the ADA Title II regulation at 28 CFR 35.130(b)(7).

§ 92.206 Equal program access on the basis of sex.

A covered entity shall provide individuals equal access to its health programs or activities without discrimination on the basis of sex; and a covered entity shall treat individuals consistent with their gender identity, except that a covered entity may not deny or limit health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual based on the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available.

§ 92.207 Nondiscrimination in health-related insurance and other health-related coverage.

(a) *General.* A covered entity shall not, in providing or administering health-related insurance or other health-related coverage, discriminate on the basis of race, color, national origin, sex, age, or disability.

(b) *Discriminatory actions prohibited.* A covered entity shall not, in providing or administering health-related insurance or other health-related coverage:

- (1) Deny, cancel, limit, or refuse to issue or renew a health-related insurance plan or policy or other health-related coverage, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, age, or disability;
 - (2) Have or implement marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, or disability in a health-related insurance plan or policy, or other health-related coverage;
 - (3) Deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for any health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual based on the fact that an individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available;
 - (4) Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition; or
 - (5) Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health services related to gender transition if such denial, limitation, or restriction results in discrimination against a transgender individual.
- (c) The enumeration of specific forms of discrimination in paragraph (b) does not limit the general applicability of the prohibition in paragraph (a) of this section.
- (d) Nothing in this section is intended to determine, or restrict a covered entity from determining, whether a particular health service is medically necessary or otherwise meets applicable coverage requirements in any individual case.

§ 92.208 Employer liability for discrimination in employee health benefit programs.

A covered entity that provides an employee health benefit program to its employees and/or their dependents shall be liable for violations of this part in that employee health benefit program only when:

- (a) The entity is principally engaged in providing or administering health services, health insurance coverage, or other health coverage;
- (b) The entity receives Federal financial assistance a primary objective of which is to fund the entity's employee health benefit program; or
- (c) The entity is not principally engaged in providing or administering health services, health insurance coverage, or other health coverage, but operates a health program or activity, which is not an employee health benefit program, that receives Federal financial assistance; except that the entity is liable under this part with regard to the provision or administration of employee health benefits only with respect to the employees in that health program or activity.

§ 92.209 Nondiscrimination on the basis of association.

A covered entity shall not exclude from participation in, deny the benefits of, or otherwise discriminate against an individual or entity in its health programs or activities on the basis of the race, color, national origin, sex, age, or disability of an individual with whom the individual or entity is known or believed to have a relationship or association.

Subpart D—Procedures

§ 92.301 Enforcement mechanisms.

(a) The enforcement mechanisms available for and provided under 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, or the Age Discrimination Act of 1975 shall apply for purposes of Section 1557 as implemented by this part.

(b) Compensatory damages for violations of Section 1557 are available in appropriate administrative and judicial actions brought under this rule.

§ 92.302 Procedures for health programs and activities conducted by recipients and State-based Marketplaces.

(a) The procedural provisions applicable to Title VI apply with respect to administrative enforcement actions concerning discrimination on the basis of race, color, national origin, sex, and disability discrimination under Section 1557 or this part. These procedures are found at §§ 80.6 through 80.11 of this subchapter and part 81 of this subchapter.

(b) The procedural provisions applicable to the Age Act apply with respect to enforcement actions concerning age discrimination under Section 1557 or this part. These procedures are found at §§ 91.41 through 91.50 of this subchapter.

(c) When a recipient fails to provide OCR with requested information in a timely, complete, and accurate manner, OCR may find noncompliance with Section 1557 and initiate appropriate enforcement procedures, including beginning the process for fund suspension or termination and taking other action authorized by law.

(d) An individual or entity may bring a civil action to challenge a violation of Section 1557 or this part in a United States District Court in which the recipient or State-based MarketplaceSM is found or transacts business.

§ 92.303 Procedures for health programs and activities administered by the Department.

(a) This section applies to discrimination on the basis of race, color, national origin, sex, age, or disability in health programs or activities administered by the Department, including the Federally-facilitated Marketplaces.

(b) The procedural provisions applicable to Section 504 at §§ 85.61 through 85.62 of this subchapter shall apply with respect to enforcement actions against the Department concerning discrimination on the basis of race, color, national origin, sex, age, or disability under Section 1557 or this part. Where this section cross-references regulatory provisions that use the term “handicap,” the term “race, color, national origin, sex, age, or disability” shall apply in its place.

(c) The Department shall permit access by OCR to its books, records, accounts, other sources of information, and facilities as may be pertinent to ascertain compliance with Section 1557 or this part. Where any information required of the Department is in the exclusive possession of any other agency, institution or individual, and the other agency, institution or individual shall fail or refuse to furnish this information, the Department shall so certify and shall set forth what efforts it has made to obtain the information. Asserted considerations of privacy or confidentiality may not operate to bar OCR from evaluating or seeking to enforce compliance with Section 1557 or this part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary under the law.

(d) The Department shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Section 1557 or this part, or because such individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under Section 1557 or this part. The identity of complainants shall be kept confidential by OCR, except to the extent necessary to carry out the purposes of Section 1557 or this part.

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

[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. [Name of covered entity] does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.

[Name of covered entity]:

- 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 [Name of covered entity] 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, DC 20201, 1-800-868-1019, 800-537-7697 (TDD).

Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

Nondiscrimination statement for significant publications and signification communications that are small-size:

[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.

Appendix B to Part 92—Sample 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).

Appendix C to Part 92—Sample Section 1557 of the Affordable Care Act Grievance Procedure

It is the policy of [Name of Covered Entity] not to discriminate on the basis of race, color, national origin, sex, age or disability. [Name of Covered Entity] has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by Section 1557 of the Affordable Care Act ([42 U.S.C. 18116](#)) and its implementing regulations at [45 CFR part 92](#), issued by the U.S. Department of Health and Human Services. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability in certain health programs and activities. Section 1557 and its implementing regulations may be examined in the office of [Name and Title of Section 1557 Coordinator], [Mailing Address], [Telephone number], [TTY number—if covered entity has one], [Fax], [Email], who has been designated to coordinate the efforts of [Name of Covered Entity] to comply with Section 1557.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, sex, age or disability may file a grievance under this procedure. It is against the law for [Name of Covered Entity] to retaliate against anyone who opposes discrimination, files a grievance, or participates in the investigation of a grievance.

Procedure:

- Grievances must be submitted to the Section 1557 Coordinator within (60 days) of the date the person filing the grievance becomes aware of the alleged discriminatory action.
- A complaint must be in writing, containing the name and address of the person filing it. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought.
- The Section 1557 Coordinator (or her/his designee) shall conduct an investigation of the complaint. This investigation may be informal, but it will be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The Section 1557 Coordinator will maintain the files and records of [Name of Covered Entity] relating to such grievances. To the extent possible, and in accordance with applicable law, the Section 1557 Coordinator will take appropriate steps to preserve the confidentiality of files and records relating to grievances and will

share them only with those who have a need to know.

- The Section 1557 Coordinator will issue a written decision on the grievance, based on a preponderance of the evidence, no later than 30 days after its filing, including a notice to the complainant of their right to pursue further administrative or legal remedies.
- The person filing the grievance may appeal the decision of the Section 1557 Coordinator by writing to the (Administrator/Chief Executive Officer/Board of Directors/etc.) within 15 days of receiving the Section 1557 Coordinator's decision. The (Administrator/Chief Executive Officer/Board of Directors/etc.) shall issue a written decision in response to the appeal no later than 30 days after its filing.

The availability and use of this grievance procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, sex, age or disability in court or with the U.S. Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination electronically through the Office for Civil Rights Complaint Portal, which is 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, DC 20201.

Complaint forms are available at: <http://www.hhs.gov/ocr/office/file/index.html>. Such complaints must be filed within 180 days of the date of the alleged discrimination.

