

FINAL HEALTHCARE RIGHTS LAW ROLLS BACK LANGUAGE ACCESS PROTECTIONS

Background

On June 12, 2020, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) released a [Final Rule](#) adopting a number of changes to the Health Care Rights Law (Section 1557 of the Affordable Care Act). The 2020 Final Rule radically reinterprets civil rights protections under the Health Care Rights Law 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 the 2020 Final Rule and its 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. The 2016 HCRL continued Title VI's protections, but also expanded the coverage to federally administered programs and many private insurance plans.

What does the 2020 final 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. The 2020 Final Rule, however, eliminates these notice protections and is part of the Trump administration's overall effort to undermine the civil rights of underserved and marginalized communities, including those who are LEP. As a result, millions of LEP persons, and the organizations that serve them, may not know their rights and may be more likely to experience discrimination and barriers to care.



Is the HCRL still the law and how will it be enforced?

Yes, the HCRL (Section 1557) is still the law. The Administration cannot repeal a law on its own. And while many of the Administration's changes proposed in the 2020 Final Rule take effect on August 18, 2020, they may not go into effect if challenged in court.

The 2020 Final Rule ends certain protections designed to ensure LEP persons know their rights by:

- **Eliminating notices of legal rights and in-language taglines.** Under the 2016 Final Rule, all covered entities were required to post a “notice of nondiscrimination” on their websites, in conspicuous physical locations, and in significant publications. The notice described the rights under the HCRL, how to get language assistance and where to file a complaint. Covered entities were also required to 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 2020 Final Rule eliminates 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 2020 Final Rule removes references to language access plans, which 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.** Under the 2016 HCRL, the HCRL applied 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 2020 Final Rule drastically changes this definition in several ways. First, it will 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 will 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. Third, the HCRL will no longer apply to other federal agencies or operations other than those administered under Title I of the ACA.



What else does the 2020 Final Rule change?

This Final Rule not only ends certain protections for LEP people, but also directly targets transgender populations, women, and individuals with disabilities and chronic conditions by eliminating critical protections. An attack on the civil rights of one group is an attack on the civil rights of all and as such, must be strongly opposed.

[For more information on all the changes to the HCRL, see the National Health Law Program’s Issue Brief.](#)

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

- Individuals, organizations, and policy makers should learn about their rights under the HCRL and inform their communities, including the continued right to language assistance.
- Individuals who believe they have experienced discrimination should file complaints with OCR and their state insurance commission.
- Some state laws may offer broader protections than those covered by the HCRL.