



October 3, 2022

Melanie Fontes Rainer
Acting Director
Office for Civil Rights
Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201

Re: RIN 0945-AA17
Nondiscrimination in Health Programs and Activities

Dear Acting Director Fontes Rainer:

The National Asian Pacific American Women's Forum (NAPAWF) appreciates the opportunity to comment on the Department of Health and Human Services' Office for Civil Rights (OCR) proposed rule, Nondiscrimination in Health Programs and Activities (hereinafter "2022 Proposed Rule").

NAPAWF is the only organization focused on building power with Asian American and Pacific Islander (AAPI) women and girls to influence critical decisions that affect our lives, our families, and our communities. We advocate for reproductive justice, immigrant rights, and economic equity at the federal, state, and local levels with a strong emphasis on field organizing and uplifting the voices of AAPI women and girls. Our field work is unique in that we build power and organize those who are most impacted by our policy work. Our base is largely made up of immigrant women, many who are working [low wage jobs](#), have [limited English proficiency](#), and are the [primary caregivers in their multigenerational families](#). It's important that these women, along with immigrants across the country, are able to access high-quality and readily available in-language resources and services when they seek health care. As an organization, NAPAWF values the opportunity to comment on the 2022 Proposed Rule, as well as collecting comments from individual community members we represent. Signatures from our membership and supporters are attached along with this letter.

We commend the work OCR has done to strengthen LGBTQ protections, reinstate individuals' rights to make discrimination claims, as well as other anti-discrimination protections. Given our

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focus on uplifting AAPI voices and supporting immigrant communities, we have focused our comments on parts of the 2022 proposed rule that focus on language access.

Language access is essential to ensuring effective communication between individuals and the health care system, without which individuals with Limited English Proficiency (LEP) may not enroll in programs for which they are eligible, may not receive timely or comprehensive health care, and may not know their rights to free, timely, and competent language services. The AAPI community is diverse and is made up of [more than 50 ethnic groups](#) and speaks [over 100 different languages](#). Data from the Census found that nearly [50 percent of foreign born AAPI women have LEP](#), which makes [interactions with medical providers difficult and exacerbates health disparities](#).

Women – especially immigrant AAPI women – are often their household's [primary caregivers](#) and make a majority of the health care decisions in their families. AAPI and immigrant women also face significant barriers to accessing health care coverage and reproductive care services due to [systemic and language barriers](#), which have been exacerbated since the fall of *Roe v. Wade*. Access to culturally competent navigators, qualified interpreters, and translated resource materials allows AAPI women to connect themselves and their family members with necessary care.




We support many provisions in the 2022 Proposed Rule including those that mandate qualified interpreters, machine translation, civil rights training, notice of availability of language assistance services, meaningful access for LEP individuals, and demographic data collection. However, we recommend several changes and additions that would improve health care access for those with LEP, especially AAPI women.

Training

OCR should require covered entities to develop training that encourages the best approaches to meeting the needs of LEP patients. For example, the provision should require training on how to best work with interpreters, particularly the type of interpreters the covered entity uses. Training health care providers and administrators on best practices of translation services use is important to ensure LEP individuals feel comfortable navigating the health care system and accessing the care they need. Quality, timely, and seamless translation in clinics allows AAPI women to [understand and make informed health care decisions](#) for themselves and their families, and helps close health care disparities those with LEP often face.

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Notice of availability of language services

We strongly support this provision and the requirements for when this notice must be made available. We also recommend that if a covered entity operates across multiple states, that the covered entity has to provide the notice in not merely the top 15 languages in the aggregate (that is, across all the states) but rather a total of the top 15 languages in each state. We also recommend that OCR mandate covered entities to require the notice in large print, at least 18 point font, as well as the top 15 languages. This will assist individuals with vision impairments to understand the importance of the notice. As OCR has previously done, we also suggest that OCR develop and provide covered entities with model notices and translated information in the relevant languages that will be needed across the country.




We also recommend that OCR specify that this notice must be provided at the beginning or on the first page of any document. Unfortunately, many documents in which this notice will be required can be lengthy. We do not believe an LEP person would look through multiple pages of a document in English if the notice is only at the end. Given the importance of this notice, we believe it should be the first page that everyone sees. This will benefit LEP individuals who will see information in their language and also individuals with disabilities who will see information in large print up front as well.

We also suggest that OCR develop and provide covered entities with model notices and translated information in the relevant languages that will be needed across the country. These notices should be related to the different types of publications they are included on; that is, a notice would likely be different for a consent form versus information about a public health emergency versus a notice about one's rights or benefits.

AAPI women often face [multiple barriers to care](#) beyond language access. Long work hours, caregiving responsibilities, and household finances can often take precedence over health care, especially when communication is an additional burden. Clear and transparent notices of available language services in clinics and health care programs lifts a large burden off of AAPI women with LEP and gives them the confidence to seek health care without the fear of miscommunication.

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Meaningful access for LEP individuals

We support the provisions related to meaningful access including the requirements related to machine translation. Regarding the section on “evaluation of compliance,” we raise concerns around the lack of a requirement to develop a language access plan. We appreciate that OCR will evaluate the entity’s written language access procedures but those procedures will only be as good as the information on which they are based. The proposed rule does not seem to require a covered entity to gather information about the needs of LEP individuals in its service area prior to developing policies and procedures.




We also support the clarification in the 2022 Proposed Rule related to the restricted use of certain persons to interpret or facilitate communication. The prior regulations recognized that an LEP individual cannot be required to provide their own interpreter, that a minor can only be used to interpret in an emergency, and that an adult accompanying an adult should not act as an interpreter without the person’s consent or in an emergency. The 2022 Proposed Rule adds an expectation that in an emergency situation, the reliance of an accompanying adult or minor should be “a temporary measure.” We support this addition.

Children and other family members of LEP immigrants are too often burdened with [acting as a translator](#) during interactions with English speaking service providers. For children especially, this burden can be uncomfortable, laborious, and traumatic, specifically when dealing with sensitive health information. For AAPI women, who are [often their families’ chief caregivers](#), direct and professional interpretation of health care information is critical in making health care decisions for themselves and their families and removing the burden from children who should not be placed in the difficult position of interpreting health care information for their LEP parents or other family members.

We also recommend that OCR add a requirement that a “companion” of an LEP individual who needs language services must also be provided meaningful access including access to qualified interpreters and translated materials. The 2022 Proposed Rule requires covered entities to take appropriate steps to ensure effective communication for companions of individuals with disabilities. We believe the same should be afforded to LEP individuals, particularly LEP parents/guardians of English-speaking minors/incapacitated adults and also family members, friends or associates of LEP individuals who are appropriate persons with whom a covered entity should communicate. This could include individuals who participate in decision-making

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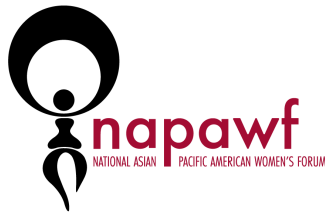
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with the LEP individual or need to understand the information for caregiving and other related reasons.




We have included citations to supporting research, including direct links to the research. We direct OCR to each of the materials we have cited and made available through active links, and we request that the full text of each of the studies and articles cited, along with the full text of our comment, be considered part of the formal administrative record for purposes of the Administrative Procedure Act. If OCR is not planning to consider these materials part of the record as we have requested here, we ask that you notify us and provide us an opportunity to submit copies of the studies and articles into the record.

Thank you for the opportunity to comment on this important issue. If you have further questions, please contact Christine Nguyen at the National Asian Pacific American Women's Forum.

Sincerely,

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