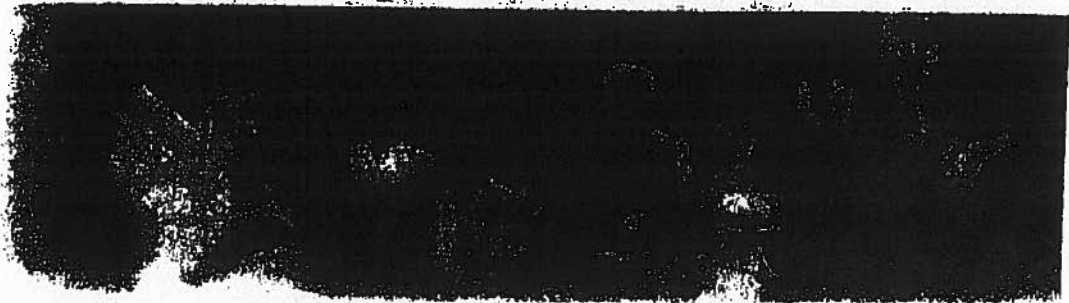


APPENDIX J

Watts, Geneva

From: OCR-CIVIL RIGHTS DIVISION- LISTSERV <OCR-CIVILRIGHTS-LIST@LIST.NIH.GOV> on behalf of OCR Civil Rights Listserv (HHS/OCR) <OCRCivilRightsLists@HHS.GOV>
Sent: Friday, May 13, 2016 7:46 AM
To: OCR-CIVILRIGHTS-LIST@LIST.NIH.GOV
Subject: HHS finalizes rule to improve health equity under the Affordable Care Act

HHS Office for Civil Rights in Ac



May 13, 2016

HHS finalizes rule to improve health equity under the Affordable Care Act

Final rule prohibits discrimination based on race, color, national origin, sex, age or disability; enhances language assistance for individuals with limited English proficiency; and protects individuals with disabilities

The Department of Health and Human Services (HHS) today issued a final rule to advance health equity and reduce health care disparities. Under the rule, individuals are protected from discrimination in health care on the basis of race, color, national origin, age, disability and sex, including discrimination based on pregnancy, gender identity and sex stereotyping. In addition to implementing Section 1557's prohibition on sex discrimination, the final rule also enhances language assistance for people with limited English proficiency and helps to ensure effective communication for individuals with disabilities. The protections in the final rule and Section 1557 regarding individuals' rights and the responsibilities of many health insurers, hospitals, and health plans administered by or receiving federal funds from HHS build on existing federal civil rights laws to advance protections for underserved, underinsured, and often excluded populations.

The *Nondiscrimination in Health Programs and Activities* final rule implements Section 1557 of the Affordable Care Act, which is the first federal civil rights law to broadly prohibit discrimination on the basis of sex in federally funded health programs. Previously, civil rights laws enforced by HHS's Office for Civil Rights (OCR) broadly barred discrimination based only on race, color, national origin, disability, or age.

"A central goal of the Affordable Care Act is to help all Americans access quality, affordable health care. Today's announcement is a key step toward realizing equity within our health care system and reaffirms this Administration's commitment to giving every American access to the health care they deserve," said HHS Secretary Sylvia M. Burwell.

The final rule helps consumers who are seeking to understand their rights and clarifies the responsibilities of health care providers and insurers that receive federal funds. The final rule also addresses the responsibilities of issuers that offer plans in the Health Insurance Marketplaces. Among other things, the final rule prohibits marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, age, or disability. The final rule also prohibits discriminatory practices by health care providers, such as hospitals that accept Medicare or doctors who participate in the Medicaid program.

The final rule prohibits the sex discrimination in health care including by:

- Requiring that women must be treated equally with men in the health care they receive. Other provisions of the ACA bar certain types of sex discrimination in insurance, for example by prohibiting women from being charged more than men for coverage. Under Section 1557, women are protected from discrimination not only in the health coverage they obtain but in the health services they seek from providers.
- Prohibiting denial of health care or health coverage based on an individual's sex, including discrimination based on pregnancy, gender identity, and sex stereotyping.

