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**Title VI & Section 1557: Language Access**



**U.S. Dept. of Health and Human Services  
Office for Civil Rights**

*9<sup>th</sup> Annual OLA Conference*

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**Topic Overview**

- **OCR Overview**
  - Who we are
  - Regulations Enforced
- **Title VI**
  - Background
  - Scope
  - General Rule
  - Implementation Tips
- **Section 1557**
  - Background
  - Procedural Requirements
  - Race, Color National Origin
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- **Enforcement**
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- **Conclusion/Questions**

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**OCR Overview**

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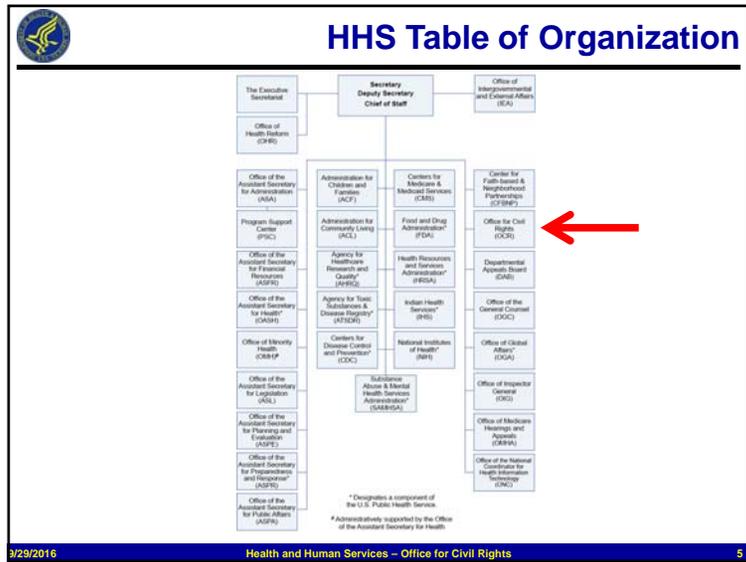


**Mission**

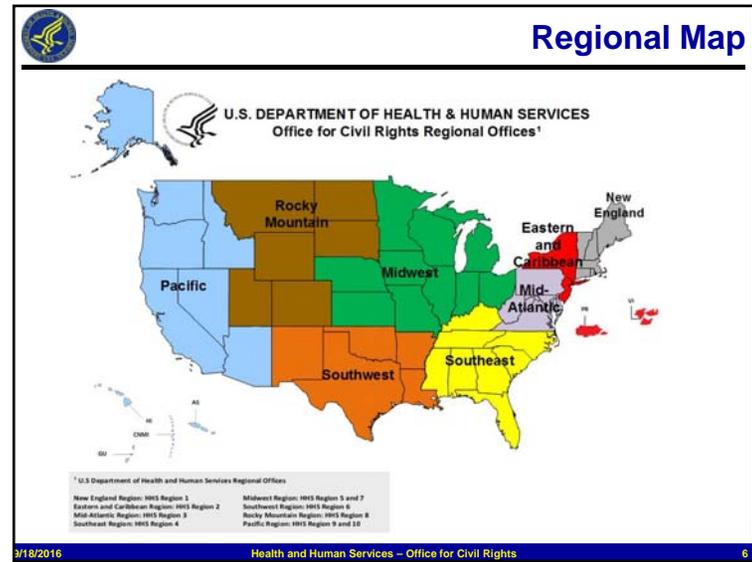
The mission of the Office for Civil Rights is to improve the health and well-being of people across the nation, to ensure that people have equal access to and the opportunity to participate in and receive services from HHS programs without facing unlawful discrimination, and to protect the privacy and security of health information in accordance with applicable law.

