

Insights

Settlement agreement with UConn and the United States Government reveals how it may interpret a covered entity's obligations under non-discrimination laws and regulations

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On January 5, 2017, the U.S. Attorney's Office for the District of Connecticut and the Office of Civil Rights ("OCR") announced that they had entered into an agreement with John Dempsey Hospital, a subsidiary of University of Connecticut Health Center ("UConn"), to resolve an accusation of its noncompliance with federal nondiscrimination laws and requirements. The complaint involved UConn's failure to timely provide auxiliary aids and interpretive services to a deaf patient despite such individual's request for those services. UConn did not dispute the allegations. Under the terms of the agreement, UConn agreed to pay \$20,000.00 to the complainant and to implement certain processes and procedures to ensure effective communication with individuals who are deaf and hard of hearing as required under existing federal laws, including Section 1557 of the Affordable Care Act ("Section 1557").

The terms of the settlement may reveal how the federal government interprets certain requirements that require a covered entity to ensure effective communication with patients who are deaf or hard of hearing, including new regulations adopted under Section 1557 that are not specifically addressed in those authorities. For instance, UConn agreed to:

- Provide auxiliary aids and services to the patient and/or the patient's companion, defined as a family member, friend, or associate who, along with the patient, is an appropriate person with whom the hospital should communicate.
- Make the compliance coordinator available 24/7 to answer questions and provide appropriate assistance to patients in need of services.
- Assess patients and/or their companion at intake to determine what type of auxiliary aid or service is necessary for either or both, regardless of whether such individuals request the services, and to document the determination in the patient's record.

- Document a determination to utilize services or aids contrary to the patient's request, when auxiliary aides are not necessary, or when the patient declines such services after explaining the risks.
- Provide a qualified interpreter as soon as practicable, but no later than two (2) hours for on-site interpreters or twenty-five (25) minutes if conducted through video remote interpreting ("VRI") upon making the determination. The agreement describes examples of when the use of either an in-person or VRI interpreter is or is not appropriate and standards for using VRI equipment.
- Give regular updates to the patient and/or companion on the status of its efforts to obtain such interpreters within the applicable time frame.
- Carefully document interactions with patients regarding the use and provision of such services for monitoring compliance, including maintaining a log of requests for random audits by the compliance coordinator.

It is unclear if the OCR intends to use this agreement as an institutional standard for all covered entities subject to the applicable laws and regulations.

Please feel free to contact Brandon W. Shirley if you have questions.