



**Interpretation and Translation Services
Under Section 1557 Of The Patient Protection
and Affordable Care Act (“ACA”)**

BACKGROUND ON SECTION 1557

Prohibitions

- Section 1557 prohibits discrimination on the basis of
 - Race,
 - Color,
 - National Origin,
 - Sex,
 - Age, OR
 - Disability

HISTORY OF SECTION 1557

- Section 1557 builds upon the pre-existing nondiscrimination regulatory regime.
- Section 1557 states that the enforcement mechanisms provided for and available under **Title VI of the Civil Rights Act, Title IX of the Education Amendments, Section 504 of the Rehabilitation Act, or the Age Discrimination Act** shall apply for purposes of addressing violations of Section 1557.
- Section 1557 is the new **civil rights** provision for healthcare.
- It is the first civil rights statute to **specifically address nondiscrimination** in the healthcare industry.
- It is the first civil rights statute to prohibit discrimination on the basis of sex/gender in healthcare.

WHAT DOES SECTION 1557 PROTECT?

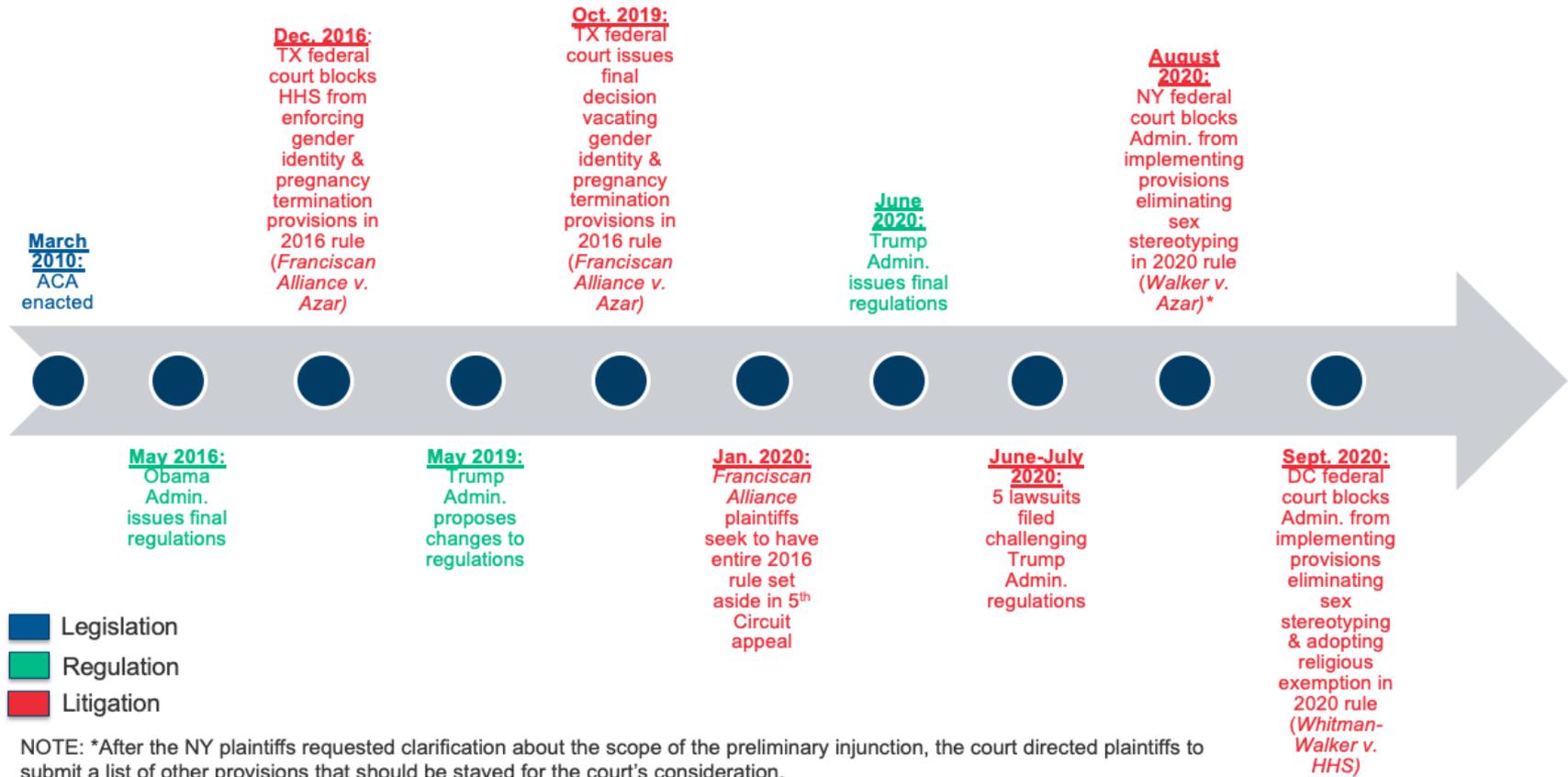
- An individual shall not, *on the basis of* **RACE, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY**
 - be **excluded** from participation in,
 - be **denied the benefits of**, OR
 - be **subjected to discrimination**.

