

Frequently Asked Questions on Section 1557 of the Affordable Care Act (ACA): Applying the Tagline Requirement to Covered Entities that Operate Health Programs or Activities in More than One State

Provided by the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR)

Section 1557 and its implementing regulation (Section 1557) require a covered entity to inform individuals with limited English proficiency (LEP) about the availability of language assistance services by providing taglines. Taglines are short statements written in non-English languages that indicate the availability of language assistance services free of charge.¹ Section 92.8(d)(1) of the regulation requires a covered entity to post taglines in “at least the top 15 languages spoken by individuals with limited English proficiency of the relevant State or States” in significant publications and communications, in physical locations, and in a location accessible from the home page of the covered entity’s website.² For publications and communications that are significant and small-sized, § 92.8(d)(2) requires taglines to be posted in “at least the top two languages spoken by individuals with limited English proficiency of the relevant State or States.”³ Nothing in the regulation bars entities from posting taglines in additional languages beyond those required by these standards.

1. How does the requirement to post taglines apply to a covered entity that operates a health program in more than one State, or that operates one health program with a multi-State service area?

A covered entity that operates health programs or activities in more than one State, or that operates one health program or activity with a multi-State service area, may add together the number of individuals with LEP who speak the same language in the collective States served to determine the top languages required by § 92.8(d)(1)-(2). In doing so, entities may use [OCR’s list of the top 15 languages spoken by individuals with LEP in each State, the District of Columbia, and each U.S. Territory](#).⁴ For example, an entity that operates a health program or activity in Minnesota, North Dakota, and Wisconsin may add together the number of individuals with LEP who speak each of the non-English languages for each of these States using OCR’s list. Based on the total, the covered entity would be able to rank the aggregated number of speakers for each language, and thus identify the top languages required by § 92.8(d)(1)-(2). The table below illustrates this example, using the languages and estimates from OCR’s list released August 2016.

MN		ND		WI		Aggregated List	
Language	Estimate	Language	Estimate	Language	Estimate	Language	Estimate
1 Spanish	83,799	1 Spanish	1,984	1 Spanish	103,190	1 Spanish	188,973
2 Hmong	24,584	2 German	1,452	2 Hmong	17,202	2 Hmong	41,786
3 Cushite	18,500	3 Chinese	807	3 Chinese	8,142	3 Cushite	19,185
4 Vietnamese	13,241	4 Cushite	685	4 German	6,583	4 Chinese	18,871
5 Chinese	9,922	5 Vietnamese ...	497	5 Arabic	2,816	5 Vietnamese	15,889
6 Russian	6,463	6 BANTU	410	6 Russian	2,482	6 German	12,067
7 Laotian	5,053	7 Arabic	331	7 Korean	2,398	7 Russian	9,188
8 Amharic	4,395	8 SWAHILI	245	8 Vietnamese	2,151	8 Laotian	6,820
9 Karen	4,045	9 Russian	243	9 PENNSYLVANIAN DUTCH .	1,970	9 Arabic	6,398
10 German	4,032	10 JAPANESE	210	10 Laotian	1,767	10 French	5,049
11 Mon-Khmer, Cambodian ...	3,691	11 NEPALI	190	11 French	1,678	11 Korean	4,725
12 Arabic	3,251	12 French	184	12 POLISH	1,666	12 Amharic	4,395
13 French	3,187	13 Korean	181	13 HINDI	1,472	13 Karen	4,045
14 Korean	2,146	14 Tagalog	173	14 ALBANIAN	1,460	14 Mon-Khmer, Cambodian ...	3,691
15 Tagalog	1,800	15 NORWEGIAN .	170	15 Tagalog	1,336	15 Tagalog	3,309

The “aggregated list” column displays the estimated number of individuals with LEP who speak each respective language when that language falls within the top 15 languages spoken by individuals with LEP of MN, ND, or WI.

