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## Meet Leon Rodriguez

Director of the Office for Civil Rights, of the  
U.S. Department of Health and Human Services

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## Leon Rodriguez

*Director of the Office for  
Civil Rights, of the U.S.  
Department of Health and  
Human Services*

an interview by Jenny O'Brien

# Meet Leon Rodriguez

This interview was conducted by Jenny O'Brien, member of the HCCA Board of Directors, and took place in April 2012. Jenny ([jennifer.obrien@uhc.com](mailto:jennifer.obrien@uhc.com)) is Chief Medicare Compliance Officer, UnitedHealthcare Medicare & Retirement in Minnetonka, MN.

**JO:** On behalf of HCCA, thanks for speaking with me about the Office for Civil Rights (OCR) and sharing initiatives the Office is focused on for 2012. Please tell us a little about yourself, your experience, and the path that led you to become the Director of the Office for Civil Rights.

**LR:** I was born in Brooklyn, New York, not long after my parents emigrated from Cuba. We

moved to Miami when I was four, and there I grew up in a community of immigrant strivers. Hard work and achievement were respected, no matter what your background. I was fortunate to go to Brown University and then Boston College Law School; both of those experiences have played a significant role in shaping my worldview and professional priorities.

After graduating from law school, I started out in 1988 as Assistant District Attorney in Brooklyn, where I was a street prosecutor doing stints handling sexual assaults cases, organized crime, and official corruption. My wife and I moved to Washington DC in 1994 for her to pursue a residency in obstetrics and

gynecology, and then to Pittsburgh, where she completed her training. In Washington, I went to work as a trial lawyer in the Criminal Section of the Civil Rights Division of the U.S. Department of Justice. In Pittsburgh, I was an Assistant U.S. Attorney specialized in health care fraud cases. We returned to the DC area in 2001, and I went into private practice with Ober Kaler for the next six years, representing health care providers in a variety of litigation and investigation matters. In 2007, I was appointed County Attorney for Montgomery County, the county where we live. I served in that position until I became the Chief of Staff at the U.S. Department of Justice, Civil Rights Division.

**JO:** You have a very impressive background. Are there certain influences that helped shape your successful career?

**LR:** Many colleagues, mentors, professors, teachers, books, and even newspaper articles have helped shape my career and life choices, but really, the most important influences are the people closest to me. My parents, who came to this country in 1961, taught me not only the importance of hard work, but through their example, taught me that all human beings are basically the same, no matter their wealth or their background and, because of that, are entitled to dignity and respect. My wife is a physician who has been my teacher, counselor, and inspiration

from the very day we met 23 years ago. And I am inspired by my genuinely wonderful children, to whom I feel responsible for, as best I can, living a life worthy of emulating.

**JO:** Can you tell us about the Office for Civil Rights and its overall mission and vision?

**LR:** Fundamentally, our work at OCR is like that of any part of the Department of Health and Human Services, and is about making sure that all Americans can lead healthy lives

free of barriers to getting the care and services that they need. OCR's specific mission is to promote compliance with the federal laws that prohibit discrimination by entities funded by HHS, and to protect the privacy of health information. The anti-discrimination laws include Title VI of the Civil Rights Act of 1964, through which we address health disparity issues,

particularly those arising out of non-compliance with requirements for serving limited English-proficient populations, and also the Americans with Disabilities Act, which prohibits discrimination based on disability and, among other things, protects rights to language assistance and the utilization of service animals.

We are the federal agency responsible for enforcing the HIPAA Privacy and Security Rules, as well as the enhancements to HIPAA under the HITECH Act. We discharge this

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overall mission through three basic activities: enforcement, policy development, and education. Our central vision is that by reducing discriminatory activity in federally funded health programs and increasing patient trust in the confidentiality of their health information, we promote better health outcomes for individuals and communities.

**JO:** Is there an aspect of your current role that has been especially surprising to you? And what would you say are the greatest challenges and rewards?

