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# Nondiscrimination



Robert Low  
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# Written Materials



- Copies of the .ppt presentation.
- ACA Nondiscrimination Rules, 45 CFR part 92
- 2003 Limited English Proficiency (LEP) Guidance
- DOJ Guide for Service Animals
- DOJ Guide Communicating with Deaf People in Hospital
- Client Alerts available at <https://www.hollandhart.com/healthcare>
  - Assistance for Persons with Disabilities
  - Language Assistance for Non-English Speakers
  - Providers Must Post New Nondiscrimination Notices

# Overview



- Nondiscrimination Statutes
- ACA Nondiscrimination Rules
  - Application
  - Notice and Taglines
  - Persons with Limited English Proficiency
  - Persons with Disabilities
  - Enforcement
- Service Animals
- Action items

# Overview

- We will focus on the ACA Nondiscrimination Rules (45 CFR Part 92 – which implement the anti-discrimination provisions of the ACA §1557) as they apply to healthcare providers, not necessarily health plans.
- Other discrimination laws still apply, e.g.,

Apply to Specific Situations

- **Federal**

- Titles VI and VII, Civil Rights Act of 1964, 42 USC 2000d, 45 CFR 80.3
- Title IX, Education Amendments of 1972, 20 USC 1681
- Section 504, Rehabilitation Act of 1973, 29 USC 701; 45 CFR 84.3
- Age Discrimination Act of 1975, 42 USC 6101
- Americans with Disabilities Act of 1990, Title III, 42 USC 12101
- Executive Order 13166 (8/00) and HHS Guidance re Persons with Limited English Proficiency (8/03)

- **State discrimination statutes**

- Idaho Human Rights Act (IC 67-5901)



## Affordable Care Act § 1557

- “[A]n 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 under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under [the Affordable Care Act].”

(42 USC 18116)

# ACA Nondiscrimination Rules



- Prohibits discrimination on the basis of race, color, national origin, sex\*, age, or disability.
  - Does not preempt or replace other discrimination laws.
  - Does not include religious exemption, but does not replace other Federal and State protections for religious freedom or conscience, e.g., Religious Freedom Restoration Act.

\* “Sex” includes gender identity - Requires providers to treat persons consistent with their gender identity (45 CFR part 92).

- On 12/31/16, federal judge issued nationwide preliminary injunction against enforcement of (i) transgender provisions, and (ii) termination of pregnancy.  
*(Franciscan Alliance, Inc. et al v. Burwell)*
  - Trump administration in a May 2, 2017 filing in the case asked that the case be remanded back to HHS because the department was considering altering the language.
  - **STAY TUNED**



# Covered Entities

- Nondiscrimination Rules apply to:
  - Any entity that receives federal financial assistance from HHS, including:
    - Medicare Parts A, C and D; Medicaid; grants; loans; subsidies; etc.
    - Not Medicare Part B (e.g. DME, ambulance service, research)
    - ❖ Applies to hospitals, nursing facilities, clinics, medical practices, individual physicians, etc.
  - Any health program that HHS administers.
  - Health insurance marketplaces and issuers that participate in the marketplaces.

(45 CFR 92.2; 81 FR 31383-84)



# Requirements



1. Applicants sign HHS assurance form promising to comply.
2. Covered entities with 15 or more employees:
  - a. **Appoint compliance coordinator.**
  - b. **Establish grievance procedure.**
3. Post notice of nondiscrimination.
4. Include taglines and statements on significant documents.
5. Do not discriminate on basis of race, color, national origin, sex, age, or disability.
  - a. **Treat men and women equally in healthcare they receive, and treat individuals consistent with their gender identity.**
  - b. **Provide language assistance (e.g., interpreters and translations) to persons with limited English proficiency.**
  - c. **Provide auxiliary aids to those with disabilities.**
  - d. **Make newly constructed or altered facilities accessible to those with disabilities.**

**(45 CFR part 92)**

# IMPORTANT NOTICE

## Notice Requirements

Notice Type	Content	Publication
Notice of Nondiscrimination	<ul style="list-style-type: none"><li>• Seven elements in English</li><li>• Taglines in top 15 languages</li></ul>	<ul style="list-style-type: none"><li>• Public locations</li><li>• Website</li><li>• Significant publications or communications</li></ul>
Statement of Nondiscrimination	<ul style="list-style-type: none"><li>• Short statement in English</li><li>• Taglines in top 2 languages</li></ul>	<ul style="list-style-type: none"><li>• Small-sized publications (e.g., postcards, pamphlets, tri-fold brochures)</li></ul>



# Notice of Nondiscrimination

❖ All covered entities must post notice stating:

1. Covered entity does not discriminate based on race, color, national origin, sex, age, or disability.
2. Covered entity provides auxiliary aids to persons with disabilities free of charge and in timely manner.
3. Covered entity provides language assistance (e.g., interpreters and translations) free of charge and in timely manner.
4. How to obtain aids and services.
5. Contact info for compliance coordinator.
6. How to file grievance.
7. How to file complaint with Office for Civil Rights (OCR).