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### OCR Authorities

<p><b>Civil Rights Authorities</b></p> <ul style="list-style-type: none"> <li>• Title VI of Civil Rights Act of 1964</li> <li>• Title II of the Americans With Disabilities Act of 1990</li> <li>• Title IX of the Education Amendments of 1972</li> <li>• Section 504 and 508 of the Rehabilitation Act of 1973</li> <li>• Age Discrimination Act of 1975</li> <li>• Multiethnic Placement Act of 1994</li> <li>• Community Service Assurance of the Hill Burton Act</li> <li>• Section 1557 of the Patient Protection and Affordable Care Act</li> <li>• Miscellaneous others</li> </ul>	<p><b>HIPAA/HITECH Act Authorities</b></p> <ul style="list-style-type: none"> <li>• Privacy Rule</li> <li>• Security Rule</li> <li>• Enforcement Rule</li> <li>• Breach Notification Rule</li> <li>• Patient Safety Rule</li> </ul> <p>*For More Info.:  <a href="http://www.hhs.gov/ocr/civilrights/resources/laws/index.html">http://www.hhs.gov/ocr/civilrights/resources/laws/index.html</a></p>
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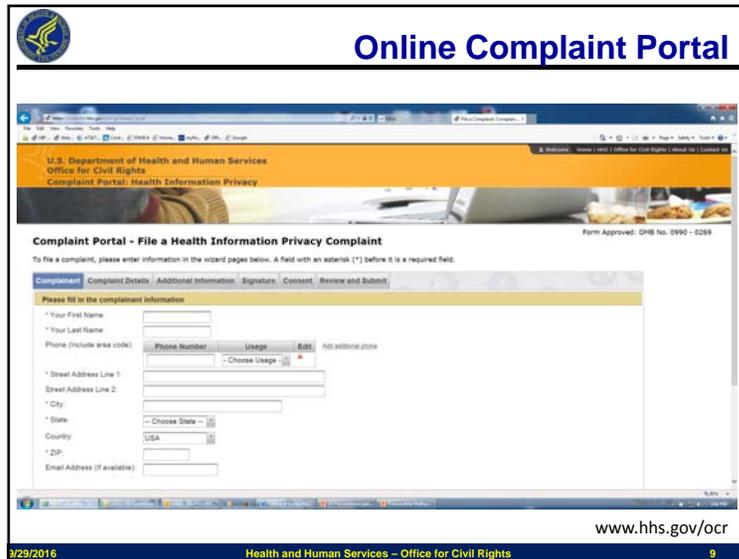
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### Enforcement Tools

- Preventing violations
  - Guidance materials, technical assistance
- Complaint investigations, compliance reviews, & audits
  - Resolution agreements
  - Voluntary corrective action plans
  - Civil money penalties

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**Online Complaint Portal**

U.S. Department of Health and Human Services  
Office for Civil Rights  
Complaint Portal: Health Information Privacy

Complaint Portal - File a Health Information Privacy Complaint

To file a complaint, please enter information in the wizard pages below. A field with an asterisk (\*) before it is a required field.

Please fill in the complaint information

- \* Your First Name
- \* Your Last Name
- Phone (include area code) [Phone Number] [Change] [Edit] Add additional phone
- \* Street Address Line 1
- Street Address Line 2
- \* City
- \* State [Choose State]
- Country [USA]
- \* ZIP
- Email Address (if available)

www.hhs.gov/ocr

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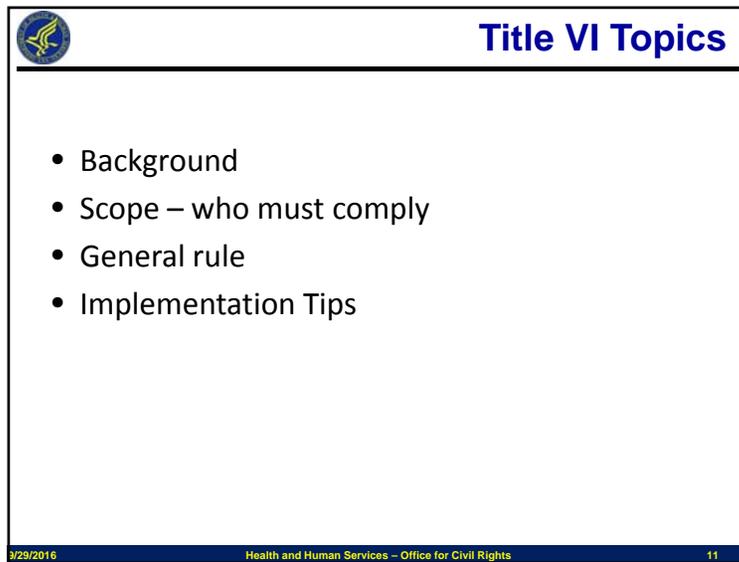