[Name of covered entity] will make appropriate arrangements to ensure that individuals with disabilities and individuals with limited English proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed to participate in this grievance process. Such arrangements may include, but are not limited to, providing qualified interpreters, providing taped cassettes of material for individuals with low vision, or assuring a barrier-free location for the proceedings. The Section 1557 Coordinator will be responsible for such arrangements.

end regulatory text

Dated: May 11, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. [2016-11458](#) Filed 5-13-16; 11:15 am]

BILLING CODE 4153-01-P

Footnotes

1. [5 U.S.C. 301](#).

[Back to Context](#)

2. [80 FR 54172](#) (Sept. 8, 2015).

[Back to Context](#)

3. [Public Law 110-233](#), 122 Stat. 881 (2008).

[Back to Context](#)

4. See [42 U.S.C. 6103\(b\)](#).

[Back to Context](#)

5. See, e.g., [42 U.S.C. 300a-7](#); [42 U.S.C. 238n](#); Consolidated and Further Continuing Appropriations Act 2015, [Public Law 114-53](#), Div. G, § 507(d) (Dec. 16, 2015).

[Back to Context](#)

6. [42 U.S.C. 2000bb-1](#).

[Back to Context](#)

7. See, e.g., [42 U.S.C. 18023](#).

[Back to Context](#)

8. See [45 CFR 147.131](#).

[Back to Context](#)

9. 467 U.S. 837 (1984).

[Back to Context](#)

10. 132 S. Ct. 2751, 2783 (2014).

[Back to Context](#)

11. [20 U.S.C. 1681\(a\)\(3\)](#).

[Back to Context](#)

12. *See, e.g.*, [42 U.S.C. 300a-7](#); [42 U.S.C. 238n](#); Consolidated and Further Continuing Appropriations Act 2015, [Pub. L. 114-53](#), Div. G, § 507(d) (Dec. 16, 2015).

[Back to Context](#)

13. [42 U.S.C. 2000bb-1](#).

[Back to Context](#)

14. *See, e.g.*, [42 U.S.C. 18023](#).

[Back to Context](#)

15. *See* [45 CFR 147.131](#).

[Back to Context](#)

16. Health Insurance MarketplaceSM. and MarketplaceSM. are service marks of the U.S. Department of Health and Human Services.

[Back to Context](#)

17. [42 U.S.C. 18023\(b\)\(4\)](#).

[Back to Context](#)

18. [42 U.S.C. 18023\(b\)\(1\)\(A\)](#).

[Back to Context](#)

19. [42 U.S.C. 18116\(a\)](#).

[Back to Context](#)

20. [20 U.S.C. 1681\(a\)](#); [29 U.S.C. 794\(a\)](#); [42 U.S.C. 2000d](#); [42 U.S.C. 6102](#).

[Back to Context](#)

21. [45 CFR 80.13\(e\)](#).

[Back to Context](#)

22. [45 CFR 80.13\(i\)](#) (Title VI); 84.3(f) (Section 504); 86.2(i) (Title IX); 90.4 (Age Act).

[Back to Context](#)

23. OCR notes that in contrast to Section 1557, which does not refer to the United States or to “states,” other ACA provisions refer to “states” and the Department has interpreted the meaning of “state” in the context of those statutory requirements. *See* [45 CFR 144.103](#).

[Back to Context](#)

24. Consolidated and Further Continuing Appropriations Act, 2015, [Public Law 113-235](#), Div. M, § 3 (codified at [42 U.S.C. 18014](#)).

[Back to Context](#)

25. [42 U.S.C. 18014\(f\)](#).

[Back to Context](#)

26. Funds under the Purchased/Referred Care program (formerly the Contract Health Services program) are used to supplement and complement other health care resources available to eligible American Indians and Alaska Natives. See <https://www.irs.gov/newsroom/index.cfm/factsheets/purchasedreferredcare> (last updated Jan. 2015).

[Back to Context](#)

27. [42 U.S.C. 4151-4157](#) (2012).

[Back to Context](#)

28. [42 U.S.C. 12101](#) *et seq.* (codified as amended by the Americans with Disabilities Amendments Act of 2008, [Public Law 110-325](#), 122 Stat. 3553 (2008)).

[Back to Context](#)

29. [29 U.S.C. 794d](#).

[Back to Context](#)

30. [29 U.S.C. 705\(9\)\(B\)](#).

[Back to Context](#)

31. [Public Law 110-325](#), 122 Stat. 3553, § 4 (Sept. 25, 2008) (codified at [42 U.S.C. 12102](#)).

[Back to Context](#)

32. [42 U.S.C. 300jj\(5\)](#).

[Back to Context](#)

33. Architectural and Transportation Barriers Compliance Board, Information and Communication Technology (ICT) Standards and Guidelines. [80 FR 10880](#) (proposed Feb. 27, 2015) (to be codified at 36 FR pt. 1194).

[Back to Context](#)

34. See 80 FR at 10905.

[Back to Context](#)

35. See *infra* discussion of excepted benefits under § 92.207.

[Back to Context](#)

36. [45 CFR 84.3\(h\)](#).

[Back to Context](#)

37. [45 CFR 91.4](#).

[Back to Context](#)

38. See [45 CFR 86.2\(g\)\(1\)\(ii\)](#).

[Back to Context](#)

39. *United States Dep't of Transport. v. Paralyzed Veterans of Amer.*, 477 U.S. 597, 604-06 (1986).

[Back to Context](#)

40. The hospital may also be responsible for discrimination by the doctor's practice that occurs at the hospital.

[Back to Context](#)

41. The rule defines a “recipient” of Federal financial assistance to include an individual. See § 92.4.

[Back to Context](#)

42. See, e.g., U.S. Office of Personnel Management, Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace (May 27, 2011), <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-Guidance/>; U.S. Office of Personnel Management, U.S.

Equal Employment Opportunity Commission, U.S. Office of Special Counsel, U.S. Merit Systems Protection Board. Addressing Sexual Orientation and Gender Identity Discrimination in Federal Civilian Employment: A Guide to Employment Rights, Protections, and Responsibilities, p. 2 (June 2015), <http://www.opm.gov/LGBTGuide>.

[Back to Context](#)

43. See *Rumble v. Fairview Heath Servs.*, Civ. No. 14-cv-2037, 2015 WL 1197415, at *10 (D. Minn. Mar. 16, 2015) (Section 1557); *Schroer v. Billington*, 577 F. Supp.2d 293, 303 (D.D.C. 2008)(Title VII); *Macy v. Holder*, EEOC Appeal No. 0120120821, Agency No. ATF-2011-00751, 2012 WL 1435995, at *7 (Apr. 20, 2012), <http://www.eeoc.gov/decisions/0120120821%20Macy%20v%20DOJ%20ATF.txt> (Title VII).

[Back to Context](#)

44. Public Law 100-259, 102 Stat. 28 (1988).

[Back to Context](#)

45. Employee health benefits programs are discussed elsewhere in rule. See *infra* discussion of § 92.208.

[Back to Context](#)

46. We note that it is not permissible for clinical researchers to consider “cost” of accommodating participants with disabilities as a reason to exclude them from participation.

[Back to Context](#)

47. Medicare Parts A, C, and D all constitute Federal financial assistance. See www.bhs.gov/civil-rights/for-individuals/faqs/what-qualifies-as-federal-financial-assistance/301/index.html.

[Back to Context](#)

48. See <http://www.who.int/about/definition/en/print.html>. (last visited Mar. 11, 2016).

[Back to Context](#)

49. **68 FR 47311**, 47313 (Aug. 8, 2003).

