

238n), the Church Amendments (42 U.S.C. 300a-7), the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), Section 1553 of the Patient Protection and Affordable Care Act (42 U.S.C. 18113), Section 1303 of the Patient Protection and Affordable Care Act (42 U.S.C. 18023), the Weldon Amendment (Consolidated Appropriations Act, 2019, Pub. L. 115-245, Div. B sec. 209 and sec. 506(d) (Sept. 28, 2018)), or any related, successor, or similar Federal laws or regulations, such application shall not be imposed or required.

Subpart B—Specific Applications to Health Programs or Activities

§ 92.101 Meaningful access for individuals with limited English proficiency.

(a) Any entity operating or administering a health program or activity subject to this part shall take reasonable steps to ensure meaningful access to such programs or activities by limited English proficient individuals.

(b) *Specific applications*—(1) *Enforcement discretion*. In evaluating whether any entity to which paragraph (a) of this section applies has complied with paragraph (a) of this section, the Director of the Department's Office for Civil Rights may assess how such entity balances the following four factors:

(i) The number or proportion of limited English proficient individuals eligible to be served or likely to be encountered in the eligible service population;

(ii) The frequency with which LEP individuals come in contact with the entity's health program, activity, or service;

(iii) The nature and importance of the entity's health program, activity, or service; and

(iv) The resources available to the entity and costs.

(2) *Language assistance services requirements*. Where paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, requires the provision of language assistance services, such services must be provided free of charge, be accurate and timely, and protect the privacy

and independence of the individual with limited English proficiency. Language assistance services may include:

(i) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with limited English proficiency, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with limited English proficiency; and

(ii) Written translation, performed by a qualified translator, of written content in paper or electronic form into languages other than English.

(3) *Specific requirements for interpreter and translation services*. (i) Where paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, requires the provision of interpreter services, they must be provided by an interpreter who:

(A) Adheres to generally accepted interpreter ethics principles, including client confidentiality;

(B) Has demonstrated proficiency in speaking and understanding at least spoken English and the spoken language in need of interpretation; and

(C) Is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

(ii) Where paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, requires the provision of translation services for written content (in paper or electronic form), they must be provided by a translator who:

(A) Adheres to generally accepted translator ethics principles, including client confidentiality;

(B) Has demonstrated proficiency in writing and understanding at least written English and the written language in need of translation; and

(C) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

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(iii) If remote audio interpreting services are required to comply with paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, the entity to which section 1557 applies (as defined in § 92.3 of this part) shall provide:

(A) Real-time, audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality audio without lags or irregular pauses in communication;

(B) A clear, audible transmission of voices; and

(C) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the remote interpreting services.

(4) *Restricted use of certain persons to interpret or facilitate communication.* If an entity is required by paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, to provide interpretation services, such entity shall not:

(i) Require an individual with limited English proficiency to provide his or her own interpreter;

(ii) Rely on an adult accompanying an individual with limited English proficiency to interpret or facilitate communication, except

(A) In an emergency involving an imminent threat to the safety or welfare of an individual or the public, where there is no qualified interpreter for the individual with limited English proficiency immediately available; or

(B) Where the individual with limited English proficiency specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances;

(iii) Rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public, where there is no qualified interpreter for the individual with limited English proficiency immediately available; or

(iv) Rely on staff other than qualified bilingual/multilingual staff to commu-

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nicate directly with individuals with limited English proficiency.

(c) *Acceptance of language assistance services is not required.* Nothing in this section shall be construed to require an individual with limited English proficiency to accept language assistance services.

§ 92.102 Effective communication for individuals with disabilities.

(a) Any entity operating or administering a program or activity under this part shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in such programs or activities, in accordance with the standards found at 28 CFR 35.160 through 35.164. Where the regulatory provisions referenced in this section use the term "public entity," the term "entity" shall apply in its place.

(b) A recipient or State Exchange shall provide appropriate auxiliary aids and services, including interpreters and information in alternate formats, to individuals with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(1) Auxiliary aids and services include:

(i) Interpreters on-site or through video remote interpreting (VRI) services, as defined in 28 CFR 35.104 and 36.303(f); note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing; and