

# THE NEW LAW ON LANGUAGE ACCESS:

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## How Will Section 1557 of the ACA Impact Care for LEP Patients?

*The material herein is educational and informational only. No legal advice is provided.*

The US Department of Health and Human Services (HHS) recently issued a rule to help medical and insurance providers comply with Section 1557 of the Affordable Care Act (ACA). Section 1557 deals with nondiscrimination, and a significant portion of HHS's rule focuses on the care of Limited-English Proficient (LEP) patients.

The **rule took effect on July 18th**, and compliance will quickly become a high-level priority as the consequences for failure become clear. Language access in healthcare already aligns with executive goals in improving patient safety, reducing readmissions rates, and boosting patient satisfaction, growth, and retention **[Learn how here]**. Under the new law, language services leaders are uniquely positioned to make sure their organizations succeed, demonstrating the importance of their programs in the process.

To help, CyraCom has compiled this guide to explain what's required under Section 1557 and how it impacts LEP patient care.

# QUICK FACTS ON SECTION 1557

HHS has stated that Section 1557:

## MANDATES

Posting Notices of Nondiscrimination and signage explaining the availability of language services in the state's top 15 non-English languages.

Using "qualified interpreters" in healthcare scenarios.

## GRANTS

Individuals a private cause of action to sue healthcare organizations that fail to provide language services, based on disparate impact.

A patient's family, spouse, or partner access to an interpreter even if the patient does not need one.

## PROHIBITS

Minor children from interpreting except in short-term emergency scenarios.

Adult family/friends from interpreting unless the patient specifically requests it.

Healthcare staff from interpreting unless they are qualified and interpreting is an official job duty.

## REQUIRES

Provision of "meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered" from any organization receiving HHS funding, any HHS-administered health program, and any insurer on the Health Insurance Marketplace.

Standards for all video remote interpretation to comply with those set for ASL VRI in the ADA.

## TO WHICH HEALTHCARE ORGANIZATIONS DOES 1557 APPLY?

HHS ruled that Section 1557 applies to healthcare organizations or programs which:

- **Receive federal funding** (such as hospitals or doctors that accept Medicare/Medicaid. Excludes Medicare Part B).
- **Are administered by the HHS itself** (such as Medicare Part D).
- **Participate in Health Insurance Marketplaces.**

Since most healthcare organizations fall into at least one of the above categories, Section 1557 will likely have a broad and far-reaching impact on the healthcare industry.

## WHAT DOES 1557 SAY ABOUT TREATING LEP PATIENTS?

HHS's ruling requires healthcare organizations to "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."<sup>1</sup>

HHS does not set a minimum number of languages; rather, their checks for compliance – conducted by the Office of Civil Rights - will consider several factors, including:

The nature of the health program or activity in question.

The importance of the communication at issue.

Whether the organization has implemented an effective language access plan.<sup>2</sup>

Section 1557 also prohibits discrimination on the basis of association, extending the duty to provide an interpreter to a patient's family, spouse, or same-sex partner as needed.<sup>3</sup>

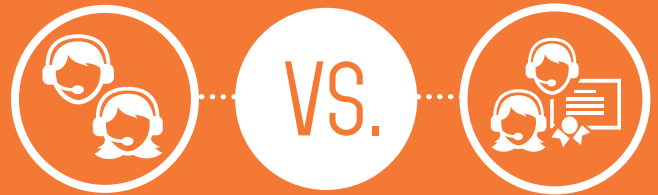
Covered organizations must also post notices of nondiscrimination and Taglines in their state's 15 most-commonly-used non-English languages, advising patients that language services are available free of charge.<sup>1</sup>

HHS has translated these notices and taglines into 64 languages available here. (CyraCom can provide these resources as well.)

## WHAT STANDARDS DOES 1557 SET FOR INTERPRETERS?

### "Competent" vs. "Qualified"

Prior to the passage of the ACA in 2010, the standards for healthcare interpreters came from a 2003 HHS document entitled Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin. In it, HHS specified that hospitals and healthcare organizations must provide patients with "competent" interpreters.