(45 CFR 92.8)

- Sample Notice available at 45 CFR part 92, App. A (81 FR 31472), or <http://www.hhs.gov/sites/default/files/Sample%20CE%20Notice%20-%20English%20%28508%29.pdf>.

# Notice of Nondiscrimination

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- Only required to post the notice of nondiscrimination in English.
- HHS “encourages covered entities to post the notice of nondiscrimination in one or more of the most prevalent non-English languages frequently encountered by covered entities in their geographic service area.”

(81 FR 31398)

- Must still comply with language assistance rules for LEP persons.
- Must still post taglines in top 15 non-English languages.

(45 CFR 92.8)

# Statement of Nondiscrimination

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- All covered entities must publish short statement in small-sized publications affirming nondiscrimination:
  - E.g., “[Covered entity] does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities.”
  - Must still comply with language assistance rules for LEP persons.
- Written in English.
- Must be accompanied by Taglines in top 2 non-English languages.

(45 CFR 92.8)

# Taglines

- All covered entities must post “taglines”, *i.e.*, short statements written in non-English informing person that language assistance services are available free of charge.
    - E.g.: *“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).”*
  - Post in languages spoken by LEP persons in relevant state or states:
    - Top 15 languages: post in--
      - Physical locations where interact with public
      - Website
      - Significant communications and publications .
    - Top 2 languages: post in small-sized publications.
- (45 CFR 92.8(d), (f), and (g))

# Taglines

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- Based on 15 or 2 most prevalent languages in:
  - Relevant state, or
  - For entities operating in more than one state, in the relevant states.
    - Need only post one set of taglines.
    - Not required to have taglines which vary based on state.
- Must still take reasonable steps to provide meaningful access to LEP persons.

# Top 15 Non-English Languages in Idaho

- OCR has published its own list at [www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/top15-languages/index.html](http://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/top15-languages/index.html)

1	ID	Spanish .....	47,041
2	ID	Chinese .....	1,798
3	ID	Serbo-Croatian* .....	815
4	ID	Korean .....	767
5	ID	Nepali* .....	715
6	ID	Vietnamese .....	630
7	ID	Arabic .....	628
8	ID	German .....	588
9	ID	Tagalog .....	562
10	ID	Russian .....	481
11	ID	French .....	449
12	ID	Japanese .....	395
13	ID	Romanian* .....	315
14	ID	Bantu* .....	305
15	ID	Persian (Farsi) .....	296



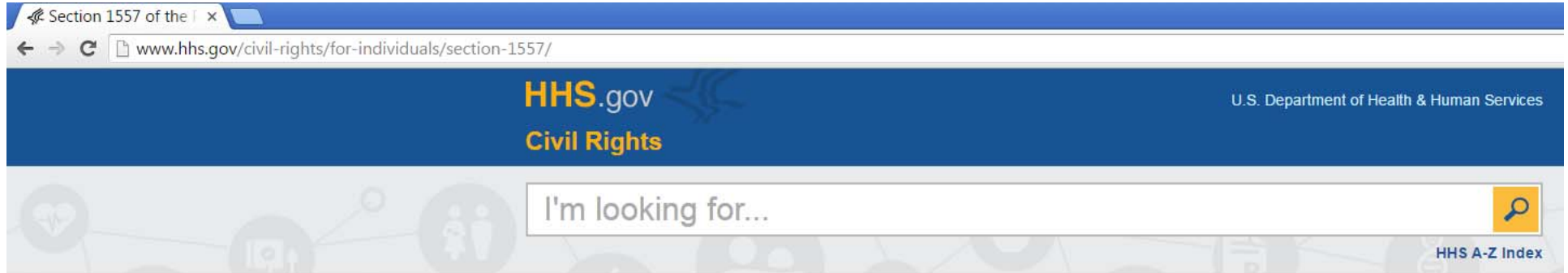


# Languages of HHS Samples

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(available at <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>)

<http://www.hhs.gov/civil-rights/for-individuals/section-1557/>



## Includes:

- Sample notices
- Translated documents
- Factsheets
- FAQs
- Training materials

[Information for Individuals](#) | [Filing a Complaint](#) | [Information for Providers](#) | [Newsroom](#)

[HHS Home](#) > [Civil Rights](#) > [For Individuals](#) > Section 1557 of the Patient Protection & Affordable Care Act

Civil Rights for Individuals and Advocates

- [Race, Color, National Origin](#)
- [Disability](#)
- [Age Discrimination](#)
- [Sex Discrimination](#)
- [Religion](#)
- [Section 1557](#)
- [Hill-Burton](#)
- [Health Care Conscience Protection](#)
- [Section 1553](#)
- [Special Topics](#)
- [Civil Rights FAQs](#)
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## Section 1557 of the Patient Protection and Affordable Care Act

Section 1557 is the nondiscrimination provision of the Affordable Care Act (ACA). The law prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. Section 1557 builds on long-standing and familiar Federal civil rights laws: Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975. Section 1557 extends nondiscrimination protections to individuals participating in:

- Any health program or activity any part of which received funding from HHS
- Any health program or activity that HHS itself administers
- Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces.