EFFECTIVE DATE

- The final rule of Section 1557 became effective on July 18, 2016.
- The [New Final Rule](#) became effective on August 18, 2020 (with exceptions).

TIMELINE OF SECTION 1557

Key Dates in Section 1557 Implementation



KEY CHANGES TO LANGUAGE ACCESS

- **HHS reduced the standards governing access to language assistance services, including oral interpretation and written translation, for individuals with limited English proficiency (LEP).**
- Specifically, HHS replaced the requirement in the 2016 regulation for covered entities to take reasonable steps to provide meaningful access to “each individual with LEP eligible to be served or likely to be encountered” with a requirement to provide meaningful access to “limited English proficient individuals” generally. HHS notes that commenters expressed concerns that this change would weaken nondiscrimination requirements and result in some LEP individuals being unable to access health care; many commenters further indicated that lack of understanding in a medical setting could cause harm and possibly death to patients with LEP. In response, HHS indicated that the 2016 standard was a stringent requirement that could be interpreted to require an entity to provide language assistance services to every LEP individual with which it comes in contact. It says that by adopting this revised language, it is applying the same standard to both health and human service programs within the department and that it conforms to existing LEP guidance.

85 *Fed. Reg.* at 37210

KEY CHANGES TO LANGUAGE ACCESS

- **HHS also replaces the test to determine when covered entities must provide language access services with one that removes the emphasis on the importance of the communication to the specific individual.**
- Under the 2016 regulation, the test to determine whether an entity was compliant with requirements to provide meaningful access to LEP individuals OCR gave “substantial weight” to the nature and importance of the health program or activity and the communication at issue to the specific individual. Under the final rule, HHS applies a different test that balances a variety of factors to determine when language assistance services are required, including the **overall number of LEP individuals eligible to be served or likely to be encountered, the frequency with which any LEP individuals come into contact with the covered program or activity, and the costs involved**. HHS also eliminates the provision that allows HHS to consider whether the covered entity has an effective written language access plan when assessing compliance with requirements to provide meaningful access. In addition, HHS **eliminates remote video interpreting standards and instead includes standards only for remote audio interpreting services**. Some commenters expressed concerns that the revised test to assess compliance with providing meaningful access to LEP individuals places too much of an emphasis on costs and is too broad, lacks clarity, and does not ensure that translation and other language services are available under important medical circumstances. In response, HHS notes that the revised test is consistent with existing LEP guidance and intended to strike a balance between ensuring access by LEP individuals while not imposing undue burdens on small businesses, small local governments, or small nonprofits.

85 Fed. Reg. at 37210

KEY CHANGES TO LANGUAGE ACCESS

- **HHS eliminated requirements that non-discrimination notices include the availability of language assistance services and taglines in the top 15 languages spoken by LEP individuals in the state.**
- Some commenters stated that the removal of the notice and tagline provisions would result in LEP individuals having less knowledge of available language assistance and would be more likely to rely on informal sources of assistance through family members. HHS responded that the rule maintains the requirement that covered entities provide a notice of discrimination and taglines whenever necessary to ensure meaningful access, and that it is only removing the requirement that all significant communications contain taglines. It also says that this requirement caused significant unanticipated expenses and indicates it has determined that the financial burden on covered entities was not justified by the protections or benefits it provided to LEP individuals.