[Back to Context](#)

50. We use the terms “oral interpretation” and “written translation” for clarity. The term “interpretation” used without the preceding descriptor of “oral” refers to the communication of information orally and the term “translation” used without the preceding descriptor of “written” refers to the communication of information in writing. See, e.g., U.S. Dep’t of Justice, Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals, <http://www.lep.gov/faqs/faqs.html#OneQ11> (last visited Mar. 15, 2016) (differentiating between interpreters and translators in FAQ 11); Interpreters and Translators, U.S. Dep’t of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, 2014-15, <http://www.bls.gov/ooh/media-and-communication/interpreters-and-translators.htm> (explaining that interpreters convert information in a spoken language and translators convert information in written language).

[Back to Context](#)

51. **29 CFR 1606.1** (defining “national origin discrimination”).

[Back to Context](#)

52. In addition, courts have adopted this principle. See, e.g., *Bennun v. Rutgers State Univ.*, 941 F.2d 154, 173 (3d Cir. 1991), *cert. denied*, 502 U.S. 1066 (1992) (stating that an individual’s birth in a foreign country where another culture predominates, immersion in that country’s ways of life, and speaking the native language in one’s home, are sufficient to identify the individual as part of a national origin group); *Fragante v. City and County of Honolulu*, 888 F.2d 591, 595-96 (9th Cir. 1989), *cert. denied*, 494 U.S. 1081 (1990) (stating that accent and national origin are inextricably intertwined in many cases); *Gutierrez v. Mun. Court of Southeast Jud. Dist., Los Angeles Cnty.*, 838 F.2d 1031, 1039 (9th Cir. 1988 *vac’d and rem.*, 490 U.S. 1016 (1989))(stating that “[b]ecause language and accents are identifying characteristics, “rules which have a negative effect on bilinguals, individuals with accents, or non-English speakers, may be mere pretexts for intentional national origin discrimination”). A member of a religious group states a cognizable national origin discrimination claim under Title VI and Section 1557 and this part when that discrimination is based on a religious group’s shared ancestry or its physical, cultural, and linguistic characteristics rather than its members’ religious practice. See Letter from Thomas Perez, Assistant Attorney Gen., Civil Rights Div., U.S. Dep’t of Justice to Russlynn Ali, Assistant Sec’y for Civil Rights, Office for Civil Rights, U.S. Dep’t of Educ. Re: Title VI and Coverage of Religiously Identifiable Groups, at 2 (Sept. 8, 2010), https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf.

[Back to Context](#)

53. See Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights and Ariz. Health Care Cost Containment System & the Ariz. Dep't of Econ. Sec., OCR Transaction Nos. 10-117078 & 10-117875 (2015), <http://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/Arizona/vra.pdf> [hereinafter HHS OCR VRA with AZ Agencies] (resolving cognizable complaints of national origin discrimination under Title VI following implementation of a State law requiring State employees, in the administration of public benefits programs, to report “discovered violations of federal immigration law” to U.S. Immigration and Customs Enforcement).

Back to Context

54. See **45 CFR 86.40**(b) (prohibiting discrimination on the basis of “pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom”).

Back to Context

55. 490 U.S. 228, 250-51 (1989).

Back to Context

56. See **5 CFR 300.102**(c), 300.103(c), 300.103(c), 315.806(d), 335.103(b)(1), 537.105(d), 900.603(e) (U.S. Office of Personnel Management regulations providing that discrimination on the basis of sex includes discrimination on the basis of gender identity); Directive 2014-02, U.S. Dep't of Labor, Office of Fed. Contract Compliance Programs, § 5 (Aug. 19, 2014), http://www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html; Statement of Interest of the United States, *Jamal v. SAKS & Co.*, No. 4:14-CV-2782 (S.D. Tex. Jan. 26, 2015) <https://www.justice.gov/sites/default/files/crt/legacy/2015/02/27/jamalsoi.pdf>; Statement of Interest of the United States, *Tooley v. Van Buren Pub. Sch.*, No. 2:14-cv-13466-AC-DRG (E.D. Mich. Feb. 24, 2015) <https://www.justice.gov/sites/default/files/crt/legacy/2015/02/27/tooleysoi.pdf>; Memo from Eric Holder, Att'y Gen., to U.S. Att'ys & Heads of Dep't Components (Dec. 18, 2014), <https://www.justice.gov/opa/pr/attorney-general-holder-directs-department-include-gender-identity-under-sex-discrimination>; U.S. Dep't of Educ., Questions and Answers on Title IX and Sexual Violence, p. B-2, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>; *Macy*, 2012 WL 1435995, at *11.

Back to Context

57. See Letter from Leon Rodriguez, Director, U.S. Dep't of Health & Human Servs., Office for Civil Rights, to Maya Rupert, Federal Policy Director, National Center for Lesbian Rights (Jul. 12, 2012), <https://www.nachc.com/client/OCRLetterJuly2012.pdf>.

Back to Context

58. See, e.g., *Rumble v. Fairview Heath Servs.*, Civ. No. 14-cv-2037, 2015 WL 1197415, at *10 (D. Minn. Mar. 16, 2015) (Section 1557) (order denying motion to dismiss); *Barnes v. City of Cincinnati*, 401 F.3d 729, 737 (6th Cir.), *cert. denied*, 546 U.S. 1003 (2005)(Title VII); *Smith v. City of Salem, Ohio*, 378 F.3d 566, 575 (6th Cir. 2004) (Title VII); *Schroer v. Billington*, 577 F.Supp.2d 293, 304 (D.D.C. 2008) (Title VII). *But see Johnston v. Univ. of Pittsburgh*, 97 F.Supp.3d 657, 671 (W.D. Pa. 2015) (appeal docketed, No. 1502922) (3d Cir. Apr. 24, 2015) (holding that an individual treated in accordance with sex assigned at birth has not been discriminated against on the basis of sex under Title IX).

Back to Context

59. U.S. Equal Employment Opportunity Comm'n Appeal No. 0120133080, Agency No. 2012-24738-FAA-03 (July 15, 2015), <http://www.eeoc.gov/decisions/0120133080.txt>.

Back to Context

60. **42 U.S.C. 18023**(b)(4).

Back to Context

61. **42 U.S.C. 18023**(b)(1)(A).

Back to Context

62. **42 U.S.C. 18023**.

Back to Context

63. 490 U.S. at 251 (citations omitted).

Back to Context

64. See, e.g., *Smith v. City of Salem, Ohio*, 378 F.3d. 566, 573-74 (6th Cir. 2004).

Back to Context

65. See, e.g., *Wolfe v. Fayetteville, Ark. Sch. Dist.*, 648 F.3d 860, 864 n.4 (8th Cir. 2011); *Weinstock v. Columbia Univ.*, 224 F.3d 33, 42 n.1 (2d Cir. 2000), *cert.*

denied, 540 U.S. 811 (2003).

Back to Context

66. U.S. Dep't of Education, Office for Civil Rights, Questions and Answers in Title IX and Single Sex Elementary and Secondary Classes and Extra-Curricular Activities, (2014), <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>.

Back to Context

67. *G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467 at * 6 (4th Cir. 2016).

Back to Context

68. See e.g., *Crosby v. Reynolds*, 763 F. Supp. 666 (D. Me. 1991) (requiring female prisoner to share a cell with a transgender woman violated no clearly established constitutional right); cf. *Cruzan v. Special Sch. Dist., #1*, 294 F.3d 981 (8th Cir. 2002) (per curiam) (teacher's assertion that her personal privacy was invaded when school permitted a transgender woman to use women's restroom was not cognizable under employment discrimination law).

Back to Context

69. **45 CFR 155.120**(c)(1)(ii); 156.200(e).

Back to Context

70. **42 CFR 482.13**(h)(3).

Back to Context

71. <http://www.medicare.gov/sign-up-change-plans/same-sex-marriage.html> (last visited Mar. 11, 2016).