Section 1557 has been in effect since its enactment in 2010 and the HHS Office for Civil Rights has been enforcing the provision since it was enacted. If you believe you have been discriminated against on one of the bases protected by Section 1557, [you may file a complaint](#) with OCR.

### Issuance of the Final Rule

On May 13, 2016, the HHS Office for Civil Rights issued the final rule implementing of Section 1557

# Posting Notice + Taglines

- All covered entities must post notice + taglines in top 15 languages in conspicuously-visible font size:
  1. In conspicuous physical locations where interact with public.
  2. On covered entity's Website conspicuously accessible from homepage.
    - May use prominent in-language links from homepage.
  3. In "significant" publications and communications to public and patients.
    - "Significant" interpreted broadly.
    - Includes outreach, education and marketing; patient handbooks; notices requiring response from patient; written notices re rights and benefits; consent forms; complaint forms; etc.
    - Not small-sized publications, e.g., postcards, pamphlets, tri-folds.

"Vital"  
documents  
under LEP  
Guidance are  
subset of  
"significant"  
publications

(45 CFR 92.8; 81 FR 31401-02)

# Posting Notice + Taglines

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- Covered entities have discretion in how they post notice + taglines so long as satisfy regulatory standards, e.g.,
  - May combine with other notices.
  - May include at beginning of significant documents.
  - May include as separate insert.
  - May include on separate webpage.
- **Test: “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 FR 31397)

# Small-Sized Publications

- Must include the following in significant publications and communications that are small-sized (e.g., postcards, tri-fold brochures, etc.) in conspicuously-visible font size:
  - **Statement of nondiscrimination.**
    - *“ [Covered entity] does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities.”*
  - **Taglines in top 2 languages spoken by LEP persons in relevant state(s).**
    - *“ 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). ”*

(45 CFR 92.8(b)(2) and (g))

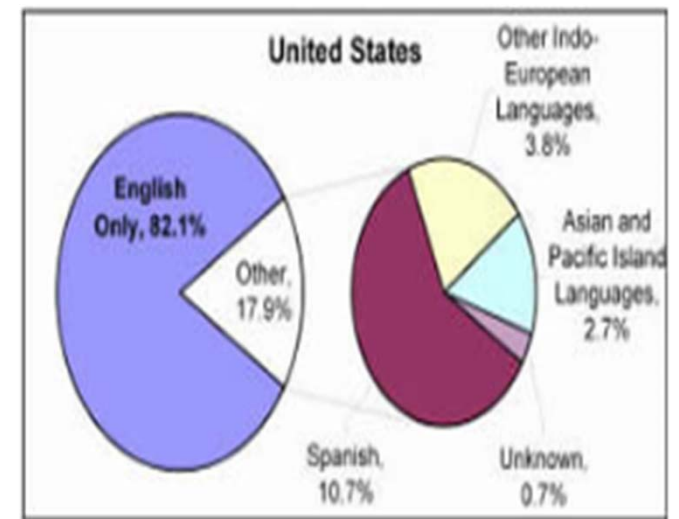
# Persons with Limited English Proficiency

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# Persons with Limited English Proficiency

- The rules require free, accurate and timely language assistance for persons with limited English proficiency.
- “Accurate and timely” determined on a case-by-case basis per OCR commentary (81 F.R. 31416)
- These rules build on but extend beyond HHS's 2003 Guidance Regarding Limited English Proficiency Persons (68 F.R. 47311).



# Persons with Limited English Proficiency

## Interpreters

- Covered entities must offer a qualified interpreter to an individual with limited English proficiency when oral interpretation is a **reasonable step to provide meaningful access**. (45 C.F.R. § 92.201(d)(1)).
  - A "qualified interpreter" generally means one who, via a remote interpreting service or in person:
    1. Adheres to generally accepted interpreter ethics principals, including client confidentiality; and
    2. Has demonstrated proficiency in speaking and understanding both spoken English and the relevant spoken language; and
    3. 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. (45 C.F.R. § 92.4).
- The interpreter need not be licensed under state law, but must have the relevant proficiency. Simply having above average familiarity with speaking or understanding the relevant foreign language does not necessarily qualify him/her as an interpreter. (81 F.R. 31391).



# Persons with Limited English Proficiency Interpreters (cont.)

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- “Reasonable steps to provide meaningful access”
  - OCR interprets this requirement to mean a covered entity must, “as an initial step, assess the need to provide language assistance services to each individual with limited English proficiency and respond to that need by providing the appropriate language assistance services on a timely basis.”
  - (81 F.R. 31413)

# Persons with Limited English Proficiency

## Interpreters (cont.)

- A covered entity that provides a qualified interpreter through video remote interpreting services must 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. (45 C.F.R. § 92.201(f))

# Persons with Limited English Proficiency

## Interpreters (cont.)

- In providing an interpreter, a covered entity may not:
  1. Require an individual with limited English proficiency to provide his or her own interpreter;
  2. Rely on an adult accompanying the 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;
  3. 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

# Persons with Limited English Proficiency

## Interpreters (cont.)

4. Rely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with limited English proficiency. (45 C.F.R. § 92.92.201(e)).