It also includes important protections for individuals with disabilities and enhances language assistance for people with limited English proficiency including by:

- Requiring covered entities to make electronic information and newly constructed or altered facilities accessible to individuals with disabilities and to provide appropriate auxiliary aids and services for individuals with disabilities.
- Requiring covered entities to take reasonable steps to provide meaningful access to individuals with limited English proficiency. Covered entities are also encouraged to develop language access plans.

While the final rule does not resolve whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination under Section 1557, the rule makes clear that OCR will evaluate complaints that allege sex discrimination related to an individual's sexual orientation to determine if they involve the sorts of stereotyping that can be addressed under 1557. HHS supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor legal developments on this issue.

The final rule states that where application of any requirement of the rule would violate applicable Federal statutes protecting religious freedom and conscience, that application will not be required.

For more information about Section 1557, including factsheets on key provisions and frequently asked questions, visit <http://www.hhs.gov/civil-rights/for-individuals/section-1557>.

To learn more about non-discrimination and health information privacy laws, your civil rights, and privacy rights in health care and human service settings, and to find information on how to file a complaint, visit us at www.hhs.gov/ocr.

Follow OCR on Twitter at <http://twitter.com/HHSOCR>.

This email is being sent to you from the OCR-Civil Rights Division-Listserv, operated by the Office for Civil Rights (OCR) in the US Department of Health and Human Services.

This is an announce-only list, a resource to distribute information about civil rights laws enforced by OCR that prohibit discrimination in health care and social services. For additional information on a wide range of topics about the Federal civil rights laws and how to file a civil rights complaint with OCR, please visit the OCR Civil Rights Division website at <http://www.hhs.gov/ocr/civilrights/index.html>.

If you feel a health care provider, or state or local government agency, has discriminated against you (or someone else) based on race, national origin, disability, or age, you may file a civil rights complaint. OCR can investigate disability-based discrimination complaints against programs operated by HHS. Under certain statutes and regulations, OCR also has limited authority to investigate complaints of discrimination based on sex and religion. For additional information about how to file a complaint, visit OCR's web page at <http://www.hhs.gov/ocr/civilrights/complaints/index.html>.

To subscribe to or unsubscribe from the listserv, please go to: <https://list.nih.gov/cgi-bin/wa.exe?SUBED1=OCR-CIVILRIGHTS-LIST&A=1>

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 of 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. To read the full text version, visit www.federalregister.gov.

Read the Press Release

[This information will be translated into additional languages and will be made available on this webpage.]

Summary of the Final Rule

[This information will be translated into additional languages and will be made available on this webpage.]

Factsheets on Key Provisions

- **Protecting Individuals against Sex Discrimination**

[This information will be translated into additional languages and will be made available on this webpage.]

- **Ensuring Meaningful Access for Individuals with Limited English Proficiency**
[This information will be translated into additional languages and will be made available on this webpage.]
- **Ensuring Effective Communication with and Accessibility for Individuals with Disabilities**
[This information will be translated into additional languages and will be made available on this webpage.]
- **Coverage of Health Insurance in Marketplaces and Other Health Plans**
[This information will be translated into additional languages and will be made available on this webpage.]

Frequently Asked Questions on Final Rule

[This information will be translated into additional languages and will be made available on this webpage.]

Translated Resources for Covered Entities

HHS Office for Civil Rights offers downloadable samples of translated materials for use by covered entities. **For translated materials, go here.**

Enforcement of Section 1557: Sex Discrimination Case Examples

The HHS Office for Civil Rights has been enforcing Section 1557 since it was enacted in 2010. **Read case examples that highlight OCR's enforcement results in complaints alleging sex discrimination.**

Background on the Section 1557 Notice of Proposal Rulemaking (NPRM)

OCR issued the Notice of Proposed Rulemaking for Section 1557 in the Federal Register on September 8, 2015 and invited public comment on the proposed rule through November 9, 2015.

Information and materials issued for the NPRM.