85 *Fed. Reg.* 37176

APPLICATION TO IRB

- Under the 2016 Rule, health programs or activities were broadly defined to include the provision of health-related services or insurance coverage and the provision of assistance in securing services or coverage for covered entities receiving federal funding.
- **The 2019 final rule narrows the scope of the regulations to cover only the specific programs and activities that receive federal funding, and not all operations, of health insurers that are not principally engaged in the business of providing health care.**
- The final rule continues to apply to health care providers, such as physicians' practices, hospitals, nursing homes that receive federal funds such as Medicare or Medicaid payments and health-related education and research programs.
- Federally funded medical research is subject to the antidiscrimination prohibition, but the preface recognizes that nondiscriminatory research protocols may exclude certain populations because of the nature of the research.

DISCRIMINATION AGAINST PERSONS WITH LIMITED ENGLISH PROFICIENCY (“LEP”)

- An individual with LEP is an individual whose **PRIMARY language for communication is not English** and who has limited ability to read, speak, write, or understand English (even if he or she has some capacity to do so).
- Twenty-five million individuals in the United States, 8.5 percent of the population, have LEP.
- Failing to take reasonable steps to provide meaningful access to language assistance services is **a form of national origin discrimination** (which is defined in the rule to include not just an individual’s place of origin but also his or her ancestor’s place of origin, as well as manifestation of the physical, cultural, or linguistic characteristics of a national origin group).

LANGUAGE ASSISTANCE

- LEP individuals cannot be required to provide their own interpreters.
 - Language assistance services must be provided in a timely manner.
 - Qualified translators and interpreters must be used.
 - Staff may not be relied upon to interpret unless they are “qualified bilingual/multilingual staff.”
 - Covered entities may not rely on friends or family of individuals for interpretation.
 - Friends and family members may not be competent interpreters and often may not be privy to sensitive information.
- EXCEPTION: Section 1557 makes exceptions for the use of friends family members as interpreters of adult friends or family in emergency situations.

