AMN Healthcare

Sec. 1557 Requirements for Decision Support Tools & AI

What the Regulation Says:

> "(a) General prohibition. A covered entity must not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs or activities through the use of patient care decision support tools.
>
> (b) Identification of risk. A covered entity has an ongoing duty to make reasonable efforts to identify uses of patient care decision support tools in its health programs or activities that employ input variables or factors that measure race, color, national origin, sex, age, or disability.
>
> (c) Mitigation of risk. For each patient care decision support tool identified in paragraph (b) of this section, a covered entity must make reasonable efforts to mitigate the risk of discrimination resulting from the tool's use in its health programs or activities."
>
> **-Nondiscrimination In The Use Of Patient Care Decision Support Tools**
> **45 CFR §92.210**

What it means for you:

What Constitutes a "Decision Support Tool"

Any automated or non-automated tool, mechanism, method, technology, or combination thereof used by a covered entity to support clinical decision-making in its health programs or activities.

> *But note: HHS OCR stated that it was considering whether to expand this concept to non-clinical decision-making tools (such as billing, scheduling, and resource allocation).*

Required "Due Diligence"

HHS OCR will evaluate what steps you took by way of **"due diligence"** when you were looking to use AI or a decision support tool. They will look at whether you:

- Consulted disclosures required by certified health IT developers
- Reviewed resources published by HHS
- Monitored academic literature
- Reviewed media reports
- Participated in professional associations

Identification of Risk:

Whether assessing whether **"reasonable efforts"** have been made to identify potential risks, HHS OCR stated that it will consider:

1. The system's size and resources;
2. Whether the system used the tool in a manner and under the conditions intended by the developer and approved by regulators (or whether the tool was customized by the health system);
3. Whether the system reviewed the product information from the certified developer of healthcare IT regarding the potential for discrimination; and
4. Whether the system has a methodology or process in place for evaluating the tools it adopts (e.g., the "due diligence" concept mentioned above).

Mitigation of Risk

For mitigation, HHS OCR stated that health systems are encouraged to:

- Establish written policies and procedures for the use of these tools in decision-making, including governance measures;
- Monitor potential impacts and develop ways to address complaints; and
- Train staff on the purpose of the use of the tools in clinical decision-making.

Effective Communication Procedures

A covered entity must establish clear, written procedures to ensure effective communication for individuals with disabilities as required by § 92.202.

These procedures should include:

- **Section 1557 Coordinator:** Current contact information for the Section 1557 Coordinator (if applicable) to manage and oversee compliance.
- **Accessing Interpreter Services:** A detailed process on how staff can request and access qualified interpreters to facilitate communication with individuals with disabilities, including a list of available interpreter staff members.
- **Auxiliary Aids & Services:** Clear instructions on how to access appropriate auxiliary aids and services (e.g., hearing aids, captioning, etc.) to ensure all individuals can effectively communicate during their care.

Machine Translation

What HHS OCR considers "Machine Translation"

Machine Translation - Automated translation, without the assistance of or review by a qualified human translator, that is text-based and provides instant translations between various languages, sometimes with an option for audio input or output.

When does Machine Translation need to be reviewed by a Qualified Human Translator?

When the text being translated…

- Is critical to rights, benefits or meaningful access,
- Where accuracy is essential,
- Or the source document/materials contain complex, non-literal or technical language.