In this example, there are 24 unique languages ranked among the top 15 languages spoken by individuals with LEP for Minnesota, North Dakota, and Wisconsin. Of the 24 languages, nine (in all caps) are in the top 15 of one or two of the States but are not in the top 15 when the languages spoken by LEP individuals in all three states are combined. In this example, a covered entity would not be required under § 92.8(d)(1) to include taglines in the nine languages in all caps because none are in the top 15 when the estimates from all three States are combined. (A covered entity, however, is still responsible for providing timely and accurate language assistance services, even for those languages for which taglines are not provided, when doing so is a reasonable step to provide meaningful access to an individual who is LEP.)⁵

2. Is a covered entity required to post taglines tailored for the State in which it has a physical location when that entity operates health programs or activities in more than one State?

When a covered entity identifies the top 15 languages by aggregating populations with LEP, it may post taglines in the top 15 languages identified by its aggregated list in all required locations, documents, and websites. Covered entities may, however, choose to provide taglines in the top 15 languages spoken by individuals with LEP of each of the States in which the entity has a physical location.

3. How does the tagline requirement in § 92.8(d)(1)-(2) apply to a covered entity that operates health programs or activities nationwide and in the U.S. Territories?

Under Section 1557, a covered entity serving individuals nationally may aggregate populations with LEP in all 50 States, the District of Columbia, and the U.S. Territories. OCR has used its estimates showing the languages spoken by populations with LEP by State to create a list for covered entities operating nationwide and in the U.S. Territories.⁶ This list is as follows: Spanish, Chinese, Vietnamese, Korean, Tagalog, Russian, Arabic, French Creole, French, Polish, Portuguese, Italian, German, Japanese, and Persian (Farsi).⁷ Covered entities may use this list or may instead calculate the top 15 languages spoken by individuals with LEP nationally through other reasonable methods.

Endnotes

¹ 45 C.F.R. § 92.4 (defining taglines).

² *Id.* § 92.8(d)(1), (f)(1)(i)-(iii). A covered entity must post a nondiscrimination notice in addition to at least 15 taglines. *See id.* § 92.8(b)(1), (f)(1)(i)-(iii).

³ *Id.* § 92.8(d)(2), (g)(2). In addition to posting at least 2 taglines in significant small-sized publications, a covered entity must post a nondiscrimination statement. *See id.* § 92.8(b)(2), (g)(1).

⁴ U.S. Dep't of Health & Human Servs., Office for Civil Rights, Estimates of at Least the Top 15 Language Spoken by Individuals with LEP for the 50 States, the District of Columbia, and the U.S. Territories, Aug. 2016, <http://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf>. These estimates are accompanied by Frequently Asked Questions that provide information about the data sources and methodology OCR used to compile its list. *See* <http://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/top15-languages/index.html>. Section 1557 covered entities that are subject to the tagline requirements under 45 C.F.R. § 155.205(c)(2)(iii)(A) may also use the HHS Centers for Medicare & Medicaid Services' Center for Consumer Information and Insurance Oversight's Top 15 Non-English Languages by State at <https://www.cms.gov/CCIIO/Resources/Regulations-andGuidance/Downloads/Appendix-A-Top-15.pdf>, which accompanies explanatory guidance. *See* Guidance and Population Data for Exchanges, Qualified Health Plan Issuers, and Web-Brokers to Ensure Meaningful Access by Limited-English Proficient Speakers Under 45 CFR 155.205(c) and 156.250 (Mar. 30, 2016), <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Language-access-guidance.pdf>.

⁵ See 45 C.F.R. § 92.201(a).

⁶ These languages are also the ones that a covered entity may use if it operates a health program in all 50 States (including D.C.) but not in the U.S. Territories.

⁷ In the taglines OCR has made available, the Spanish translation is in a neutral Spanish dialect for the United States; the Chinese tagline is in traditional Chinese; the French Creole tagline is in Haitian Creole; the French tagline is in the European dialect, and the Persian tagline is in Farsi. See <http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html> for sample translated taglines.