**TITLE VI OF THE CIVIL RIGHTS ACT**

45 C.F.R. Part 80

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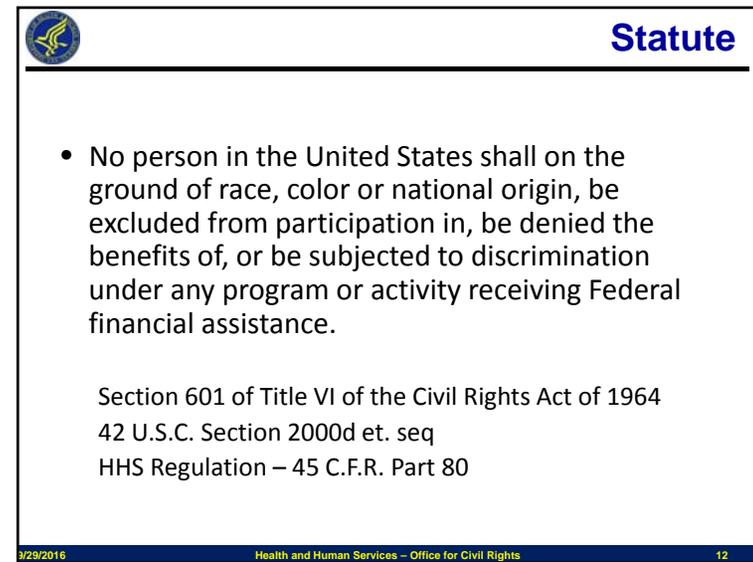


**Title VI Topics**

- Background
- Scope – who must comply
- General rule
- Implementation Tips

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**Statute**

- No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 601 of Title VI of the Civil Rights Act of 1964  
42 U.S.C. Section 2000d et. seq  
HHS Regulation – 45 C.F.R. Part 80

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## Supreme Court Decision



- Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination.  
Lau v Nichols, 1974

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## Title VI Scope

- All recipients of **HHS Federal financial assistance**, either directly or indirectly, through a grant, contract or subcontract must comply with HHS’s Title VI Regulation.
- Note: Section 1557 jurisdiction may also apply to your entity (but not in all circumstances)

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## Title VI Scope - Examples

<i>Common Types of FFA</i>	<i>Common FFA recipients</i>
<ul style="list-style-type: none"> <li>Loans</li> <li>Grants</li> <li>Grants or loans of federal property</li> <li>Use of equipment &amp; donations of surplus property</li> <li>Training</li> <li>Details of Federal personnel</li> <li>Any other agreement or contract to provide assistance</li> </ul>	<ul style="list-style-type: none"> <li>Hospitals, nursing homes, home health agencies, managed care organizations</li> <li>State, county and local welfare agencies</li> <li>Universities and other health or social service research programs</li> <li>Programs for families, youth and children</li> <li>Head Start programs</li> <li>Physicians and other providers who receive Federal financial assistance from HHS</li> </ul>

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## Meaningful Access for LEP Individuals

- General rule: recipients must take reasonable steps to ensure **meaningful access** to their programs, activities and services for LEP persons
- OCR evaluation of compliance: relevant factors
- HHS’ LEP guidance  
<http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/index.html>

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## Title VI Implementation Tips

- Design an effective language access plan
- Have language access policies and procedures that account for **oral interpretation** and **written translation**
- Assess number or proportion of LEP persons eligible to be served or likely to be encountered
- Provide **competent** language access services
  - Note: Section 1557 now defines ‘Qualified Interpreter for an individual with LEP,’ ‘Qualified Translator’ and ‘Qualified Bilingual/Multilingual staff’
- Ensure language access services are provided **timely**
- Train staff on policies and procedures
- Friends and Family as interpreters - very limited circumstances

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## SECTION 1557 OF THE AFFORDABLE CARE ACT