– “Qualified bilingual/multilingual staff” means:

A member of a covered entity's work force who is designated by the covered entity to provide oral language assistance as part of the individual's current, assigned job responsibilities and who has demonstrated to the covered entity that he or she:

1. 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
2. Is able to effectively, accurately, and impartially communicate directly with individuals with limited English proficiency in their primary languages.

(45 C.F.R. § 92.4).

# Persons with Limited English Proficiency

## Translators

- Covered entities must use a qualified translator when translating written content in paper or electronic form. (45 C.F.R. § 92.201(d)(2)).
- A "qualified translator" is one who:
  1. Adheres to generally accepted translator ethics principles, including client confidentiality;
  2. Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language; and
  3. Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology. (45 C.F.R § 92.4).
- A qualified interpreter may not necessarily qualify as a translator. (81 F.R. 31392).
- HHS cautions against the use of automatic translation technologies without the involvement of a qualified translator. (81 F.R. 31417).
- The regulations and accompanying commentary provide little guidance on when and which documents should be translated.

# Persons with Limited English Proficiency

## Translations: Vital Documents

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- HHS 2003 LEP Guidance provides clarification and examples of “Vital Documents”:
  - “Vital” documents = translation vital to services and important consequences if translation is not accurate and timely.
    - Consent forms.
    - Complaint forms.
    - Intake forms with health consequences.
    - Notices of patient rights, *e.g.*, HIPAA, COPs, etc.
    - Notices of eligibility criteria.
    - Notice of free LEP services and how to obtain services.
- (68 F.R. 47319)

# Persons With Limited English Proficiency

## Translations: Non-Vital Documents

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- “Non-vital” documents = translation not vital to services.
  - General information
  - Patient satisfaction survey
  - Menus
  - Large documents, *e.g.*, enrollment handbook  
(68 F.R. 47319)

# Persons With Limited English Proficiency

## Translations: Safe Harbors

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- Safe harbor = “strong evidence” of reasonable compliance.
  - Written translation of vital documents for LEP groups that constitute 5% of service population or 1,000, whichever is less; oral translation of other documents.
  - If fewer than 50 persons in LEP group that reaches 5%, may provide written notice of right to receive oral translation.
- Problem: translations may cost \$.15-\$.25/word, or \$150/page.
- (68 F.R. 47319)



# Persons With Limited English Proficiency

## Translations: Some Options

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- Standardize and share translated documents.
  - **Ensure the translation is appropriate to your practice.**
- Some translated documents may be found on government websites.
  - **Ensure the translation is appropriate to your practice.**
- Consider oral interpretation of some documents.
- Use qualified community volunteers.
- Others?

# Persons with Disabilities



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# ACA Nondiscrimination: Assistance for Persons with Disabilities

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- “[A]n 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 under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under [the Affordable Care Act].”

(42 USC 18116)

# ACA Rules' Definition of "Disability"

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- “Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment, as defined and constructed in the Rehabilitation Act, 29 U.S.C. 705(9)(B), which incorporates the definition of disability in the ADA, 42 U.S.C. 12102, as amended. Where this part cross-references regulatory provisions that use the term ‘handicap,’ ‘handicap’ means ‘disability’ as defined in this section.”

(45 CFR 92.4)

# ACA Rules' Definition of "Disability"

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- Same except it defines “major life activities” – “major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.”
- Further, “a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.”

(42 USC 12102)

# ACA's Definition of Disability

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- Definition shall be construed in favor of broad coverage, to the maximum extent permitted.
- Only one major life activity need be limited.
- An impairment that is episodic or in remission is still a disability if it would substantially limit a major life activity when active.
- Determination made without regard to ameliorative effects of mitigating measures (except eyeglasses and contact lenses).

(42 USC 12102(4))

# ACA Rules: What Must a Covered Entity Do?

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- “Take appropriate steps to ensure that communications with individuals with disabilities are as effective as communication with others in health programs and activities, in accordance with the standards found at 28 CFR 35.160 through 35.164. Where the regulator provisions referenced in this section use the term ‘public entity,’ the term ‘covered entity’ shall apply in its place.”

(45 CFR 92.202(a))

# ACA Rules: What Must a Covered Entity Do?

- Provide “appropriate auxiliary aids and services to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.”

(45 CFR 92.202(b))

- Post a notice of individuals' rights, stating that 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.

(45 CFR 92.8(a)(2))



# Standards in 28 CFR 35.160-.164

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- A covered entity shall take appropriate steps to ensure communications with patients with disabilities or companions with disabilities.
- “Companion means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a [covered entity], who, along with such individual, is an appropriate person with whom the [covered entity] should communicate.”