Back to Context

72. For example, in 1996, the Supreme Court struck down an amendment to the Colorado constitution that prohibited the State government from providing any legal protections to gay, lesbian, and bisexual individuals. *Romer v. Evans*, 517 U.S. 620 (1996). And, just last year, the Supreme Court ruled in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), that states may not prohibit same-sex couples from marrying and must recognize the validity of same-sex couples' marriages.

Back to Context

73. 490 U.S. 228 (1989).

Back to Context

74. See Def.'s Renewed Mot. to Dismiss at 18-19, *Termeer v. Billington*, No. 1:12-cv-1290, ECF No. 27 (D.D.C. Mar. 21, 2013).

Back to Context

75. See, e.g., *Deneffe v. SkyWest, Inc.*, No. 14-cv-00348, 2015 WL 2265373, at * (D. Colo. May 11, 2015); *Termeer v. Billington*, 34 F. Supp. 3d 100, 116 (D.D.C. 2014); *Boutillier v. Hartford Pub. Schs.*, 2014 WL 4794527 at *2 (D. Conn. 2014); *Koren v. The Ohio Bell Tel. Co.*, 894 F. Supp.2d 1032, 1037-38 (N.D. Ohio. 2012); *Heller v. Columbia Edgewater Country Club*, 195 F. Supp.2d 1212, 1224, *adopted*, 195 F. Supp.2d 1216 (D. Or. 2002); *Centola v. Potter*, 183 F. Supp.2d 403, 410 (D. Mass. 2002).

Back to Context

76. See *Videckis and White v. Pepperdine Univ.*, No. 15-00298, 2015 WL 8916764 (C.D. Cal. Dec. 15, 2015) (denying motion to dismiss).

Back to Context

77. *Isaacs v. Felder*, No. 2:13 cv 693, 2015 WL 6560655, at * 9 (M.D. Ala. Oct. 29, 2015) (internal quotation marks omitted).

Back to Context

78. *Videckis*, 2015 WL 8916764. Prior circuit court decisions have drawn such distinctions. See, e.g., *Dawson v. Bumble & Bumble*, 398 F.3d 211, 218 (2d Cir. 2005); *Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757, 763 (6th Cir. 2006).

Back to Context

79. U.S. Equal Employment Opportunity Comm'n Appeal No. 0120133080, Agency No. 2012-24738-FAA-03 (July 15, 2015), <http://www.eeoc.gov/decisions/0120133080.txt> (finding that sexual orientation is inseparable from and inescapably linked to sex and thus that an allegation of discrimination based on sexual orientation is necessarily an allegation of sex discrimination).

Back to Context

80. See 80 FR at 54176, 54216.

Back to Context

81. See HHS LEP Guidance, *supra* note 49, 68 FR at 47317 (stating that the covered entity may provide oral language assistance through bilingual staff members that are “competent to communicate directly with [limited English proficient] persons in their language”).

Back to Context

82. See HHS LEP Guidance, 68 FR at 47311, 47316 (explaining that an individual's proficiency in another language, knowledge of specialized terminology, and adherence to interpreter ethics are considerations in determining competency to interpret); *id.* at 47317-18, 47323 (discussing why family members, friends, and ad hoc interpreters may not be competent to interpret); The language is also consistent with the approach we have taken in our Title VI enforcement efforts. See, e.g., Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights and Mee Memorial Hosp., OCR Transaction Nos. 12-143846, 13-1551016 & 13-153378, pt. II.J. (2014) [hereinafter HHS OCR VRA with Mee Memorial Hospital], <http://www.hhs.gov/ocr/civilrights/activities/agreements/mee.html> (defining qualified interpreter); Voluntary Resolution Agreement between U.S. Dep't of Health & Human Servs., Office for Civil Rights and Montgomery County Dep't of Soc. Servs., OCR Transaction No. 08-79992, pts. II.E (defining qualifications of an “interpreter” under the agreement), IV.H (requiring timely, competent language assistance); & IV.L (identifying interpreter standards) [hereinafter HHS OCR VRA with Montgomery County DSS], <http://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/examples/limited-english-proficiency/MCDSS-resolution-agreement/index.html>.

Back to Context

83. See HHS LEP Guidance, 68 FR at 47316 (“Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful.”).

Back to Context

84. We note that this final rule uses the terms “qualified interpreter for an individual with limited English proficiency” interchangeably with “qualified interpreter for the individual with limited English proficiency” and “qualified interpreter to an individual with limited English proficiency.” The preposition and article used within the phrase do not represent a change in meaning.

Back to Context

85. See HHS LEP Guidance, *supra* note 49, 68 FR at 47316; Int'l Medical Interpreters Assoc., Guide on Medical Translation 4 (Jan. 2009), <http://www.imiaweb.org/uploads/pages/438.pdf>.

Back to Context

86. See, e.g., *Chadwick v. Wellpoint, Inc.*, 561 F.3d 38, 45 (1st Cir. 2009) (adverse employment action based on assumption that women are responsible for family caregiving and will perform their jobs less well as a result of caregiving responsibilities is discrimination based on sexual stereotypes in violation of Title VII). See also *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011) (“These instances of discrimination against plaintiffs because they fail to act according to socially prescribed gender roles constitute discrimination under Title VII according to the rationale of *Price Waterhouse*.”).

Back to Context

87. See discussion § 92.4, *supra*.

Back to Context

88. See *Price Waterhouse*, 490 U.S. at 251; *Smith*, 378 F.3d. at 573 (citations omitted).

Back to Context

89. The HHS LEP Guidance, *supra* note 49, 68 FR at 47320, describes the practice of tagging non-English statements on the front of common documents, such as “brochures, booklets, and in outreach and recruitment information” informing individuals with limited English proficiency of the availability of language assistance services.

Back to Context

90. **45 CFR 84.5.**

Back to Context

91. Section 92.302 incorporates provisions of the Title VI implementing regulation with respect to enforcement actions concerning discrimination on the basis of race, color, national origin, sex, age, or disability. Those provisions authorize OCR to collect reports from recipients as necessary to determine

compliance. Section 92.303 incorporates provisions in the Section 504 implementing regulation with respect to discrimination on the basis of prohibited criteria in health programs or activities administered by the Department. Those provisions authorize OCR to initiate actions as necessary to ensure compliance.

[Back to Context](#)

92. Under Section 504, a recipient of Federal financial assistance with 15 or more employees must designate at least one individual to coordinate the covered entity's compliance with Section 504's prohibition of disability discrimination and must have a written process in place for handling grievances. **45 CFR 84.7(a)**. Under Title IX, a recipient of Federal financial assistance must designate at least one individual to coordinate the recipient's compliance with Title IX's prohibition of sex discrimination with respect to the recipient's education program or activity and must have a written process in place for handling grievances. **45 CFR 86.8(a)**. Under Title II of the ADA, an entity with 50 or more employees must designate at least one individual to coordinate the covered entity's compliance with Title II's prohibition of disability discrimination and must have a written process in place for handling grievances. **28 CFR 35.107(a)**.

[Back to Context](#)

93. See **80 FR 54172**, 54202 (Sept. 8, 2015).

[Back to Context](#)

94. *Id.*

[Back to Context](#)

95. See **45 CFR 164.520(b)(1)(vi)** and § 164.530(a)(1)(ii) (requires designation of “contact person or office who is responsible for receiving complaints under this subsection” and the provision of a notice “that contains a statement that individuals may complain to the covered entity and to the Secretary if they believe their privacy rights have been violated, a brief description of how the individual may file a complaint with the covered entity, and a statement that the individual will not be retaliated against for filing a complaint,” respectively.)

[Back to Context](#)

96. **45 CFR 80.6(d)** (requiring recipients to provide notice of individuals' rights under Title VI), 84.8(a)-(b) (requiring recipients to provide notice of individuals' rights under Section 504), 86.9(a)-(c) (requiring notice of individuals' rights under Title IX), 91.32 (requiring recipients to provide notice of individuals' rights under the Age Act).