Content created by Office for Civil Rights (OCR)

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

Business Associate Contracts

SAMPLE BUSINESS ASSOCIATE AGREEMENT PROVISIONS

(Published January 25, 2013)

Introduction

A "business associate" is a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate. The HIPAA Rules generally require that covered entities and business associates enter into contracts with their business associates to ensure that the business associates will appropriately safeguard protected health information. The business associate contract also serves to clarify and limit, as appropriate, the permissible uses and disclosures of protected health information by the business associate, based on the relationship between the parties and the activities or services being performed by the business associate. A business associate may use or disclose protected health information only as permitted or required by its business associate contract or as required by law. A business associate is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized by its contract or required by law. A business associate also is directly liable and subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.

A written contract between a covered entity and a business associate must: (1) establish the permitted and required uses and disclosures of protected health information by the business associate; (2) provide that the business associate will not use or further disclose the information other than as permitted or required by the contract or as required by law; (3) require the business associate to implement appropriate safeguards to prevent unauthorized use or disclosure of the information, including implementing requirements of the HIPAA Security Rule with regard to electronic protected health information; (4) require the business associate to report to the covered entity any use or disclosure of the information not provided for by its contract, including incidents that constitute breaches of unsecured protected health information; (5) require the business associate to disclose protected health information as specified in its contract to satisfy a covered entity's obligation with respect to individuals' requests for copies of their protected health information, as well as make available protected health information for amendments (and incorporate any amendments, if required) and accountings; (6) to the extent the business associate is to carry out a covered entity's obligation under the Privacy Rule, require the business associate to comply with the requirements applicable to the obligation; (7) require the business associate to make available to HHS its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by the business associate on behalf of, the covered entity for purposes of HHS determining the covered entity's compliance with the HIPAA Privacy Rule; (8) at termination of the contract, if feasible, require the business associate to return or destroy all protected health information received from, or created or received by the business associate on behalf of, the covered entity; (9) require the business associate to ensure that any subcontractors it may engage on its behalf that will have access to protected health information agree to the same restrictions and conditions that apply to the business associate with respect to such information; and (10) authorize termination of the contract by the covered entity if the business associate violates a material term of the contract. Contracts between business associates and business associates that are subcontractors are subject to these same requirements.

This document includes sample business associate agreement provisions to help covered entities and business associates more easily comply with the business associate contract requirements. While these sample provisions are written for the purposes of the contract between a covered entity and its business associate, the language may be adapted for purposes of the contract between a business associate and subcontractor.

This is only sample language and use of these sample provisions is not required for compliance with the HIPAA Rules. The language may be changed to more accurately reflect business arrangements between a covered entity and business associate or business associate and subcontractor. In addition, these or similar provisions may be incorporated into an agreement for the provision of services between a covered entity and business associate or business associate and subcontractor, or they may be incorporated into a separate business associate agreement. These provisions address only concepts and requirements set forth in the HIPAA Privacy, Security, Breach Notification, and Enforcement Rules, and alone may not be sufficient to result in a binding contract under State law. They do not include many formalities and substantive provisions that may be required or typically included in a valid contract. Reliance on this sample may not be sufficient for compliance with State law, and does not replace consultation with a lawyer or negotiations between the parties to the contract.

Sample Business Associate Agreement Provisions

Words or phrases contained in brackets are intended as either optional language or as instructions to the users of these sample provisions.

Definitions

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Business Associate].
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean [Insert Name of Covered Entity].
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;

[The parties may wish to add additional specificity regarding the breach notification obligations of the business associate, such as a stricter timeframe for the business associate to report a potential breach to the covered entity and/or whether the business associate will handle breach notifications to individuals, the HHS Office for Civil Rights (OCR), and potentially the media, on behalf of the covered entity.]

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(e) Make available protected health information in a designated record set to the [Choose either "covered entity" or "individual or the individual's designee"] as necessary to satisfy covered entity's obligations under 45 CFR 164.524;

[The parties may wish to add additional specificity regarding how the business associate will respond to a request for access that the business associate receives directly from the individual (such as whether and in what time and manner a business associate is to provide the requested access or whether the business associate will forward the individual's request to the covered entity to fulfill) and the timeframe for the business associate to provide the information to the covered entity.]

(f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

[The parties may wish to add additional specificity regarding how the business associate will respond to a request for amendment that the business associate receives directly from the individual (such as whether and in what time and manner a business associate is to act on the request for amendment or whether the business associate will forward the individual's request to the covered entity) and the timeframe for the business associate to incorporate any amendments to the information in the designated record set.]