(28 CFR 35.160(a))

# Standards in 28 CFR 35.160-.164

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- A covered entity “shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities . . . an equal opportunity to participate in” health care.
  - The type of aid or service “will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.”
  - Covered entity “shall give primary consideration to the requests of the individuals with disabilities.”
  - To be effective, must be in accessible format, timely and protect privacy and independence.

(28 CFR 35.160(b))

# Auxiliary Aids

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- DOJ has suggested that interpreters may be required when complex information is being conveyed, e.g.,
  - symptoms, medical condition, and history
  - treatment options and tests
  - medications and surgical procedures
  - obtaining informed consent
  - offering diagnosis, prognosis
  - recommendations for treatment and instructions
  - psychotherapy counseling
  - complex billing or insurance matters.

(DOJ, *ADA Business Brief: Communicating with People Who Are Deaf in Hospital Settings* (10/03))

# What Are Auxiliary Aids and Services?

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- For deaf or hard of hearing:
  - “Qualified interpreters on-site or through video remote interpreting services . . .; 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 telecommunications products and systems, text telephones, videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing.”

(45 CFR 92.4)

# What Are Auxiliary Aids and Services?

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- For blind or low vision:
  - “Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.”

(45 CFR 92.4)

# What Are Auxiliary Aids and Services?

- A "qualified interpreter" for an individual with a disability is one who, via a remote interpreting service or in person,
  - (1) Adheres to generally accepted interpreter ethics principles, including client confidentiality; (2) is able to interpret effectively, accurately, and impartially, both receptively and expressly, using any necessary specialized vocabulary, terminology and phraseology.
  - E.g., sign language interpreters, individuals who represent or spell in the characters of another alphabet, and individuals who represent or spell by using a small number of handshapes.

(45 CFR 92.4)

- The interpreter need not be licensed as an interpreter under state law, but must have the relevant proficiency.

(81 FR 31391).

# Auxiliary Aids: Factors to Consider

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- Effectiveness of method of communication without and with the proposed auxiliary aid.
- Nature and complexity of communication.
- Nature of treatment or procedure.
- Size of practice or facility.
- Cost of alternatives.
- Number of patients who will require auxiliary aids.
- Patient's preferences.
- Provider's risk tolerance.
- Other?

# Standards in 28 CFR 35.160-.164

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- The covered entity shall not require an individual with a disability to bring another individual to interpret for him or her.
- The covered entity shall not rely on an adult accompanying an individual with a disability to 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 interpreter available”; or (b) “Where the individual with a disability 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.”

(28 CFR 35.160(c))



# Standards in 28 CFR 35.160-.164

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- The covered entity “shall not 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 interpreter available.”

(28 CFR 35.160(c)(3))

# Standards in 28 CFR 35.160-.164

- A covered entity using qualified interpreters via video remote interpreting (VRI) services shall ensure that it provides
  - 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;
  - A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
  - A clear, audible transmission of voices; and
  - Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

(28 CFR 35.160(d))

# Standards in 28 CFR 35.160-.164

- If a covered entity communicates with patients by telephone, “text telephones (TTY) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.”
- If a covered entity uses an automated-attendant system, such as voicemail and messaging or an interactive voice response system, “the system must provide effective real-time communication with individuals using auxiliary aids and services, including TTY and all forms of FCC-approved telecommunications relay systems, including Internet-based relay systems.”
- A covered entity “shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.”

(28 CFR 35.161)

# Standards in 28 CFR 35.160-.164

- A covered entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.
- A covered entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities.
- The international symbol for accessibility shall be used at each accessible entrance of a facility.

(28 CFR 35.163)



# Standards in 28 CFR 35.160-.164

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- Entity not required to take any action that “it can demonstrate would result in a fundamental alternation in the nature of a service, program, or activity or in undue financial or administrative burdens.”
- Entity has the burden of proving that compliance would result in such alterations or burdens.
- If an action required would result in such alteration or such burden, covered entity “shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, the maximum extent possible, individuals with disabilities receive the benefits or services provided.”

(28 CFR 35.164)

# ACA Rules' Facility Accessibility Standards

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- Applies to facility or part of facility in which health programs or activities are conducted.
- If construction or alteration is commenced on or after July 18, 2016:
  - Must ensure that buildings and facilities are compliant with the 2010 Americans with Disabilities Act Standards for Accessible Design, 28 CFR 35.104, which consists of the 2004 Americans with Disabilities Act Accessibility Guidelines and the requirements contained in 28 CFR 35.151;
  - Must comply with the requirements for a “public building or facility” as defined in Section 106.5 of the 2010 Standards.

(45 CFR 92.203(a))

# ACA Rules' Facility Accessibility Standards

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- Exception – if facility was not covered by 2010 Standards prior to July 18, 2016, facility shall comply with 2010 Standards if construction commenced after Jan. 18, 2018.
- “Departures from particular technical and scoping requirements by the use of other methods are permitted where substantially equivalent or greater access to and usability of the facility is provided.”