[Back to Context](#)

97. See **80 FR 54179** (describing the methodology used in the proposed rule).

[Back to Context](#)

98. See **45 CFR 155.205(c)(2)(iii)(A)**. This regulation, which requires taglines on certain documents and Web site content in at least the top 15 languages spoken State-wide by individuals with limited English proficiency is not the only tagline requirement with which qualified health plan issuers must comply. Qualified health plan issuers must comply with another tagline requirement applicable to group health plans and health insurance issuers, which requires taglines, on certain notices and on a health plan's summary of benefits and coverage, in languages in which 10% of individuals with limited English proficiency county-wide are exclusively literate. See, e.g., **45 CFR 147.136(e)(2)(iii)**, (e)(3) (HHS regulations); **29 CFR 2590.715-2719(e)(2)(iii)**, (3) (DOL regulations for group health plans and health insurance issuers that are not grandfathered health plans).

[Back to Context](#)

99. An individual's national origin is not the same as her citizenship or immigration status, and neither Title VI nor Section 1557 explicitly protects individuals against discrimination on the basis of citizenship or immigration status. However, as under Title VI, Section 1557 and this part protect individuals present in the United States, whether lawfully or not, who are subject to discrimination based on race, color, national origin, sex, age, or disability. See discussion *supra* note 53.

[Back to Context](#)

100. *Supra* note 96.

[Back to Context](#)

101. **45 CFR 86.9(a)**.

[Back to Context](#)

102. See **45 CFR 86.9(a)(1)** (requiring a recipient to provide a notice of individuals' rights to applicants for employment and to employees, among other groups of individuals); *id.* 84.8(a) (requiring a recipient to provide a notice of individuals' rights requiring notice to employees, among other groups of

individuals).

Back to Context

103. In estimating this percentage, we used the same data sources, *infra* notes 109 and 110, and the same methodology described in the discussion, *infra*, that we used to identify the languages under the State-based approach in which the Director will translate the sample notice and taglines, as required by § 92.8(c) and (e) of the final rule.

Back to Context

104. In October 2015, for the second time since the U.S. Census Bureau's American Community Survey (ACS) began, the Census Bureau released detailed tables that unbundle the 39 languages and language groups that ACS publishes annually through its American Factfinder data set. U.S. Dep't of Commerce, U.S. Census Bureau, Data, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013, <http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> [hereinafter U.S. Census Bureau, ACS 2009-2013 Detailed Languages] (last visited May 3, 2016). The unbundled data includes 380 possible languages or language groups spoken by individuals who speak English less than “very well.” In the proposed rule, HHS explained that it calculated the top 15 languages spoken nationally by individuals with limited English proficiency by relying on the American Factfinder data set that bundles languages. See **80 FR 54172**, 54179 n.30 (Sept. 8, 2015) (describing the tagline methodology).

Back to Context

105. **45 CFR 155.205(c)(iii)(A)** (beginning no later than November 1, 2016, requiring taglines on Web site content and documents that are critical for obtaining coverage or access to health care services through a qualified health plan for certain individuals in at least the top 15 languages spoken by individuals with limited English proficiency in the relevant State; documents are deemed to be critical for obtaining health insurance coverage or access to health care services through a qualified health plan if they are required to be provided by law or regulation to certain individuals); see *infra* note 107 (describing other tagline requirements applicable to qualified health plan issuers as a result of market-wide regulations).

Back to Context

106. This 10% county-level threshold for taglines applies to group health plans and health insurance issuers. See, e.g., **45 CFR 147.136(e)(2)(iii)**, (e)(3) (HHS regulations); **29 CFR 2590.715-2719(e)(2)(iii)**, (3) (DOL regulations).

Back to Context

107. Qualified health plan issuers are also bound by the tagline requirement in market-wide regulations at **45 CFR 147.136(e)**. Under § 147.136(e), taglines must appear on certain notices and on a health plan or issuer's summary of benefits and coverage, in languages in which 10% of individuals with limited English proficiency county-wide are exclusively literate. See, e.g., **45 CFR 147.136(e)(2)(iii)**, (e)(3). This methodology applies to a narrower set of documents than those to which the tagline requirement applies in Federal regulations governing Marketplaces and qualified health plan issuers. Compare **45 CFR 147.136(e)(2)(iii)** (requiring taglines on internal claims and appeals notices) and **45 CFR 147.200(a)(5)** (requiring taglines on summaries of benefits and coverage) with **45 CFR 155.205(c)(2)(iii)(A)** (requiring taglines on Web site content and documents that are critical for obtaining health insurance coverage or access to health care services through a qualified health plan). For CMS's most recent technical guidance on the tagline requirement at **45 CFR 155.205(c)(2)(iii)(A)**, see Guidance and Population Data for Exchanges, Qualified Health Plan Issuers, and Web-Brokers to Ensure Meaningful Access by Limited-English Proficient Speakers Under **45 CFR 155.205(c)** and 156.250 (Mar. 30, 2016), <https://www.cms.gov/cciio/resources/regulations-and-guidance/index.html#>, Language Access Guide for Exchanges, Qualified Health Plan (QHP) Issuers, and Web-Brokers (last visited May 3, 2016).

Back to Context

108. U.S. Census Bureau, ACS 2009-2013 Detailed Languages, *supra* note 104 (detailing data parameters in the user notes). At least 25,000 individuals who speak English less than “very well” must speak the same language for the ACS county-level data to identify such language speakers. *Id.*

Back to Context

109. We rely on the American Community Survey (ACS) 5-year data set because its stability is superior to the 1-year data set, especially when analyzing small populations. U.S. Census Bureau, American Community Survey, When to Use 1-year, 3-year, or 5-year Estimates, <http://www.census.gov/programs-surveys/acs/guidance/estimates.html> (last visited May 3, 2016). The U.S. Census Bureau has discontinued the ACS 3-year data set, which is the data set on which we relied in the proposed rule. U.S. Census Bureau, Census Bureau Statement on the 3-Year American Community Survey Statistical Product (Feb. 2, 2015), <http://content.gondelivery.com/accounts/USCENSUS/bulletins/eeb4af> (last visited May 3, 2016).

Back to Context

110. U.S. Dep't of Commerce, U.S. Census Bureau, American FactFinder, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Older, ACS Estimates by State: 2010-2014 (released Dec. 2015); U.S. Census Bureau, ACS 2009-2013 Detailed Languages, *supra* note 104. We are not aware of a public data source providing as robust data as the ACS that estimates the languages in which individuals with limited English proficiency read, understand, or speak. Thus, we are relying on a data set identifying individuals who have a limited ability to speak English as a proxy for limited English proficiency population.

Back to Context

111. This categorization includes covered entities that operate multiple health programs serving individuals within various States or that operate a health program with a multi-State service area.

[Back to Context](#)

112. For a similar approach, see HHS Notice of Benefit and Payment Parameters for 2016; Final Rule, **80 FR 10750**, 10788 (Feb. 27, 2015) (describing the Department's interpretation of **45 CFR 155.205(c)(2)(iii)(A)** and (B) for entities with multi-State service areas).

[Back to Context](#)

113. As newer ACS data become available with respect to the data sets on which we base our methodology, we will determine if and when the at least top 15 languages spoken by individuals with limited English proficiency State-wide change, warranting the Director to make available notices and taglines translated in additional non-English languages.

[Back to Context](#)

114. For instance, Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, and Medicare Prescription Drug Plans must include a “CMS Multi-Language Insert” in the text of certain documents or as a separate page included with certain documents. U.S. Dep't of Health & Human Servs., Centers for Medicare & Medicaid Servs., Medicare Marketing Guidelines, § 30.5.1, 7-8 (Jul. 2, 2015), <https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>.