**LR:** The level of unfinished business is far greater than I would have guessed, and that's true across OCR's areas of responsibility. We see widespread security vulnerabilities for health information. We see continuing barriers to language access for patients and human services clients. It

means that one of the most critical tasks for the OCR leadership team is to be strategic about how we utilize our resources, so that we are maximizing the impact of our work, while at the same time providing meaningful customer service to our citizen complainants and other stakeholders. We're doing all that while our train is in motion, and I am already seeing progress in terms of accelerated enforcement and an increased attention by regulated entities to compliance issues in all our areas of jurisdiction. Since the start of 2012, OCR has publicized settlements with five entities—two of which concerned civil rights violations under section 504 of the Rehabilitation Act, one focused on Title II of the Americans with Disabilities Act, and two concerned violations of the HIPAA

Security Rule. Covered entities can anticipate more enforcement actions coming. We hope that each of our press releases tells a story that is meaningful to the industry in their efforts to comply with the various laws that we enforce.

**JO:** What are the Office for Civil Rights' main initiatives aimed at enforcing the Privacy and Security Rules?

**LR:** We have several initiatives, most of which I think are known to your readers. The one that I would particularly like to underscore is the consolidation of our monetary enforcement program. The Privacy Rule became effective in 2003, the Security Rule in 2005,

and HITECH became law in 2009. Among other things, HITECH dramatically increased the scope and amount of penalties for HIPAA violations. The clear enforcement mandate in HITECH comes

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at the conclusion of a pretty lengthy ramp-up period for covered entities to come into compliance. Consistent and principled monetary enforcement is one of the most important tools, in my experience, to ensure that covered entities "get it" that the expectation of compliance is current and real. HITECH authorizes OCR to retain the penalties it collects to fund restitution for victims and also for application to enforcement activities. We intend to use those proceeds in a principled and transparent manner. We also want to continue to use our breach notification program in an effective way to identify privacy and security vulnerabilities and make sure that, both on an individual entity level and on an industry-wide level, we work to close gaps.

For example, we announced an important settlement on March 13, 2012, with Blue Cross and Blue Shield of Tennessee (BCBST), detailing an agreement under which BCBST agreed to pay \$1.5 million and enter into a 450-day Corrective Action Plan (CAP) to address its HIPAA compliance issues. BCBST settled following an investigation triggered by the report of a “breach”—57 unencrypted hard drives, including patient records for over a million patients, were stolen from a leased facility in Tennessee. As required by the HITECH Act, we are engaged in a HIPAA audit pilot that is looking at a small group of randomly selected entities. The pilot will teach us lessons that will aid us in deciding the shape of a permanent audit program and will also supplement the function of the breach program to identify common vulnerabilities. While we are doing this, we also need to continue to develop our education and technical assistance so that patients understand their rights and providers their responsibilities and the resources available to them to comply with those responsibilities, and much, much more.

**JO:** The Office for Civil Rights also protects individuals from discrimination in certain health care and social service programs. Can you share more about the programs this includes and current areas of focus for 2012?

**LR:** We will continue to focus on health disparities, particularly but not only in the context of limited English-proficient persons, and making sure that entities receiving federal funds are in compliance with those Title VI requirements. At the same time, we are continuing to look at other ways to utilize Title VI as a framework to attack disparities. Our Americans with Disabilities Act (ADA) work continues to focus on language assistance and service animal issues, but is also expanding into issues such as discrimination based on HIV status. We are also dedicating



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considerable resources to developing capacity to enforce requirements under the ADA that promote community living for persons with disabilities, requirements which were then enshrined in the 1999 *Olmstead* case. While the Department of Justice Civil Rights Division will continue to play a large enforcement role on *Olmstead* cases, we believe that OCR has a critical role to play in partnership with the Department of Justice in enforcement, policy development, and education. Finally, we are working on implementing important new anti-discrimination authorities found in Section 1557 of the Affordable Care Act, which among other things prohibit, for the first time, discrimination based on gender in federally funded programs.