(45 CFR 92.203(a))

# ACA Rules' Facility Accessibility Standards

- If construction or alteration is commenced on or after July 18, 2016 and was done in conformance with the 1991 ADA Standards for Accessible Design or the 2010 Standards, it shall be deemed to comply with 45 CFR 92.203 and with 45 CFR 84.23(a) and (b), cross-referenced in § 92.101(b)(2)(i).
- Compliance with Rules also deemed if construction:
  - done in conformance with the Uniform Federal Accessibility Standards as defined in § 92.4;
  - construction was commenced before July 18, 2016; and
  - facility was not covered by 1991 Standards or 2010 Standards.

(45 CFR 92.203(b))



# ACA Rules' Technology Accessibility Standards

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- Make all programs and activities provided through electronic and information technology accessible to individuals with disabilities:
  - unless doing so would impose undue financial or administrative burdens or would result in a fundamental alteration in the nature of the covered entity's health program or activity;
  - if unduly burdensome, then provide information in format other than an electronic that will ensure, to the maximum extent possible, that individuals with disabilities receive the benefits and services that are provided through technology.

(45 CFR 92.204(a))

# ACA Rules' Technology Accessibility Standards

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- “Recipients and State-based Marketplaces shall ensure that their health programs and activities provided through Web sites comply with the requirements of Title II of the ADA.”

(45 CFR 92.204(b))

# ACA Rules' Re: Reasonable Modifications

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- Covered entity must make reasonable changes to policies, practices, and procedures where necessary to avoid discrimination on the basis of disability and provide equal access for individuals with disabilities unless the covered entity can demonstrate that making the changes would fundamentally alter the nature of the health program or activity.
- Term “reasonable modifications” to be interpreted consistent with the reasonable modification requirement of the ADA, 28 CFR 35.130(b)(7).

(45 CFR 92.205)

# Enforcement of the ACA Rules

- The HHS Office for Civil Rights (OCR) is responsible for accepting and investigating Section 1557 complaints.
- OCR has been receiving and investigating discrimination complaints since 2010.
- Enforcement mechanisms provided for in the following statutes also apply for purposes of enforcing Section 1557:
  - Title VI of the Civil Rights Act of 1964
  - Title IX of the Education Amendments of 1972
  - Section 504 of the Rehabilitation Act of 1973
  - Age Discrimination Act of 1975

(45 CFR 92.301)

# Enforcement of the ACA Rules

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- Enforcement mechanisms include:
  - requiring covered entities to keep records and submit compliance reports to OCR
  - conducting compliance reviews and compliance investigations
  - providing technical assistance and guidance
- Where noncompliance cannot be corrected by informal means, available enforcement mechanisms include:
  - suspension of, termination of, or refusal to grant or continue Federal financial assistance
  - referral to the DOJ with a recommendation to bring proceedings to enforce any rights of the United States
  - any other means authorized by law

# Enforcement of the ACA Rules

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- **Compensatory damages for violations of Section 1557 are available in “appropriate administrative and judicial actions.”**

(45 CFR 92.301(b))

- **Individuals can file a complaint through the OCR.**
- **Individuals may bring a civil challenge to a Section 1557 violation.**

(45 CFR 92.302)

# Enforcement Examples from HHS.gov

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## – Mee Memorial Hospital of California (8/21/14)

- Agreed to expand and improve accessibility for LEP persons
- Complaint involved national origin discrimination and violation of Title VI of Civil Rights Act (insufficient interpreters for Triqui Bajo language)
- Failure to provide adequate language assistance at no cost

