

PROPOSED CHANGES TO THE HEALTH CARE RIGHTS LAW AND LANGUAGE ACCESS

Background

On May 24, 2019, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) released the “[Nondiscrimination in Health and Health Education Programs or Activities](#)” notice of proposed rulemaking. HHS proposes a number of changes that would radically reinterpret civil rights protections under the Health Care Rights Law (Section 1557 of the Affordable Care Act) for persons who are limited English proficient (LEP). These include changing who must comply with the law, limiting enforcement of civil rights, and rolling back protections. This fact sheet reviews these proposals and their potential impact.

What is the Health Care Rights Law?

The Health Care Rights Law prohibits discrimination on the basis of race, color, national origin, sex, age, and disability by covered entities. The Health Care Rights Law (HCRL) has been in effect since enactment in 2010. In 2016, the Obama Administration issued a final rule implementing the law after extensive public input. Since then, a number of lawsuits have challenged parts of the regulation, including protections for transgender persons and reproductive health care.

Why does the Health Care Rights Law matter for language access?

The HCRL prohibits discrimination on the basis of national origin, including discrimination due to one’s ability to speak English. This built on existing civil rights protections including Title VI of the Civil Rights Act of 1964 which applies to entities receiving federal funds guaranteeing “meaningful” access for LEP persons. HCRL continues Title VI’s protections but also expands the coverage to federally administered programs and many private insurance plans.

What does the proposed rule mean for limited English proficient people and why should advocates care? 25 million individuals in the U.S. are LEP, meaning they speak little to no English. Language barriers are known to interfere with access to and the quality of care that people receive. The HCRL recognized that and included critical notice protections to ensure people know their rights. This proposal is the latest effort by the Trump Administration to undermine the civil rights of underserved and marginalized communities, including those who are LEP. If finalized, many people will not know their rights and will be more likely to experience discrimination and barriers to care.



Would the proposed rule immediately change how the law is enforced?

No. At this point, nothing has changed. Since HHS cannot repeal the HCRL itself, individuals may still sue in court to enforce their rights.

Further, these proposed rules will not be effective until 60 days after a final rule is published and even then may not go into effect if challenged in court.

The proposed rule would end protections ensuring LEP persons know their rights by:

- **Eliminating notices of legal rights and in-language taglines.** Currently, all covered entities are required to post a “notice of nondiscrimination” on their websites, in conspicuous physical locations, and in significant publications. The notice describes the rights under the HCRL, how to get language assistance and where to file a complaint. Covered entities must also include in-language taglines on significant documents. The taglines must be in the top 15 languages spoken by individuals with LEP in the state or relevant states the entity operates in. Taglines are short statements that tell people, in their own language, that they have a right to language assistance for free and how to get help. The proposed rule would eliminate both requirements.
- **Discouraging language access plans.** Language access plans may be developed by covered entities to help determine what steps to take to support LEP individuals. They have been a part of language access protections for decades. OCR’s 2003 LEP Guidance recommended development of language access plans and Executive Order 13166 required that all federal agencies develop language access plans. While the 2016 HCRL rule did not require covered entities to develop language access plans, it said if an entity has a language access plan, OCR must consider it when evaluating compliance. The proposal to remove this consideration could discourage use of a planning device that helps entities better comply with the law.
- **Deeply limiting the number and types of health programs covered by the HCRL.** Current regulations apply to all of an entities’ activities if any part of the entity is subject to the HCRL. For example, an insurer that provides both marketplace and non-marketplace plans must follow HCRL for all of its plans. But the proposed rule would change that in two ways. First, it would only apply to the part of an entity that receives federal financial assistance, such as Affordable Care Act marketplace plans, if the entity is not “principally engaged in the business of providing health care.” Second, the rule would exempt much of the plans, products, and operations of most health insurance companies by stating that providing health insurance is not engaging in health care. It would also no longer apply to any federal administered health programs except the federal marketplace.



What else does the proposed rule change?

This proposal would not only would end protections for LEP people, but also directly targets transgender populations, women, and individuals with disabilities and chronic conditions. An attack on the civil rights of one group is an attack on the civil rights of all.

For more information on all the changes to the HCRL, see the National Health Law Program’s [Q&A: Proposed Rollback of Nondiscrimination Protections Under the ACA’s Section 1557.](#)

What can be done to protect the Health Care Rights Law?

- Individuals, organizations, and policy makers should comment in full opposition to the rule. Individuals should also share stories of their own or their families’ experiences of discrimination in health care.
- The administration cannot single handedly repeal the HCRL. Individuals can continue to assert their rights without fear of being denied care because of who they are and how they identify.