**JO:** What do you see on the horizon? Can you share trends you see developing in the health care enforcement area?

**LR:** I think one clear trend is going to be a continued and growing emphasis on HIPAA privacy and security. As we move into more integrated electronic health information systems, it is going to be critical that consumers of health care trust that their information is truly confidential. Enforcement will be a critical part of creating that trust, giving covered entities incentives to come into genuine compliance, and making sure patients understand that those who view their obligations casually will be subject to sanction. And it's important to remember that OCR is not the only enforcer

in this arena. As required under HITECH, we have trained a number of state Attorneys General on HIPAA requirements and have also consulted with a portion of them as they work to develop their own privacy and security enforcement programs.

On the civil rights side, the drive to

fulfill the community integration mandate of the Americans with Disabilities Act will mean a growing utilization of enforcement tools to fulfill that mandate.

I also think there is going to be a growth in awareness of the civil rights implications of health disparities. For example,

as understanding grows on the critical role of provider-patient communication, including for limited English-proficient populations, in preventing adverse outcomes and promoting optimal ones, we believe that this will grow as a compliance priority.

**JO:** As you know, HCCA's members are compliance professionals. How will these trends impact compliance programs and the role of compliance officers?

**LR:** The role of compliance officers will be more critical than ever. In the privacy and security area, compliance officers have a crucial role to play in designing and then ensuring the implementation of their organizations' policies and procedures. Their most important role, however, given the nature of the vulnerabilities that we see here in OCR, is to ensure that all employees in their organizations take

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ownership of compliance issues—from the leadership to the employees who handle protected information in their day-to-day work. For Title VI and ADA requirements, there is a real need to conduct an assessment of the covered entities' business, particularly the nature of the population an entity serves and also the nature of the service it provides. Based on that assessment, entities need to be sure that they have adequate language assistance plans both for limited English-proficient persons and persons with disabilities.

**JO:** What guidance or advice would you give to health care compliance professionals who are working to help their organizations meet regulators expectations?

**LR:** I think an important thing that needs to be understood about all of our jurisdictional areas is that they are all really grounded in common sense and are designed to be adaptable to different types and sizes of entities. I know that compliance officers understand that, but I think it would be very helpful for them to help their organizational leadership understand that as well. So while the initial reaction might be “That it’s too hard” or “It’s too expensive,” an understanding that these are not exotic requirements and that they do improve the quality of care will help organizations come into compliance.

At the same time, compliance professionals can help deliver the message that we at OCR take our enforcement responsibilities seriously and that there may be significant consequences to non-compliance.

**JO:** What are some key indicators your investigators look for when determining whether an organization has demonstrated that it has an effective compliance program?

**LR:** The first thing our investigators examine is whether an organization has a living plan to address the particular regulatory area we’re examining. Underlying many of the worst violations is an on-going failure to take compliance responsibilities seriously. We look to see whether an entity has assessed its compliance risks, issued appropriate policies and procedures, trained its staff, implemented safeguards and processes consistent with its policies and procedures, and maintained employee disciplinary policies to ensure compliance.

**JO:** HCCA has reached over 7,000 members and the compliance profession continues to grow, while enforcement efforts continue to intensify. What areas of opportunity do you see for HCCA, the government, and the health care industry to better collaborate?

**LR:** I have been familiar with HCCA since starting in private practice 11 years ago, and they do an excellent job of promoting understanding of compliance issues. We certainly see opportunities to engage in dialogue and collaboration to make sure that OCR is providing optimal technical assistance and that our compliance message goes far and wide.

**JO:** Leisure time—we all like to think about that! Please share any hobbies or favorite activities you are involved in.

**LR:** My duties as OCR Director and my family responsibilities keep me pretty busy. I do enjoy leisure activities with my wife and children—biking, eating out, working in the garden, cooking, and listening to Latin music.

**JO:** Thank you, Leon. We appreciate the perspectives and insights you have shared and look forward to continued collaboration with the Office of Civil Rights. 🍷