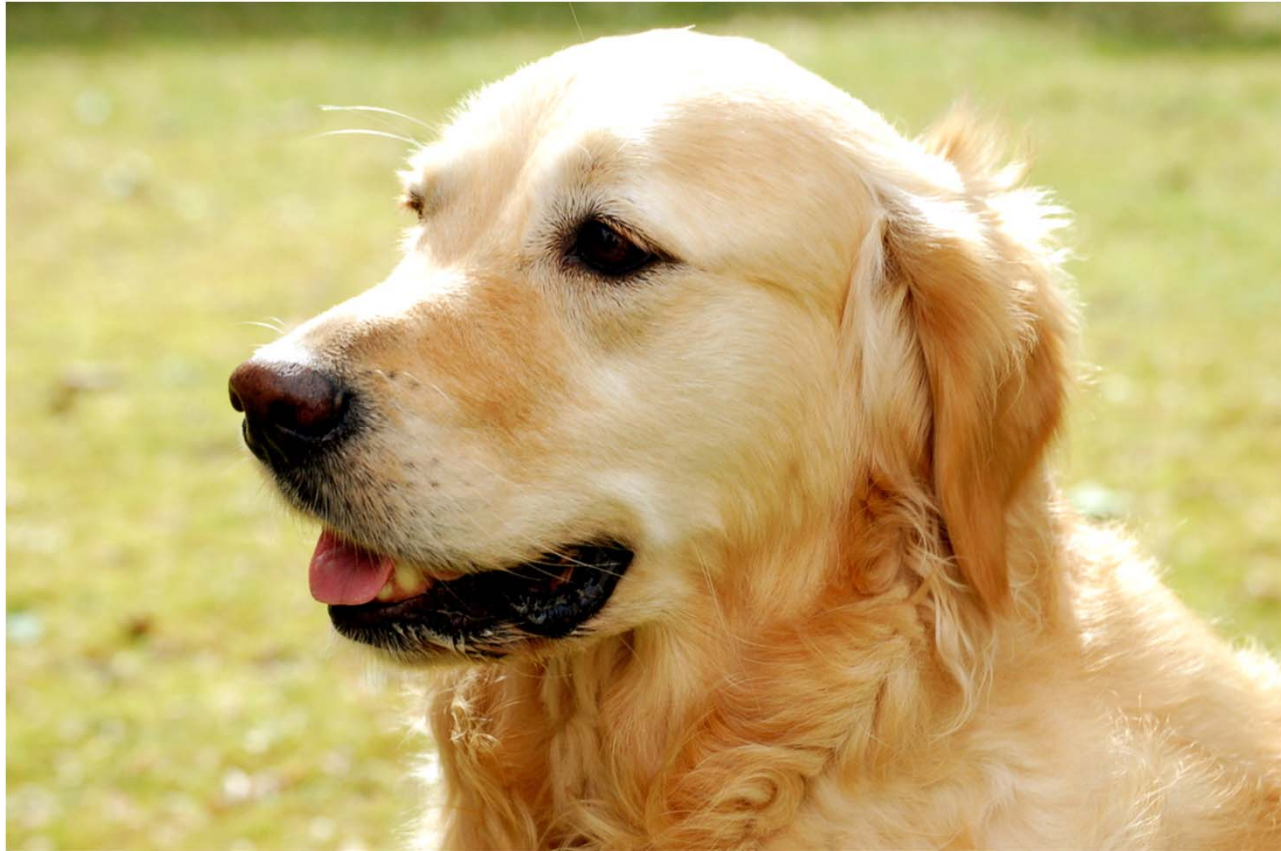
(OCR Bulletin 8/21/2014)

## – Memorial health system in Colorado Springs, CO (11/02/12)

- Signed a voluntary resolution agree to improve quality of services for deaf, hard of hearing, or limited English proficient persons
- Complaint involved Section 504 Rehab Act/Title II ADA/Title VI CRA
- Delay in providing sign language interpreter

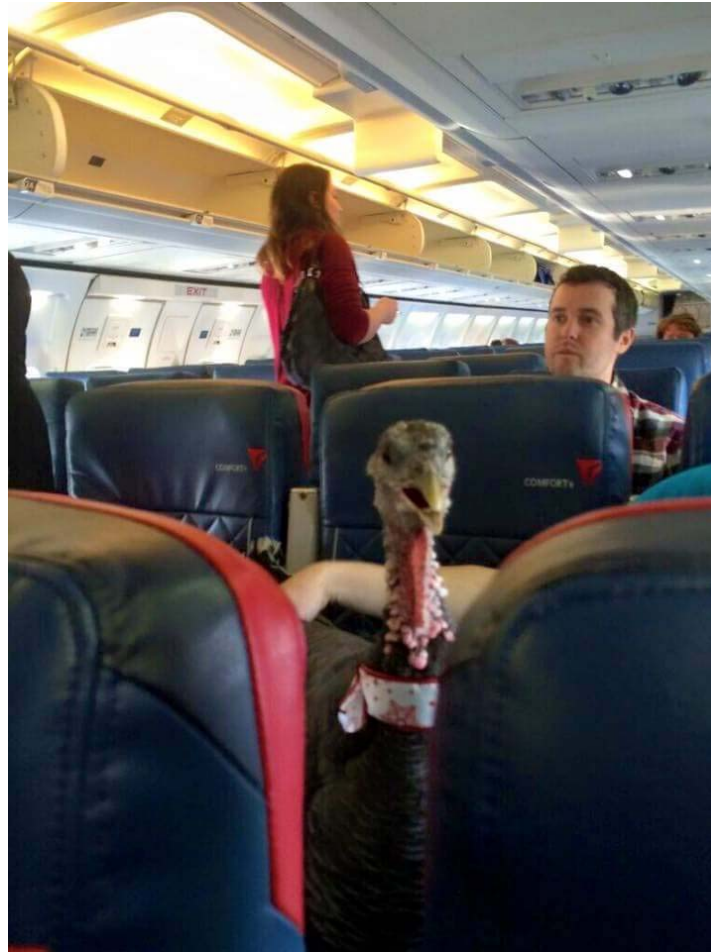
(OCR Bulletin 11/07/2012)