45 C.F.R. Part 92

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## Background

- Section 1557 prohibits discrimination based on race, color, national origin, sex, age, or disability in certain health programs and activities.
- This provision went into effect upon the signing of the Affordable Care Act in March 2010
- OCR published the Implementation regulation for Section 1557 on May 18, 2016 (Nondiscrimination in Health Programs and Activities, Final Rule (81 FR 31376)).
- Effective Date July 18, 2016 (60 days after publication)

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## Scope of Section 1557 Final Rule

**The Final Rule applies to:**

- All health programs and activities, any part of which receives Federal financial assistance (FFA) from HHS;
- All health programs and activities administered by HHS (e.g., the Medicare Program and the Federally-facilitated Marketplaces);
- Health programs and activities administered by Title I entities (e.g., State-based and Federally-facilitated Health Insurance Marketplaces).

*\*Principally engaged in health services or health coverage, ALL of the entity's operations are considered part of the health program or activity*

45 C.F.R. § 92.2

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### Enforcement Mechanisms

- Imports existing civil rights enforcement procedures for OCR enforcement.
  - Complaints
  - Compliance Reviews
  - Guidance
- Provides for a private right of action against federally assisted programs and State-based Marketplaces.
  - Includes compensatory damages.

45 C.F.R. § 92.301

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### Procedural Requirement #1: Coordinator & Grievance Procedure

- Applies to CEs ≥ 15 employees
- Requires CE to designate an employee to serve as the entity’s compliance coordinator - § 92.7(a)
  - Must investigate grievances
  - For HHS, OCR Director is compliance coordinator
- Requires CE to adopt a grievance procedure - § 92.7(b)
  - Must incorporate due process standards & provide for prompt and equitable resolution of grievances
  - Appendix C to the final rule is a sample grievance procedure
- The grievance procedure and designated employee’s responsibilities must cover discrimination on the basis of race, color, national origin, sex, age, and disability.

45 C.F.R. § 92.7(a) and (b)

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### Procedural Requirement #2: Notice

- Covered entities must post:
  - A notice advising individuals of their rights and of covered entities’ nondiscrimination obligations (or a nondiscrimination statement in small-sized documents).
  - Taglines notifying individuals of the availability of language assistance services in at least the top 15 languages spoken by individuals with LEP in the relevant state or states (or 2 languages in small-sized documents).
- OCR to provide guidance on Top 15 Languages by state
- OCR translates nondiscrimination notice, statement, and taglines into the languages triggered by the state threshold.

45 C.F.R. § 92.8 (b)

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### Nondiscrimination Notice: Content

- Seven elements required in the nondiscrimination notice - § 92.8(a)(1)-(7)
  1. CE does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities
  2. CE provides appropriate auxiliary aids and services
  3. CE provides language assistance services
  4. How to obtain auxiliary aids & services and language assistance services
  5. If applicable, name and contact information for compliance coordinator required in § 92.7(a)
  6. If applicable, availability of CE’s grievance procedure and how to file a grievance
  7. How to file a discrimination complaint with OCR

45 C.F.R. § 92.8(a)

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### APPENDIX A: Sample Non-discrimination Statement

[Name of covered entity] complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex. [Name of covered entity] does not exclude people or treat them differently because of race, color, national origin, age, disability, or sex.

[Name of covered entity]:

- Provides free aids and services to people with disabilities to communicate effectively with us, such as:
  - Qualified sign language interpreters
- Written information in other formats (large print, audio, accessible electronic formats, other formats)
- Provides free language services to people whose primary language is not English, such as:
  - Qualified interpreters
  - Information written in other languages

If you need these services, contact [Name of Civil Rights Coordinator]

If you believe that [Name of covered entity] has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex, you can file a grievance with: [Name and Title of Civil Rights Coordinator], [Mailing Address], [Telephone number ], [TTY number—if covered entity has one], [Fax], [Email]. You can file a grievance in person or by mail, fax, or email. If you need help filing a grievance, [Name and Title of Civil Rights Coordinator] is available to help you. You can also file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights electronically through the Office for Civil Rights Complaint Portal, available at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>, or by mail or phone at:

U.S. Department of Health and Human Services  
 200 Independence Avenue, SW  
 Room 509F, HHH Building  
 Washington, D.C. 20201  
 1-800-868-1019, 800-537-7697 (TDD)  
 Complaint forms are available at <http://www.hhs.gov/ocr/office/file/index.html>.

