



Remote Interpreters of the Americas (RIA) - Connecting People From Afar

Section 1557 Language Access Walkthrough

For the 2022 Notice of Proposed Rulemaking

Prepared by Kelly (Grzech) Henriquez, a volunteer for Remote Interpreters of the Americas (RIA)

Disclaimer: *The following document was prepared by a spoken-language medical interpreter and interpreter educator (not a legal professional), with a significant focus on the language access implications of these proposed changes, for informational purposes only. This document is not intended and should not be considered as legal advice. Please seek counsel from a lawyer if you have legal questions or concerns.*

Introduction

Did you know that just by opening this document, you've actually taken a big step in trying to understand the upcoming proposed changes to Section 1557 of the Affordable Care Act? RIA wants to thank you for your interest, your enthusiasm, and your effort in taking the time to understand these proposed changes that we hope will have a positive effect not only on people who utilize the services of interpreters and translators alike, but also the other protected groups it is aimed at helping.

If you haven't read [the article we published on our website](#) that includes other resources that are aimed at helping you to understand the proposed rule, we highly recommend doing so. This



document is designed to be an accompaniment to the article and *does not* include information about commenting, including tips and tricks we (again, highly) recommend reading before commenting. So, without further ado, let's get started, shall we?

The Layout of this Document

This document is divided into sections named after their respective sections in the proposed rule. All of the sections mentioned in this document are linked in the [web version of the Notice of Proposed Rulemaking \(NPRM\)](#) on the Federal Register's website (you can [access the PDF version here](#)).

To be clear, the NPRM is more than just the text of the changes they're proposing, but also some background information including [the history of Section 1557](#) and the [reasons why HHS wants to change Section 1557](#). If you're really interested in the *why* behind these changes, as well as a bunch of statistics that will likely be relevant to the work that you do in the language services profession, we highly recommend reading the first part of the document.

However, if you're more interested in what changes the HHS is proposing and want to read the full rule, you can jump straight to [part III](#) of the NPRM entitled "[Nondiscrimination in Health Programs and Activities](#)," however bear in mind that this proposed rule impacts more than just language access. For your convenience, we've referenced (and linked!) the sections that apply to language access below.

§ 92.4 Definitions.

It's about: Qualified Interpreters & Translators... and more!

§ 92.4 ([click here](#) to jump to this part of the document on the Federal Register website) is the definitions provision of the proposed changes to Section 1557. This is actually a really important part of the law as it tells us *exactly* what the law means when it comes to the terms:

- **Federal Financial Assistance**
Section 1557 says the healthcare entities that receive this must follow it. What is federal financial assistance? What does it include?
- **Language Assistance Services**
What's acceptable language assistance to provide to someone with limited English proficiency? What does it look like? What does it include?
- **Machine Translation**
What is it? Can it be used in a healthcare setting or not?



- **National Origin**
Explains what is included in someone's national origin (hint: it has to do with the language they speak) and what is national origin discrimination
- **Qualified Interpreter**
Who is considered to be a qualified interpreter? What knowledge do they have to have? What type of training?
- **Qualified Translator**
Is Google Translate a qualified interpreter? If not, who is?

To be clear, this is *not* an exhaustive list of the terms included in this section.

Here's the definition of **qualified interpreter** (for someone with limited English proficiency) as outlined in the NPRM. If you're an interpreter, you should ask yourself: what do you think of this definition? Do you think it's missing something? If so, your thoughts are *exactly* what you should include in a comment to HHS!

Qualified interpreter for a limited English proficient individual means an interpreter who via a remote interpreting service or an on-site appearance: (1) Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; (2) Is able to interpret effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and (3) Adheres to generally accepted interpreter ethics principles, including client confidentiality.

87 FR 47913

§ 92.8 Policies and procedures.

It's about: Including written language access procedures

§ 92.8 ([click here](#) to jump to this part of the document on the Federal Register website) covers policies and procedures that covered entities (the healthcare providers, facilities, etc. that have to follow Section 1557) must have. It includes some new things that have implications for language access including:

In Paragraph (B), entitled *Nondiscrimination policy*, in addition to covered entities including in their written policies that they do not discriminate on the basis of race, color, national origin (and other protected groups covered by Section 1557), they've added after "national origin" in parentheses



"including limited English proficiency and primary language" to make it more clear that national origin discrimination *includes* limited English proficiency ([87 FR 47914](#)).

Paragraph (D) talks about *Language access procedures*. It requires that a covered entity has written language access procedures (if applicable) for reference by staff such as how they provide language assistance to people with LEP including:

- How an employee identifies whether someone has LEP
- How an employee obtains the services of qualified interpreters and translators to communicate with people with LEP
- Names of qualified bilingual staff members
- A list and the location of any translated materials they have ([87 FR 47914](#))

To be clear, this is *not* a language access plan, which has been the subject of many discussions surrounding Section 1557 in the past.

§ 92.10 Notice of nondiscrimination.

It's about: Letting people with LEP know about their rights

§ 92.10 ([click here](#) to jump to this part of the document on the Federal Register website) outlines specific requirements for a notice of nondiscrimination. This is a notice that lets patients or anyone who interacts with a healthcare facility that they can't be discriminated against, and there are some specific requirements based on what this needs to contain, and how this notice should be delivered. There are a few paragraphs that are very specific to language access for people with LEP.

Paragraph (a)(1)(iii)

(iii) The covered entity provides language assistance services, including electronic and written translated documents and oral interpretation free of charge and in a timely manner, when such services are necessary to provide meaningful access to a limited English proficient individual;

87 FR 47915, paragraph (a)(1)(iii)

Paragraph (a)(1)(iv)

Requires covered entities in their notice of nondiscrimination to explain to people with LEP (and other people who need language assistance services) how they can get them.