# Service Animals





# Not To Be Confused With:



# Definition of Service Animals

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- Americans With Disabilities Act (ADA)
  - A dog that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person’s disability.
  - Revised ADA regulations now include miniature horses
  - Pre March 2011 –Any animal trained to do a task for an individual = service animal (e.g. rats, monkeys, cats)
- State and local laws (may define “service animal” more broadly)

# ADA Service Animals

- Generally must allow service dogs to accompany person with disability in all areas where members of public are allowed to go.
- May limit dog's access if:
  - dog is out of control and handler does not take effective action to control it;
  - dog is not housebroken; or
  - dog poses risk to health or safety.(for miniature horses, access can be limited if the facility cannot accommodate the service animal's type, size, and weight)
- May require dog to be on leash unless it would interfere with service.
- May not inquire about disability or certification, but may ask:
  - Whether dog is required because of disability, and
  - What tasks the dog is trained to perform.

(28 CFR 36.302; *see* DOJ Bulletin, *Service Animals* (7/11))

# Emotional Support Animals

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- Emotional support, therapy, comfort, or companion animals (“Emotional Support Animals”) are not considered service animals under the ADA (and therefore are not protected under the public accommodation provision of the ADA)
- Such animals have not been trained to perform a specific job or task; they provide comfort just by being with a person.
- Emotional Support Animals can be most any type of animal within reason.
- A physician or therapist can determine that a patient needs an emotional support animal.

# Emotional Support Animals

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- Two federal regulations protect Emotional Support Animals in connection with housing and transportation:
  - **Fair Housing Act:** prohibits a property management company from denying housing to someone with an Emotional Support Animal;
  - **Transportation Act:** allows Emotional Support Animals on airplanes.

# Action Items



# Ongoing

- Watch for additional guidance and samples from HHS and OCR.
- Train new employees and periodically retrain all employees.
- Monitor ongoing compliance.
  - Changes in personnel.
  - Changes in your policies and practices.
  - New “significant” publications or communications.
  - Changes in LEP population.
- Respond promptly to complaints and problems.
  - Use grievance procedure.
  - Educate and sanction employees, as appropriate.
  - Document appropriate response.
- Provide ongoing training.

# Additional Resources





http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html

The screenshot shows a web browser window displaying the HHS.gov Civil Rights page. The browser's address bar shows the URL: [www.hhs.gov/civil-rights/for-individuals/section-1557/index.html](http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html). The page header includes the HHS.gov logo and the text "U.S. Department of Health & Human Services". Below the header is a search bar with the placeholder text "I'm looking for...". A navigation menu contains four buttons: "Information for Individuals", "Filing a Complaint", "Information for Providers", and "Newsroom". The main content area features a breadcrumb trail: "HHS Home > Civil Rights > For Individuals > Section 1557 of the Patient Protection & Affordable Care Act". On the left is a sidebar menu titled "Civil Rights for Individuals and Advocates" with a minus sign, listing categories such as "Race, Color, National Origin", "Disability", "Age Discrimination", "Sex Discrimination", "Religion", "Section 1557", "Hill-Burton", "Health Care Conscience Protection", "Section 1553", "Special Topics", "Civil Rights FAQs", and "Fact Sheets". The "Section 1557" item is highlighted. The main content area has a text size control (A A A), a print icon, and social media share icons (Facebook, Twitter, and a plus sign). The main heading is "Section 1557 of the Patient Protection and Affordable Care Act". The text explains that Section 1557 is the nondiscrimination provision of the Affordable Care Act (ACA), prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. It lists three categories of health programs or activities covered: any health program or activity any part of which received funding from HHS; any health program or activity that HHS itself administers; and Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces. The text also states that Section 1557 has been in effect since its enactment in 2010 and that the HHS Office for Civil Rights has been enforcing the provision since it was enacted. It provides a link to "Read the full text version published in the Federal Register" and another link to "Read the Press Release". The Windows taskbar at the bottom shows various application icons, including Internet Explorer, Google Chrome, File Explorer, and a clock.



# Additional Help?

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- HHS LEP Guidance (8/03)
- OCR, *Compliance Review Initiative: Advancing Effective Communication in CAHs* (4/13)
- ADA regulations concerning public accommodation, 28 CFR part 36
- DOJ, *ADA Business Brief: Communicating with People Who are Deaf in Hospital Settings* (10/03)

# Additional Help?

- OCR website, [www.hhs.gov/ocr/civilrights/index.html](http://www.hhs.gov/ocr/civilrights/index.html)
  - Guidance and education
  - Sample policies and procedures
    - Nondiscrimination policy
    - Notifications of rights
    - LEP policy
    - Auxiliary aids policy
    - Program accessibility policy
    - Grievance procedures
- ADA website, <http://www.ada.gov/>
  - Guidance and education
  - Technical guidance
- Lots of stuff on internet, but be careful.

# Questions?

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**Robert B. Low**  
**208-383-3914**  
[rblow@hollandhart.com](mailto:rblow@hollandhart.com)



**Kim C. Stanger**  
**208-383-3913**  
[kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com)