With this new ruling, HHS has specifically replaced "competent" with "qualified" as the new standard for interpreters in healthcare. The change in wording implies an expectation: a "qualified" interpreter should possess some demonstrable qualifications. Being bilingual does not, by itself, constitute qualification. Rather, HHS states that a qualified interpreter must:

- Adhere to ethical principles such as client confidentiality.
- Possess proficiency in speaking and understanding English and one additional spoken language.
- Be able to use all necessary specialized vocabulary and phraseology effectively, accurately, and impartially.<sup>4</sup>

*To ensure CyraCom interpreters are qualified, all candidates undergo an in-depth, in-person screening interview, a three-step interpreter qualification test, and a comprehensive bilingual language assessment. Our interpreters then undergo 120 hours of initial standardized, in-person training (including medical terminology, anatomy, and physiology), culminating in written and oral certification tests before they graduate.*

## Bilingual Staff

HHS draws a distinction between “qualified bilingual/multilingual staff” and untrained bilingual/multilingual staff, explaining that to act as an interpreter, a staff member must have demonstrated 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.<sup>3</sup>

**The requirement that a staff member “has demonstrated” these skills implies that their capabilities must be tested before they interpret for patients.** Simply pulling a bilingual doctor, nurse, or custodian to interpret is unacceptable under the ruling.

## Patient Family

HHS specifically states that a patient’s minor children **may not** act as interpreters during care, except in an emergency scenario where “an imminent threat to the safety or welfare of an individual or the public where no qualified interpreter is immediately available.”



The rule also prohibits adult family and friends from interpreting except in emergencies or when an LEP patient “specifically requests that the accompanying adult interpret or facilitate communication and the accompanying adult agrees to provide such assistance.” In this case, providers must still use a qualified interpreter as needed to ensure clear communication.

## Remote Interpretation:


### High Quality Video Required

HHS’s ruling supports the use of qualified phone and video interpreters to help providers deliver timely language access to their LEP patients.

**“CyraCom’s unified phone and video interpretation solutions comply with all 1557 requirements.”**



The ruling also establishes quality standards for video interpretation, linking it to standards set for **ASL interpretation by the Americans with Disabilities Act**, including:

- 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, arms, hands, and fingers, and the participating individual’s face, arms, hands, and fingers, regardless of his or her 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 VRI.<sup>5</sup>

## WHAT RECOURSE DOES 1557 GIVE PATIENTS?

Historically, LEP patients were barred from pursuing legal action against healthcare organizations for failing to provide language access. Pre-ACA, the right to language access existed through Title VI of the Civil Rights Act, and the Supreme Court ruled in 2001 that **Title VI did not give individuals a right to sue for discrimination based on disparate impact** (*the claim that a policy is discriminatory because it has a larger impact on a protected class*).

Federal agencies could investigate claims of discrimination, audit, cut funding in the form of Medicare/Medicaid reimbursement, and impose fines. But the actual victims of these violations – LEP patients – had no legal recourse.<sup>6</sup>

HHS's Office of Civil Rights (OCR) states that this is no longer the case, explaining that

**"OCR interprets Section 1557 as authorizing a private right of action for claims of disparate impact discrimination on the basis of any of the criteria enumerated in the legislation."**<sup>3</sup>

With this ruling, LEP patients gain legal standing to sue healthcare organizations who violate the law by failing to provide the required level of language access. In addition, penalties may include "suspension of, termination of, or refusal to grant or continue Federal financial assistance; referral to the Department of Justice with a recommendation to bring proceedings to enforce any rights of the United States; and any other means authorized by law."<sup>1</sup>

## ABOUT CYRACOM

CyraCom is the leading provider of language interpreting services to healthcare. CyraCom services thousands of healthcare clients throughout the US, including many Fortune 500 healthcare providers – hospitals, systems, and insurers. We support hundreds of languages and operates 24/7.

CyraCom's employee interpreters work in the most extensive network of large-scale interpreter contact centers: all HIPAA-compliant and located in the continental US. Our interpreters receive 120 hours of initial, in-person training in the centers – three times longer than is typical in the language service industry. In training, interpreters learn medical terminology, anatomy and physiology, and other topics essential for healthcare interpreting. Upon completion of training and testing, they become certified interpreters.

### Contact CyraCom

Contact CyraCom today to discuss how we can improve your language services program.

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## CITATIONS

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5. [https://www.ada.gov/peroutka\\_sa.html](https://www.ada.gov/peroutka_sa.html)
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