(g) Maintain and make available the information required to provide an accounting of disclosures to the [Choose either "covered entity" or "individual"] as necessary to satisfy covered entity's obligations under 45 CFR 164.528;

[The parties may wish to add additional specificity regarding how the business associate will respond to a request for an accounting of disclosures that the business associate receives directly from the individual (such as whether and in what time and manner the business associate is to provide the accounting of disclosures to the individual or whether the business associate will forward the request to the covered entity) and the timeframe for the business associate to provide information to the covered entity.]

(h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and

(i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

Permitted Uses and Disclosures by Business Associate

(a) Business associate may only use or disclose protected health information

[Option 1 – Provide a specific list of permissible purposes.]

[Option 2 – Reference an underlying service agreement, such as “as necessary to perform the services set forth in Service Agreement.”]

[In addition to other permissible purposes, the parties should specify whether the business associate is authorized to use protected health information to de-identify the information in accordance with 45 CFR 164.514(a)-(c). The parties also may wish to specify the manner in which the business associate will de-identify the information and the permitted uses and disclosures by the business associate of the de-identified information.]

(b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information

[Option 1] consistent with covered entity's minimum necessary policies and procedures.

[Option 2] subject to the following minimum necessary requirements: [Include specific minimum necessary provisions that are consistent with the covered entity's minimum necessary policies and procedures.]

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity [if the Agreement permits the business associate to use or disclose protected health information for its own management and administration and legal responsibilities or for data aggregation services as set forth in optional provisions (e), (f), or (g) below, then add “, except for the specific uses and disclosures set forth below.”]

(e) [Optional] Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

(f) [Optional] Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) [Optional] Business associate may provide data aggregation services relating to the health care operations of the covered entity.

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

(a) [Optional] Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) [Optional] Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.

(c) [Optional] Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

Permissible Requests by Covered Entity

[Optional] Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity. [Include an exception if the business associate will use or disclose protected health information for, and the agreement includes provisions for, data aggregation or management and administration and legal responsibilities of the business associate.]

Term and Termination

(a) Term. The Term of this Agreement shall be effective as of [Insert effective date], and shall terminate on [Insert termination date or event] or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement [and business associate has not cured the breach or ended the violation within the time specified by covered entity]. [Bracketed language may be added if the covered entity wishes to provide the business associate with an opportunity to cure a violation or breach of the contract before termination for cause.]

(c) Obligations of Business Associate Upon Termination.

[Option 1 – if the business associate is to return or destroy all protected health information upon termination of the agreement]

Upon termination of this Agreement for any reason, business associate shall return to covered entity [or, if agreed to by covered entity, destroy] all protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information.

[Option 2—if the agreement authorizes the business associate to use or disclose protected health information for its own management and administration or to carry out its legal responsibilities and the business associate needs to retain protected health information for such purposes after termination of the agreement]

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate"] which applied prior to termination; and
5. Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

[The agreement also could provide that the business associate will transmit the protected health information to another business associate of the covered entity at termination, and/or could add terms regarding a business associate's obligations to obtain or ensure the destruction of protected health information created, received, or maintained by subcontractors.]

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

Miscellaneous [Optional]

(a) [Optional] Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) [Optional] Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) [Optional] Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

[Learn more about business associates](#)

[Back to Top](#)

Guidance Materials for Covered Entities

- [Summary of the Privacy Rule](#)
- [Guidance on Significant Aspects of the Privacy Rule](#)
- [Fast Facts for Covered Entities](#)
- [Provider Guide: Communicating With a Patient's Family, Friends, or Other Persons Identified by the Patient](#)
- [Guidance on the Application of FERPA and HIPAA to Student Health Records](#)
- [Sample Business Associate Contract](#)
- [Misleading Marketing Claims](#)
- [Sign Up for the OCR Privacy Listserv](#)

Content created by Office for Civil Rights (OCR)

APPENDIX J

SAMPLE DATA SOURCE DESCRIPTIONS

As a sample of description of population data, DHS utilizes an April 2016 report by the State of Hawaii, Department of Business, Economic Development and Tourism (DBEDT), Research and Economic Analysis Division, describing the “Non-English Speaking Population in Hawaii.” For example, major findings in that report, which was based on the American Community survey data collected for five years (2010-2014), are:

- About one – in – four Hawaii residents aged five and older spoke a language other than English at home,
- The number of non-English speakers at home in Hawaii increased by 44% from 1980 to 2014. As the total population in Hawaii grew at a similar rate during the period, the proportion of non-English speakers to the total population remained about the same,
- Non-English language speaking at home was more prevalent in Honolulu County than in the neighbor island counties. The proportion of non-English speakers was highest in Honolulu County at 28% and lowest in Hawaii County at 19%,
- Ilocano, Tagalog, and Japanese were the top three most common non-English languages spoken at home in Hawaii. Speakers of these three languages made up about half of non-English speakers at home in Hawaii,
- The growth in the use of each language was not shared evenly among various languages over the last three decades. The two most outstanding trends were found in the use of Japanese and Ilocano. The Japanese speaking population decreased to 45,500 in the 2010-2014 period, which was a little over half of its level in 1980. On the other hand, Ilocano speaking population in Hawaii almost tripled from 1980 to 2014,
- English proficiency of the non-English speaking population varied substantially by language,
- Compared with the adult population, the proportion of non-English speakers was lower and English proficiency was better in the five to 17 school-age children group,
- The most distinctive characteristic of the non-English speaking population from the English-only speaking population was their nativity (i.e., 63% were foreign born),
- A key determinant of a person’s language use at home was the person’s nativity. The chance of a foreign-born person to speak a language other than English at home was 84%,
- The chance to speak a non-English language at home also varied by age, education, and race,

- English proficiency had strong impacts on an individual's economic activities,
- English proficiency also played a role in the selection of occupation,
- Earning disparities among various English proficiency groups were evident, and
- The earning disparities among various English proficiency groups include both direct effects of English proficiency on earnings and indirect effects through other characteristics correlated with English proficiency. A multivariate regression analysis showed that the impacts of English proficiency on earnings were still significant even when all related factors were controlled. The regression results suggest that the earnings of non-English speakers can be 10 to 34% lower than that of the English-only speakers due to lack of English proficiency although they have the same amount of education and experience, are subject to the same race and gender, and work in similar occupations.

The DHS Language Access Plan (2016-2018), Component 1: Assessment of LEP Population Requirements, speaks to DHS efforts to provide effective and meaningful access to LEP applicants and clients, for example. DHS looks at the totality of circumstances, including the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee,
2. The frequency LEP individuals come in contact with the program,
3. The nature and importance of the program, activity, or service provided to people's lives, and
4. The resource available to the grantee/recipients and costs.

DHS currently uses two approaches to identify its target population to include both potential and current clients. In addition to various data sources, such as school and U. S. Census data, DHS uses a combination of the federal census data and the Hawaii state income level data below 200% federal poverty level to determine its target population's linguistic needs.

DHS has implemented a specific language identification field for staff to enter an individual's primary language into the Hawaii Automated Welfare Information System (HAWI) and the Kauhale On-Line eligibility Assistance System (KOKEA) for data collection and quantitative statistical analysis.

According to the most recent data from HAWI as of March 2016, there are 121,278 unique clients who are eligible for public benefits (non-medical). Of those, 61,903 or 13.9% reported their English proficiency as "minimum command or below." The top six non-English languages are Cantonese, Ilocano, Korean, Vietnamese, Chuukese, and Marshallese.

Furthermore, according to the most recent data from KOLEA as of March 2016, there are 328,484 unique clients who are eligible for medical assistance. Of those, 11,026 or 3.6% indicated other non-English languages as their preferred spoken language. The top six non-English spoken languages are Ilocano, Korean Vietnamese, Cantonese, Chuukese, and Marshallese.

Under this analysis, DHS compared census data with its own internal data. Tracking the language needs of its users, the department determined that the most common languages spoken by LEP persons who are eligible for DHS benefits are Chinese (Cantonese), Chuukese, Ilocano, Korean, Marshallese, and Vietnamese. The department's assessment of language needs is in line with the top four state-wide languages (Korean, Vietnamese, Chinese, and Ilocano) as reported by DBEDT.