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Providers Must Post New Nondiscrimination Notices

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Under the new ACA Nondiscrimination Rules, covered entities (including most healthcare providers) must post and publish new mandatory nondiscrimination statements and taglines by **October 16, 2016**.

1. Notice of Nondiscrimination + Taglines: Facility, Website, and Significant Publications. The new mandatory "Notice of Nondiscrimination" must inform persons that:

1. the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities;
2. the covered entity provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;
3. the covered entity provides language assistance services, including translated documents and oral interpretation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency;
4. how to obtain the aids and services described above;
5. if the covered entity has fifteen or more employees, identification of, and contact information for, the employee responsible for coordinating the covered entity's compliance as required by the regulations;
6. if the covered entity has fifteen or more employees, the availability of the grievance procedure required by the regulations and how to file a grievance; and
7. how to file a discrimination complaint with the Office for Civil Rights ("OCR").

(45 C.F.R. § 92.8(a) and (b)(1)). HHS has published a sample Notice of Nondiscrimination, which is available [here](#). Although HHS encourages entities to post the Notice of Nondiscrimination in languages other than English, covered entities are not required to do so.

In addition, covered entities must post a short statement ("tagline") written in at least the top 15 languages spoken by individuals with limited English proficiency in the relevant state informing persons that language assistance services are available free of charge. (45 C.F.R. § 92.4 and 92.8(d)(1)). HHS's sample tagline states, "ATTENTION: If you speak

[insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx). HHS has published a sample tagline in numerous languages on its website, which may be accessed here.

The required notice and taglines must be posted in a conspicuously-visible font size in the following locations:

1. in conspicuous physical locations where the entity interacts with the public;
2. in a conspicuous location on the covered entity's website accessible from the home page of the covered entity's website; and
3. in significant publications and significant communications targeted to beneficiaries, enrollees, applicants, and members of the public, except for small-sized publications described below. (42 C.F.R. § 92.8(f)). The OCR warns that it will interpret "significant" communications and publications broadly: they would likely include outreach, education, and marketing materials; patient handbooks; notices requiring a response from individuals; and written notices such as those pertaining to rights or benefits. They would also likely include those communications that were considered "vital documents" under HHS's 2003 LEP Guidance, *e.g.*, consent and complaint forms, written notices of eligibility criteria, rights, denial, loss or decreases in benefits or services; applications to participate in services or programs; *etc.* (81 F.R. 31401-31402).

Covered entities have discretion in determining the exact size, location, and manner in which they post the notice and taglines so long as they satisfy the regulatory standards. For example, they may be combined with other notices if the combined notice clearly informs individuals of their civil rights per the regulations. They may be included at the beginning of significant documents, or as a separate insert or on a webpage. Ultimately, the test will be "whether the content is sufficiently conspicuous and visible that individuals seeking services ... could reasonably be expected to see and be able to read the information." (81 F.R. 31397-31401).

2. Statement of Nondiscrimination + Taglines: Small Publications. For significant publications and communications that are small-sized (*e.g.*, postcards, pamphlets and tri-fold brochures), the covered entity must post in a conspicuously-visible font size the following:

1. A "Statement of Nondiscrimination" informing persons that the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities; and
2. Taglines in at least the top two languages spoken by individuals with limited English proficiency in the relevant state, presumably Spanish and one other non-English language.

(45 C.F.R. § 92.8(b)(2), (d)(2), and (g); 81 F.R. 31399). As with larger publications, the required statement and taglines may be provided in or

with the communication. HHS has published a sample Statement of Nondiscrimination and tagline, which is available [here](#).

Action Items. Covered entities should begin now to prepare the required notice, statement and taglines. Among other things, they should identify "significant" publications and communications that will need to be revised to include, or be accompanied by, the required notice or statement and taglines. In addition, covered entities should work with local industry associations to identify those languages in which taglines must be provided, and either use HHS's sample or prepare their own version of the tagline. Finally, covered entities should remember that the notices, statements and taglines alone do not satisfy the covered entity's other obligations to make services available to persons with limited English proficiency or disabilities; accordingly, covered entities should review their policies and practices to ensure they comply with applicable nondiscrimination laws and regulations, and train their personnel accordingly. Failure to do so may subject the entity to administrative fines and civil liability. (45 C.F.R. § 92.6 and 92.301(b); 81 F.R. 31440).

Holland and Hart has published a series of client alerts discussing the Nondiscrimination Rules in more detail. These alerts along with our webinar on the new rules may be accessed [here](#).

For questions regarding this update, please contact:

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