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Health Care Providers Required to Improve Services for Limited English Speakers, Hearing Impaired as HHS Steps Up Enforcement of Federal Discrimination Laws

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Health care providers should review the adequacy of translation and other mechanisms required to allow limited English speakers, hearing impaired, and other language limited populations effective access to services in light of recent enforcement actions taken by Department of Health and Human Services (HHS) Office of Civil Rights (OCR) against health care providers for discrimination under Title VI of the Civil Rights Act of 1964 (Title VII), the Americans With Disabilities Act (ADA) and other federal discrimination laws.

As part of a broader Obama Administration initiative to make prevention and redress prohibited national origin, disabilities and other discrimination in employment, public services, public accommodations and telecommunications a priority, OCR intends to hold health care providers accountable for ensuring effective and adequate access by individuals seeking services having limited English language proficiency, hearing loss or other language or communication restrictions impacting on their ability to access care and services.

Medco Health Solutions, Inc. National Origination Settlement

On June 22, 2009, OCR announced that national pharmacy benefit management company Medco Health Solutions, Inc., had agreed to implement a multi-faceted plan to improve services to limited and non-English speaking members in 2009.

The commitment to take corrective action by the nation's largest mail-order pharmacy operation arose from OCR's investigation of a complaint filed with OCR on behalf of a Spanish-speaking member. The complaint alleged that Medco violated Title VI of the Civil Rights Act of 1964 (Title VII) by failing to provide limited English proficiency members (LEP members) with meaningful access to mail-order pharmacy services and other pharmacy benefit management services.

Under Title VI, health care providers and other recipients of federal financial assistance are required to take reasonable steps to provide meaningful access to their programs by limited English proficient individuals who are eligible to receive their services.

Under the settlement agreement, Medco agreed to implement a number of measures to strengthen its provision of language assistance services to LEP members starting with those for Spanish-speaking members in 2009. The corrective actions agreed to by Medco include:

- Expanding its pool of bilingual customer service representatives who speak Spanish
- Revising its systems to enhance its ability to route Spanish-speaking members who need help with prescription drug questions or problems directly to bilingual staff, including pharmacists where possible and appropriate
- Continuing to use a telephonic interpreter service available for more than 150 other languages to communicate with other non-English speakers.

- Implementing a critical improvement in Medco's internal computer systems that will flag language preference on an ongoing basis to aid effective communication with limited English proficient persons during member-Medco contact.
- Continuing to improve its ability to identify and track individuals' language preferences so that important written communications and outbound telephone calls are placed to members in their primary language.
- Reviewing how best to notify limited English proficient members that language assistance services are available.
- Developing an evaluation process with respect to interpreter competency. Staff at call centers and pharmacies expected to communicate directly with members in languages other than English will be assessed as to language proficiency, and those serving as interpreters will be assessed for interpreting competency.
- Training all relevant staff on system changes intended to improve access to limited English proficient members, and will monitor the results of these efforts through periodic assessments.

[Read the Medco Commitment Letter here.](#)

Scottsdale Healthcare – Osborn (SHO) Voluntary Resolution Agreement

The Medco Commitment Letter follows OCR's April, 2008 announcement that a signed Resolution Agreement requiring Scottsdale Healthcare – Osborn ("SHO"), a 337-bed full-service Arizona hospital, to improve access to sign language interpreters and other services required for hearing impaired patients to effectively access services. The SHO VRA resolves a disability discrimination complaint against SHO brought by a patient with severe hearing loss, who reported that she was denied a sign language interpreter when treated in the SHO emergency room and intensive care unit.

Following OCR's investigation of the complaint, SHO, among other things agreed to: (1) affirm its compliance with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; (2) issue and post revised policies to ensure that appropriate auxiliary aids, including sign language interpreters or video interpretation services, are provided to deaf or hard-of-hearing patients or companions within a two hour time period; (3) develop procedures to assess the sign language interpreter needs of patients or companions; (4) train hospital personnel and physicians on its revised policies and procedures to ensure effective communication; (5) place TTY lines throughout its facility; (6) maintain a centralized telecommunication number 24-hours per day, 7-days per week for sign language interpreter requests; and (7) provide regular compliance reports to OCR. [Read SHO VRA here](#)

Health Care Providers Should Act to Manage Risks as Obama Administration Makes Enhanced Investigation and Enforcement of Federal Discrimination Laws a Priority

Health care providers and other businesses covered by Title VII, the Americans with Disabilities Act and other federal discrimination laws should heed the Medco and SHO actions of the advisability of taking prompt action to review and if necessary, strengthen the adequacy of reasonable accommodations necessary to enable individuals with limited English proficiency, hearing or other language impairments to access services.

Beyond the adequacy of services to address language impairments, health care providers and others also generally should anticipate that the willingness by the OCR under the Obama Administration to act on the Medco and SHO complaints reflects a heightened willingness by federal agencies to investigate and enforce disabilities, national origin and charges of federal discrimination violations by health care providers and others by OCR and other federal agencies under the Obama Administration. [Review Obama Administration Civil Rights Enforcement Agenda here.](#) While OCR took a series of enforcement actions under the predecessor Bush

Administration, this announced renewed emphasis on federal discrimination law enforcement coupled by the series of actions taken by OCR and other federal agencies since January, 2009 reflects that OCR and other agencies are acting on the direction of President Obama to make prevention and redress of disabilities and other discrimination in employment, public services, public accommodations and telecommunications a priority. [Read about other recent OCR federal discrimination enforcement activates here.](#) See also, e.g., recent discrimination policies and enforcement activities by [Department of Justice](#), the [Equal Employment Opportunity Commission](#), the [Department of Housing and Urban Development](#).

The Medco and SHO actions, as well as a series of other recently announced enforcement actions reflect that OCR and other federal agencies are likely to continue to expand investigation and enforcement of disability and other violations by health care providers of federal disability and other discrimination laws in recent months. Health care providers and others regulated by these federal discrimination laws should consider auditing the adequacy of existing practices, reaffirming their commitment to compliance to workforce members and constituents, retraining workforce and taking other appropriate steps to help prevent illegal discrimination within their organization and to position their organization to respond and defend against potential discrimination investigations or charges.

The author of this article, Curran Tomko and Tarski LLP Health Care Practice Chair Cynthia Marcotte Stamer, has extensive experience advising and assisting health care practitioners and other businesses and business leaders to establish, administer, investigate and federal and state discrimination and other compliance and internal control policies and practices to reduce risk under federal and state health care, discrimination and other laws. Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization, Ms. Stamer's practice emphasizes assisting health industry clients to monitor compliance and other legal and operational risks and to design, administer and defend internal controls and other risk management practices to mitigate these exposures. You can get more information about her health industry experience [here](#).

If you need assistance with these or other compliance concerns, wish to inquire about arranging for compliance audit or training, or need legal representation on other matters please contact Cynthia Marcotte Stamer, at cstamer@ctllegal.com, 214.270.2402 or another Curran Tomko Tarski LLP attorney.

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