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### APPENDIX A cont.: Sample Non-discrimination Statement

- Sample Non-Discrimination Statement (for small-sized communications):  
*“[Name of covered entity] complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.”*

Appendix A and B

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### APPENDIX B: Sample Tagline

- Sample Tagline (15 Languages for regular communications, 2 languages for small communications)  
 – *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).*

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### Top 15 Languages in Hawaii

1. Ilocano*	33,085
2. Tagalog	31,449
3. Japanese	21,288
4. Chinese	19,649
5. Korean	11,595
6. Spanish	6,974
7. Vietnamese	6,349
8. Samoan*	4,400
9. Marshallese*	3,840
10. Trukese*	3,410
11. Hawaiian*	3,010
12. Micronesian*	2,210
13. Bisayan*	1,640
14. Tongan*	1,515
15. Laotian	1,362

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### Meaningful Access for LEP Individuals

- **General Rule:** covered entities shall take reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities. 92.201(a).
- OCR evaluation of compliance:
  - Substantial weight given to nature and importance of the health program or activity and the particular communication at issue to the individual with limited English proficiency; and
  - Take into account all other relevant factors including:
    - Whether the covered entity has developed and implemented an effective written language access plan, appropriate to its circumstances.

45 C.F.R. § 92.201(a) and (b)

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### Requirements for Language Assistance Services

- Language Assistance Services must be:
  - Free of Charge to the individual
  - Accurate and Timely
  - Protect Privacy and Independence of Individual
- Language Assistance Services include:
  - Oral Interpretation (from Qualified Interpreter)
  - Written Translation (from Qualified Translator)
  - Taglines

45 C.F.R. § 92.201(c)

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### Family & Friends, Bilingual/Multilingual Staff

- CE not permitted to rely on *adult* family/friends to interpret, except:
  - Imminent threat to individual or public; or
  - Specific request from Individual, acceptance by family/friend, appropriate under the circumstances
- CE may only rely on a *minor* family member/friend when there is an Imminent threat to the individual or public
- CE may not rely on staff members other than Qualified Bilingual/Multilingual staff to communicate directly with LEPs

45 C.F.R. § 92.201(e)

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### Video Remote Interpretation Requirements

- (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)

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### LEP Related Definitions

- Individual with limited English proficiency means an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.
- National origin includes, but is not limited to, an individual's, or his or her ancestor's, place of origin (such as country or world region) or an individual's manifestation of the physical, cultural, or linguistic characteristics of a national origin group.
- Taglines mean short statements written in non-English languages that indicate the availability of language assistance services free of charge.

45 CFR § 92.4



### LEP Definitions Cont.

Qualified bilingual/multilingual staff means a member of a covered entity's workforce 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.



### LEP Definitions Cont.

Qualified interpreter for an individual with limited English proficiency means an interpreter who via a remote interpreting service or an on-site appearance:

- (1) adheres to generally accepted interpreter ethics principles, including client confidentiality;
- (2) has demonstrated proficiency in speaking and understanding both spoken English and at least one other 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.

Qualified translator means a translator 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.



## ENFORCEMENT EXAMPLES



## LEP Initiatives & Case Examples

- Compliance Review Initiatives
  - National HIV/AIDS
  - Advancing Effective Communication in CAH
- Case examples
  - Shenandoah Memorial Hospital (Addressing LEP patients and companions)
  - Mee Memorial Hospital (Addressing Languages of Lesser Diffusion)
  - Hawaii Department of Human Services (State Department Resolution Agreement)

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## VISIT OUR WEBSITE!

### www.hhs.gov/ocr



On OCR's website....

- Read about civil rights and HIPAA laws
- Download factsheets
- Access sample policies and resources in English and other languages
- File a complaint
- Contact us!

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