[Back to Context](#)

115. **45 CFR 84.8(a)-(b)** (indicating that methods of notifying individuals' of their rights under Section 504 may include “publication in newspapers and magazines, placement of notices in [Federal financial assistance] recipients' publication[s], and distribution of memoranda or other written communications” as well as “recruitment materials or publications containing general information that . . . [the recipient] makes available to participants, beneficiaries, [and] applicants. . .”).

[Back to Context](#)

116. **45 CFR 86.9(a)(2)(i)** (requiring initial notice of individuals' rights to appear in local newspapers, newspapers and magazines published by the recipient of Federal financial assistance, and “memoranda or other written communications distributed to every student . . . of such recipient”) and **86.9(b)(1)** (requiring each recipient of Federal financial assistance to “prominently include a statement of . . . [the recipient's nondiscrimination policy] in each announcement, bulletin, catalog, or application form which it makes available . . .”).

[Back to Context](#)

117. For comparison, the meaningful access requirements of other Federal regulations governing qualified health plan issuers apply to all information that is critical for obtaining health insurance coverage or access to health services through the qualified health plan, including “applications, forms, and notices” and information is deemed to be critical for obtaining health insurance coverage or access to health care services if the issuer is “required by law or regulation” to provide the document to certain individuals. See **45 CFR 156.250**. CMS's annual guidance to qualified health plan issuers lists examples of documents to which CMS interprets § 156.250 to apply, such as certain correspondence and notifications, summary of benefits and coverage disclosures, formulary drug lists, provider directories, and a plan's explanation of benefits or similar claim processing information. U.S. Dep't of Health & Human Servs., Centers for Medicare & Medicaid Servs., Final 2017 Letter to Issuers in the Federally-facilitated Marketplaces, 80-81 (Feb. 29, 2016), <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-2017-Letter-to-Issuers-2-29-16.pdf>.

[Back to Context](#)

118. HHS LEP Guidance, *supra* note 49, 68 FR at 47318-19.

[Back to Context](#)

119. *Id.* at 47318.

[Back to Context](#)

120. *Id.* at 47319.

[Back to Context](#)

121. **29 U.S.C. 621-634**.

[Back to Context](#)

122. **34 CFR 106.34**.

[Back to Context](#)

123. *Supra* note 3.

Back to Context

124. *See North Haven Bd. of Educ. v. Bell*, 456 U.S. 512 (1982).

Back to Context

125. *Id.* at 522-30; *Consolidated Rail v. Darrone*, 465 U.S. 624, 626 (1984).

Back to Context

126. Moreover, nothing in this rule is intended to affect OCR's ability to address discrimination against patients on a prohibited basis, even where that discrimination is effectuated through actions against a covered entity's employee. If, for example, a medical practice that receives Federal financial assistance fired a Hispanic doctor because the practice no longer wished to serve the doctor's predominantly Hispanic, limited English proficient patients, OCR could pursue relief on behalf of affected patients to ensure that their access to the practice was not discriminatorily denied. *Cf.* **45 CFR 80.3(c)(3)** (Title VI applies where discrimination in employment tends to exclude individuals, on the basis of race, color, or national origin, from participation in a covered program).

Back to Context

127. *See, e.g.*, U.S. Dep't of Educ., Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence (2014) at A-2, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

Back to Context

128. U.S. Dep't of Health & Human Servs. and U.S. Dep't of Agriculture, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2000) [hereinafter Tri-Agency Guidance], <http://www.hhs.gov/civil-rights/for-individuals/special-topics/national-origin/tri-agency/index.html> (describing how States can structure their facially-neutral policies and practices to enroll eligible children and families of all national origins to reduce and eliminate access barriers).

Back to Context

129. In addition to Title VI, the Tri-Agency Guidance addresses the Privacy Act of 1974 and program authorities authorizing and implementing Medicaid, CHIP, Temporary Assistance for Needy Families, and the Food Stamp Program. *Id.* at 1-2, Q2.

Back to Context

130. The Tri-Agency Guidance addresses the circumstances under which a State may not deny benefits when a non-applicant applying on behalf of a child, or a non-applicant household member, does not provide information regarding his or her citizenship status, immigration status or a Social Security number. The Guidance recommends that public benefits applications allow non-applicants to declare early in the process whether they are seeking benefits only on behalf of an eligible child or family member so that further inquiry is limited to factors necessary for determining the child's or family member's eligibility. *Id.* at 206, Q3-Q7.

Back to Context

131. *See* HHS OCR VRA with AZ Agencies, *supra* note 53, (resolving cognizable complaints of national origin discrimination under Title VI following implementation of an Arizona State law requiring State employees, in the administration of public benefits programs, to report "discovered violations of federal immigration law" to U.S. Immigrations and Customs Enforcement).

Back to Context

132. *See, e.g.*, **77 FR 18310**, 18355 (Mar. 27, 2012) (applying the principles of the Tri-Agency Guidance to Marketplace SM. regulations on the health insurance application process); U.S. Dep't of Health & Human Servs., Office of Community Servs., Admin. on Children & Families, HHS Guidance on the Use of Social Security Numbers and Citizenship Status Verification for Assistance by LIHEAP Grantees' Programs, A6 (2014), <http://www.acf.hhs.gov/programs/ocs/resource/liheap-im-hhs-guidance-on-the-use-of-social-security-numbers-ssns-and-citizenship-status-verification> (strongly encouraging LIHEAP Grantees to structure their eligibility processes to avoid the delay or denial of benefits to eligible persons in mixed-immigration status households); U.S. Dep't of Health & Human Servs., Admin. on Children & Families, Office of Child Care, Clarifying Policy Regarding Limits On The Use Of Social Security Numbers Under the Child Care and Development Fund and the Privacy Act Of 1974, Program Instr. No. ACYF-PI-CC-00-04 (2000), <http://www.acf.hhs.gov/programs/occlaw/guidance/current/pi0004/pi0004.htm> (requiring States to make clear that the provision of a SSN is voluntary and child care benefits will not be denied or withheld for failure to provide a SSN).

Back to Context

133. *See, e.g.*, **45 CFR 155.305(f)(6)** (in some cases, a MarketplaceSM. must require the SSN of an individual who is not requesting coverage for himself or herself, but whose SSN could be used to verify eligibility information for a household member who is requesting MarketplaceSM. coverage and

financial assistance, such as a child).

Back to Context

134. See U.S. Dep't of Health & Human Servs., Office for Civil Rights; Section 504 of the Rehabilitation Act of 1973; Notice of Exercise of Authority Under **45 CFR 84.52(d)(2)** Regarding Recipients With Fewer Than Fifteen Employees, **65 FR 79368** (Dec. 19, 2000).

Back to Context

135. See, e.g., *Columbia v. Gregory*, Civ. No. 08-cv-98, 2008 WL 4192437, *4 (D.N.H. Sep. 9, 2008).

Back to Context

136. See **42 U.S.C. 12182(b)(2)(A)(iii)**.

Back to Context

137. See **28 CFR 35.130(b)(7)** (requiring public entities to administer services to individuals with disabilities in the most integrated setting appropriate to their needs); **45 CFR 84.4(b)(2)**; *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Back to Context

138. U.S. Dep't of Health & Human Servs., Centers for Medicare & Medicaid Services, Guidance to States Using 1115 Demonstrations or 1915(b) Waivers for Managed Long Term Services and Supports Programs 3 (May 20, 2013), <https://www.medicare.gov/medicaid-chip-program-information/by-topics/delivery-systems/downloads/1115-and-1915b-mltss-guidance.pdf>.

Back to Context

139. 527 U.S. 581 (1999).

Back to Context

140. U.S. Dep't of Justice, Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*, (June 21, 2011), http://www.ada.gov/olmstead/q&a_olmstead.htm.

Back to Context

141. See § 92.101(c).

Back to Context

142. See § 92.101(c) (incorporating **45 CFR 91.17**).

Back to Context

143. We note that age limits may violate CMS regulations under the ACA and covered entities are responsible for ensuring compliance with all applicable CMS regulations and other Federal laws.