(iv) How to obtain from the covered entity the reasonable modifications, appropriate auxiliary aids and services, and language assistance services in paragraphs (a)(1)(ii) and (iii) of this section;

87 FR 47915, paragraph (a)(1)(iv)

Many of these requirements are similar, but perhaps some of the most notable changes show up in *how* these notices are delivered to people with LEP, such as how often (annually, upon request), and where (on their website, in prominent physical locations).

§ 92.11 Notice of availability of language assistance services and auxiliary aids and services.

It's about: Letting people know *in their language* about language assistance

§ 92.11 ([click here](#) to jump to this part of the document on the Federal Register website) is also simply referred to as the "Notice of Availability" and is a hot topic in the proposed rule! This was formerly known as the "taglines" provision that was altered in the 2020 Final Rule. Here's (generally) what this section goes over:

- The notice must let people know about the availability of language assistance services, free of charge
- The Notice of Availability must be provided in English and at least the 15 languages most commonly spoken by people with LEP in the state or states in which the healthcare entity operates
- How often the Notice of Availability should be provided
- Where the Notice of Availability should be provided (website, physical location)
- Specific documents the Notice of Availability should be provided in
- Describes the ability to opt out of the Notice of Availability, and other details

§ 92.201 Meaningful access for limited English proficient individuals.

It's about: When/how language assistance should be provided

The first section under "Subpart C—Specific Applications to Health Programs and Activities" is § 92.201 ([click here](#) to jump to this part of the document on the Federal Register website) and discusses



what is called "meaningful access" for people with LEP. Paragraph (a) is a big change, are you ready?

A covered entity must take reasonable steps to provide meaningful access to *each* limited English proficient individual eligible to be served or likely to be directly affected by its health programs and activities.

87 FR 47916, § 92.201(a)

The word "each" is italicized on purpose. This is a huge departure from the 2020 Final Rule which reinstated a tool called the "[Four-Factor Analysis](#)" that determined a healthcare facility or other covered entity needed to weigh four factors (demographics, frequency of contact, nature of service, availability/cost) to determine to what extent they needed to provide language assistance to people with LEP as a *group*.

This section also requires that when providing language assistance services, a qualified interpreter must be offered, a qualified translator must be used, and talks about the use of machine translation. We're just going to drop paragraph about the use of machine translation here:

(3) If a covered entity uses machine translation when the underlying text is critical to the rights, benefits, or meaningful access of a limited English proficient individual, when accuracy is essential, or when the source documents or materials contain complex, non-literal or technical language, the translation must be reviewed by a qualified human translator.

§ 92.201(c)(3)

This is a long and highly-relevant section, so it's recommended to read it in its entirety before commenting on language access in these proposed rules. Some other paragraphs of note (paraphrased, please see full text for exact quotes):

(e) Restricted use of certain persons to interpret or facilitate communication. ([Link to paragraph](#) on Federal Register website)

- Cannot rely on an unqualified accompanying adult as an interpreter except in cases of emergency until a qualified interpreter arrives OR if the person with LEP specifically requests it, the accompanying adult accepts, the request & acceptance are documented, and "reliance on that adult for such assistance is appropriate under the circumstances"



- Cannot rely on a minor child to interpret except in cases of emergency as a temporary measure until a qualified interpreter arrives
- Cannot rely on unqualified staff to communicate with people with LEP

| (f) Video remote interpretation services | (g) Audio remote interpreting services |
|---|---|
| (Link to paragraph on Federal Register website) | (Link to paragraph on Federal Register website) |
| Requires high-speed, wide-bandwidth connection | |
| No lags | |
| No choppy, blurry, or grainy images | |
| A "sharply delineated image" that displays interpreter's face and the "participating person's face regardless of body position" | |
| No irregular pauses in communication | |
| Clear, audible transmission of voices | |
| Training for users to set up and operate remote interpreting services | |

We imagine that interpreters and translators alike will have informed opinions and even experiences to share about this section, so be sure to mention these things in your comment that you submit to HHS!

§ 92.211 Nondiscrimination in the delivery of health programs and activities through telehealth services.

It's about: Equal access to telehealth, even for people with LEP!

What can we say about § 92.211? ([Click here to jump to this part of the document on the Federal Register website](#)). It's short, sweet, and gets straight to the point:

A covered entity must not, in delivery of its health programs and activities through telehealth services, discriminate on the basis of race, color, national origin, sex, age, or disability.



87 FR 47919, § 92.211

And that's it! While this section doesn't say much, the part of the NPRM entitled "II. Reasons for the Proposed Rulemaking" has a heading entitled "[Nondiscrimination in the Delivery of Health Programs and Activities Through Telehealth Services \(§ 92.211\)](#)" in which HHS discusses why they are adding § 92.211, and other sections about telehealth that may not necessarily apply to language access. To be clear, this doesn't mean that telehealth wasn't already covered under Section 1557, but this provision makes this requirement explicit.

The Justice Department and HHS actually issued [a guidance document on Nondiscrimination in Telehealth](#) for people with disabilities and LEP in July of 2022 to this effect (be sure to access the link to the PDF in the article). While Section 1557 is very general in its requirements, this guidance document offers detailed recommendations to healthcare facilities and other covered entities about how they can effectively comply with federal nondiscrimination laws, including Section 1557 of the ACA.

For more resources: visit our website at RemoteInterpreters.org!