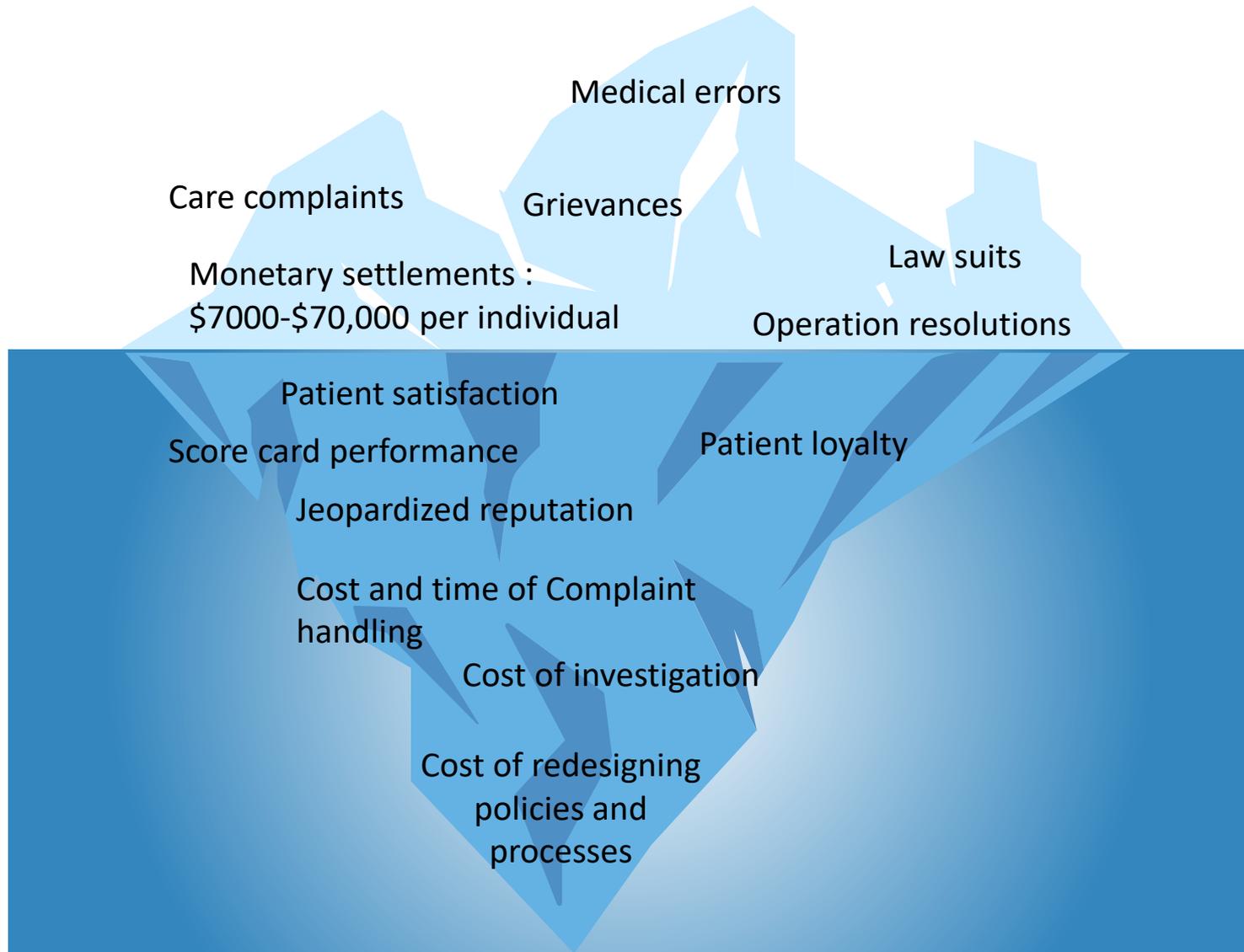
QUALIFIED BILINGUAL/MULTILINGUAL STAFF

- An employee who has been **designated** to provide oral language assistance as part of their current, assigned job responsibilities and who has **demonstrated** to Emory that he or she:
 - 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
 - is able to effectively, accurately, and impartially communicate directly with individuals with limited English proficiency in their primary languages.

QUALIFIED TRANSLATOR

- Adheres to generally accepted translator ethics principles, including **client confidentiality**;
- has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and
- is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

NON-COMPLIANCE RISKS



DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

- Section 1557 requires effective communications with individuals with disabilities, incorporating longstanding Department of Justice interpretations of the requirements of federal law.
- The rule incorporates standards under Title II of the Americans with Disabilities Act, which apply to state and local government, rather than the lower standards of Title III, which govern public accommodations.

AUXILIARY AIDS

- Auxiliary aids and services to individuals with impaired sensory, manual, or speaking skills must be provided.

VIDEO REMOTE INTERPRETING SERVICES

- (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.**

EMORY HEALTHCARE'S GRIEVANCE PROCEDURE

- Emory Healthcare has adopted an internal grievance procedure for all facilities and clinics providing for prompt and equitable resolution of complaints alleging any action prohibited by Section 1557. Any person who believes s/he has been subjected to discrimination on the basis of race, color, national origin, sex, gender identity, age or disability may file a grievance. It is against the law for any Emory Healthcare facility, clinic or program to retaliate against anyone who files a grievance or cooperates in the investigation of a grievance.

EMORY HEALTHCARE'S GRIEVANCE PROCEDURE

- Grievances must be submitted to the Patient Advocate for the facility where the issue occurred within 30 days of the date the person filing the grievance becomes aware of the alleged discriminatory action. The Patient Advocate shall contact the Director of 1557 Compliance.

ADDITIONAL INFORMATION

For more information:

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Nondiscrimination in Health Care Services and Activities

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