Back to Context

144. See **42 U.S.C. 6103(b)**.

Back to Context

145. **42 U.S.C. 300gg(a)(1)(A)(iii)**. See also **45 CFR 147.102**.

Back to Context

146. 518 U.S. 515 (1996).

Back to Context

147. *Id.* at 531-32.

Back to Context

148. *Id.* at 532-33 (internal citations omitted).

Back to Context

149. *Id.* at 533-34.

Back to Context

150. *Id.* at 533.

Back to Context

151. *See Lusardi v. McHugh*, U.S. Equal Employment Opportunity Comm'n Appeal No. 0120133395, Agency No. ARREDSTON11SEP05574, 2015 WL 1607756 (April 1, 2015) (finding Agency's denial of Complainant's access to the common women's restroom on account of her gender identity violated Title VII), <http://www.eeoc.gov/decisions/0120133395.txt>.

Back to Context

152. *See, e.g., Crosby*, 763 F. Supp. 666; *cf. Cruzan*, 294 F.3d 981.

Back to Context

153. *See, e.g.*, 80 FR at 54182.

Back to Context

154. *See, e.g., Lau v. Nichols*, 414 U.S. 563, 566 (1974) (interpreting Title VI and its implementing regulations to require a school district with students with limited English proficiency of Chinese origin to take affirmative steps to provide the students with a meaningful opportunity to participate in Federally funded educational programs); HHS LEP Guidance, *supra* note 49, 68 FR at 47313 (“[T]he failure of a recipient of [F]ederal financial assistance from HHS to take reasonable steps to provide LEP persons with [a] meaningful opportunity to participate in HHS funded programs may constitute a violation of Title VI and HHS's implementing regulations”); U.S. Dep't of Health & Human Servs., Office for Civil Rights, Policy Guidance, Title VI Prohibition against National Origin Discrimination As It Affects Persons with Limited English Proficiency, **65 FR 52762**, 52765 (August 30, 2000) (“The most important step in meeting this [meaningful access] obligation is for recipients of Federal financial assistance such as a grants, contracts, and subcontracts to provide the language assistance necessary to ensure such access, at no cost to the LEP person.”). *See also* Exec. Order No. 13166, *Improving Access to Services for Persons with Limited English Proficiency*, **65 FR 50121** (Aug. 11, 2000) (requiring each Federal Department to improve access to Federally assisted programs and activities by persons with limited English proficiency and to implement a system by which individuals with limited English proficiency can meaningfully access the Departments' Federally conducted programs and activities).

Back to Context

155. 80 FR at 54182 (citing *Lau*, 414 U.S. at 566) (reasoning that a federally funded educational program's failure to take affirmative steps to rectify the language deficiency of limited English proficient students of Chinese ancestry denies them a meaningful opportunity to participate in the educational program on the basis of their national origin).

Back to Context

156. 65 FR at 52765.

Back to Context

157. The Department's LEP Guidance provides an in-depth explanation of Title VI's prohibition against national origin discrimination as it affects limited English proficient populations and how recipients can determine what steps are reasonable to provide all individuals with limited English proficiency meaningful access. HHS LEP Guidance, *supra* note 49.

Back to Context

158. Under Title VI, OCR investigates each complaint and conducts its compliance reviews on a case-by-case basis and tailors each case resolution to the particular facts of each case. For highlights of OCR's Title VI enforcement specific to the prohibition of national origin discrimination as it affects individuals with limited English proficiency, see Enforcement Success Stories Involving Individuals with Limited English Proficiency, U.S. Dep't of Health & Human Servs., Office for Civil Rights, <http://www.hhs.gov/ocr/civilrights/activities/examples/LEP/index.html> (last visited May 4, 2016).

Back to Context

159. **80 FR 54172**, 54183 (quoting HHS LEP Guidance, *supra* note 49, 68 FR at 47312).

Back to Context

160. *Id.* (citing U.S. Dep't of Health & Human Servs., Agency for Health Care Research & Quality, Chapter 6, Patient Centeredness, National Healthcare Quality Report (2013), <http://www.ahrq.gov/research/findings/nhqrdr/nhqr13/chap6.html>). Person-centered and family centered care is one of the six priorities of the National Quality Strategy. Dep't. of Health & Human Servs., Agency for Health Care Research & Quality, 2014 National Healthcare Quality and Disparities Report, Person- and Family-Centered Care Chartbook, AHRQ Pub. No. 15-0007-14, at 3 (May 2015),

Back to Context

161. *Id.* at 54183 n.53 (stating that the Department's LEP Guidance takes a similar approach by identifying the factors that OCR will consider, in determining the extent of a recipient's obligations to individuals with limited English proficiency). *See* HHS LEP Guidance, *supra* note 49, 68 FR at 47314-16.

Back to Context

162. 80 FR at 54183 (citing HHS LEP Guidance, *supra* note 49, 68 FR at 47318, 47323 (with respect to privacy), 47316-17, 47322 (with respect to timeliness), and 47318-19, 47320, 47322 (with respect to services free of charge)).

Back to Context

163. *Id.* at 54183-84 (citing HHS LEP Guidance, *supra* note 49, 68 FR at 47317-18, 47323).

Back to Context

164. *See, e.g.*, HHS OCR VRA with Mee Memorial Hosp., *supra* note 82, at pt. II.J (defining qualified interpreter); HHS OCR VRA with Montgomery County DSS, *supra* note 82, at pts. II.E (defining qualifications of an “interpreter”), IV.H (requiring timely, competent language assistance), & IV.L (identifying interpreter standards).

Back to Context

165. 80 FR at 54184 (citing HHS LEP Guidance, *supra* note 49, 68 FR at 47318, 47320 (suggesting that recipients consider whether to record the primary language of an individual with LEP or an individual's choice to provide his or her own interpreter)).

Back to Context

166. The proposed rule discusses these entities' requirements at 80 FR at 54184-85.

Back to Context

167. *Id.* at 54185.

Back to Context

168. *See id.*

Back to Context

169. *See id.*

Back to Context

170. *See id.*

Back to Context

171. *See* HHS LEP Guidance, *supra* note 49, 68 FR at 47314, 47320, 47322.

Back to Context

172. *See Lau v. Nichols*, *supra* note 154 (interpreting Title VI to require the covered entity to take affirmative steps to provide students with limited English proficiency of Chinese origin with a meaningful opportunity to participate in Federally-funded educational programs); HHS LEP Guidance, *supra* note 49, 68 FR at 47313 (“[T]he failure of a recipient of [F]ederal financial assistance from HHS to take reasonable steps to provide LEP persons with [a] meaningful opportunity to participate in HHS funded programs may constitute a violation of Title VI and HHS's implementing regulations”).

Back to Context

173. 80 FR at 54183 (citing to the 2000 HHS LEP Guidance, *supra* note 49, 65 FR at 52763). *See generally* Cindy Brach et al., *Crossing the Language Chasm*, Health Affairs, vol. 24, no.2 424, at 424-25 (2005) (describing the impacts of language barriers in health care). In addition, the 2014 National Healthcare Quality and Disparities Report Chartbooks include metrics showing disparities between national origin groups, one of which expressly identifies trends of non-English speaking children who need health care for an illness, injury, or condition who sometimes or never got care as soon as wanted. *See* U.S. Dep't of Health & Human Servs., Agency for Health Care Research & Quality, 2014 National Healthcare Quality and Disparities Report, Chartbook on Health Care for Hispanics at 47, 57 (May 2015),

<http://www.abrq.gov/sites/default/files/wysinyg/research/findings/nhqdr/2014chartbooks/hispanichealth/2014nhqdr-hispanichealth.pdf>; U.S. Dep't of Health &

Back to Context

174. 80 FR at 54183.

Back to Context

175. *Id.*

Back to Context

176. We note, however, that the Department's National Stakeholder Strategy for Achieving Health Equity identifies financing and reimbursement for "health interpreting services" as a strategy to achieve the goal of improving cultural and linguistic competency. *See* U.S. Dep't of Health & Human Servs., Office of Minority Health, National Partnership for Action to End Health Disparities. National Stakeholder Strategy for Achieving Health Equity, Section 3, 131 (2011), http://minorityhealth.hhs.gov/npa/files/Plans/NSS/NSS_07_Section3.pdf.

Back to Context

177. We note, for example, that the Washington State Medicaid Interpreter Services Program centralizes the provision of language assistance services to achieve economies of scale. *See* Washington State Health Care Auth., Interpreter Services Program, www.hca.wa.gov/medicaid/interpreterservices (last visited May 4, 2016). Similarly, through OCR's Effective Communication in Hospitals Initiative, the Kentucky Hospital Association built the capacity to offer its approximately 120 member hospitals access to a telephonic interpretation service contract that offers a volume-based discount rate. *See* Kentucky Hospital Association, Effective Communication in Hospitals, http://www.kyha.com/CM/Initiatives/Safety_and_Quality_Resources/Effective_Communication_in_Hospitals.aspx (last visited May 4, 2016). Although OCR cannot certify that these approaches uniformly enable entities to meet the requirements of Section 1557, they do represent examples of the types of collaborative action that covered entities may consider.

Back to Context

178. Standards for Privacy of Individually Identifiable Health Information, **65 FR 82462**, 82749 (Dec. 28, 2000) (final rule) (codified at 45 CFR pts. 160 and 164) (encouraging professional associations to assist their members in developing policies and procedures required under the Privacy Rule); Standards for Privacy of Individually Identifiable Health Information, **64 FR 59918**, 59992 (Nov. 3, 1999) (proposed rule) (encouraging professional associations to assist their members in developing policies and procedures required under the Privacy Rule).

Back to Context

179. U.S. Dep't. of Health & Human Servs., Center for Medicare & Medicaid Servs., Increased Federal Matching Funds for Translation and Interpretation Services under Medicaid and CHIP 1 (Jul. 1, 2010), <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/SHO10007.pdf> [hereinafter CMS Increased Federal Matching Funds]; *id.*, Recently Released Policy Guidance—CHIPRA and the ACA, Information Bulletin 1-2 (Jul. 9, 2010), <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/07-09-2010-CHIPRA-and-ACA.pdf> [hereinafter CMS Information Bulletin 7/9/10].

Back to Context

180. CMS Increased Federal Matching Funds, *supra* note 179, at 1-2; CMS Information Bulletin 7/9/10, *supra* note 179, at 1-2; U.S. Dep't. of Health & Human Servs., Center for Medicare & Medicaid Servs., Information Bulletin 2 (Apr. 26, 2011), <http://www.medicaid.gov/Federal-Policy-Guidance/downloads/Info-Bulletin-4-26-11.pdf>.

Back to Context

181. *See* **42 U.S.C. 18031(c)(1)(E)**, (g)(1)(E) (describing qualified health plan certification requirements in a quality improvement strategy).

Back to Context

182. *See* 28 CCR 1300.67.04(c) (requiring each health care service plan to develop and implement a language assistance program that contains standards for enrollee assessment; providing language assistance services; staff training; and compliance monitoring).

Back to Context

183. E.O. 13166, **65 FR 50121** (2000). In 2011, the U.S. Department of Justice renewed the Federal Government's commitment to the Executive Order. Office of the Att'y General, U.S. Dep't of Justice, Federal Government's Renewed Commitment to Language Access Obligations Under **Executive Order 13166** (Feb. 17, 2011) https://www.justice.gov/crt/about/cor/AG_021711_EO_13166_Memo_to_Agencies_with_Supplement.pdf.

Back to Context

184. For example, as part of the certification process to ensure that recipients of Medicare Part A are in compliance with Title VI, OCR requires Medicare Part A providers to document their written procedures on communicating effectively with individuals with limited English proficiency. U.S.

Dep't of Health and Human Servs., Office for Civil Rights, Civil Rights Information Request for Medicare Certification, Form OMB No. [0945-0006](#), pt. II.7, http://www.hhs.gov/sites/default/files/ocr/civilrights/clearance/ocr_mclap.pdf (identifying written policies and procedures with respect to serving individuals with limited English proficiency as required in a provider's application for Medicare certification).

[Back to Context](#)

185. *See, e.g.*, HHS OCR VRA with Mee Memorial Hosp., *supra* note 82, at pt. IV.B (requiring the development and implementation of a language access policy), pt. IV.C.1 (determining the language needs of the affected population), pt. IV.C.2 (determining the language needs of each individual with limited English proficiency); HHS OCR VRA with Montgomery County DSS, *supra* note 82, at pt. IV.B (requiring the development and implementation of a language access policy), pt. IV.C.1 (determining the language needs of the affected population), pt. IV.C.2 (determining the language needs of each individual with limited English proficiency).

[Back to Context](#)

186. *See* HHS LEP Guidance, *supra* note 49, 68 FR at 47319-21 (encouraging recipients to develop a language access plan [called an “LEP Plan” in the Guidance]). HHS's updated language access plan may be a useful model for covered entities. *See* U.S. Dep't of Health & Human Servs., Language Access Plan (2013), <http://www.hhs.gov/sites/default/files/open/pres-actions/2013-hhs-language-access-plan.pdf>.

[Back to Context](#)

187. *See* 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. *See also* the Federal government's Interagency Working Group on Limited English Proficiency, at www.LEP.gov.

[Back to Context](#)

188. Some of these factors were proposed in § 92.201(b)(2)(i)-(v), were suggested by commenters', are grounded in the HHS LEP Guidance, or are staples of the effective communication analysis in § 92.202 of this final rule, consistent with Federal disability rights law.

[Back to Context](#)

189. *See* HHS LEP Guidance, *supra* note 49, [68 FR 47311](#), at 47315 (describing how and why a recipient of Federal financial assistance should consider the nature and importance of the program or activity in determining the extent of its language access obligations under Title VI).

[Back to Context](#)

190. *See* HHS LEP Guidance, *supra* note 49, 68 FR at 47315 (“Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices.” “Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance.”).

[Back to Context](#)

191. *See* 80 FR at 54183.

[Back to Context](#)

192. A third party to the communication, such as a qualified interpreter for an individual with limited English proficiency, would orally interpret the covered entity's oral summary from English to a non-English-language and would not alter, summarize, omit, or distort the oral summary that the covered entity provides or judge which information is relevant or important. *See e.g.*, The Nat'l Council on Interpreting in Health Care, A National Code of Ethics for Interpreters in Health Care 8, 13 (2004), <http://www.ncihc.org/assets/documents/publications/NCIHC%20National%20Code%20of%20Ethics.pdf> (discussing the ethical principle of fidelity to the original message).

[Back to Context](#)

193. [80 FR 54172](#), 54183. The National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care (the National CLAS Standards) emphasize the importance of timely language assistance. U.S. Dep't of Health & Human Servs., Office of Minority Health, The National CLAS Standards, <http://minorityhealth.hhs.gov/omb/browse.aspx?lvl=2&lvlid=53> (last visited May 4, 2016).

[Back to Context](#)

194. Jessica Sperling, Migration Policy Institute, Communicating More for Less: Using Translation and Interpretation Technology to Serve Limited English Proficient Individuals (2011), 12 <http://www.migrationpolicy.org/research/communicating-more-less-using-translation-and-interpretation-technology-LEP> (noting that translation memory programs are used in the public and private sector to increase the efficiency of translating a high-volume of documents and to assist a qualified translator in improving consistency among translated documents).

[Back to Context](#)