

Your Obligation as a Recipient of HHS Funding to Provide Assistance to Patients with Limited English Proficiencies (LEP)

Mara K. Youdelman (“The Medical Tongue: U.S. Laws and Policies on Language Access.” Health Affairs, March 2008, vol. 27 no.2, p.424) poses a provocative question: “Should the language you speak determine how long you live?” Sadly, as medical diagnoses and treatments get more complex, this is often the case.

“An area of increasing concern among physicians is providing care for patients with limited abilities to speak English. This concern is warranted by – among other factors – logistical uncertainties in treating patients who may not understand physician instructions, the risk of potential litigation in treating such patients, and the fiscal impact on medical practice of treating such patients.” (“Eliminating Barriers for Patients with Limited English Proficiency.” Journal of American Osteopathic Association, December 1, 2009, vol. 109 no.12, p. 634).

In addition to the practical reasons and moral imperatives for promoting better communication in medical settings, Title VI of the Civil Rights Act requires certain providers to offer special services to patients who face language barriers in obtaining good care. The website for the US Department of Health and Human Services (HHS) discusses in detail the requirements for providing language assistance to persons with limited English proficiency, known as “LEP.”

See: <http://www.hhs.gov/ocr/civilrights/resources/laws/revisedlep.html>

These are the key sections:

Who is required to provide language assistance?

All recipients of federal financial assistance from HHS are required “to provide meaningful access to LEP persons.” This includes any health care providers who submit claims to Medicaid or Medicare Part A (hospital services). Receiving funds from Medicare Part B (physician services) is not considered federal financial assistance; however, physicians are subject to the LEP rules if they receive Medicaid reimbursement.

Who are LEP persons?

“Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English” may be considered to be LEP persons.

How does a Health Care Provider determine the extent of its obligation to provide LEP services?

The starting point is an individualized assessment that balances “four factors” (i.e., number of persons, frequency of visits, nature and importance of the services provided, and resources available and related costs. An analysis of the four factors (spelled out in detail on the HHS website) will determine which services are required.

What constitutes language assistance?

Detailed guidance is provided on the HHS website of the two main services:

1. **Written** or translation of text including consent forms, intake forms, written notices, and written tests. “Safe Harbor” (i.e., strong evidence of compliance) is outlined on the website.
2. **Spoken** or oral interpretation of verbal interaction including hiring bilingual staff or interpreters and using telephonic interpretation, community volunteers, or friends and family members.

In many families where the parents do not speak English, the children do, and they are often pressed into service as translators. Although these children may be able to effectively translate in the grocery store or at school, the sophisticated language of medicine can create mistranslations with lethal consequences. In addition, children do not have the emotional maturity appropriate for delivering news of potential life-threatening illnesses. An article in a California newspaper offers a case in point:

A Laotian refugee, unable to communicate with her doctor, relied on her 12-year-old son to translate, but he revealed that, “She tells me things I don’t know how to say. Sometimes I tell the doctor something else.” He also mistranslated the doctor’s orders regarding her medication resulting in dizzy spells from taking the wrong dose. [Burke, G. (2005, Oct. 24). Translating isn’t kid stuff. San Jose Mercury News, p. 5B.]

HHS policy guidelines urge providers to be cautious when an LEP patient chooses to use a minor child or other family member as the interpreter in light of the potential issues of competency, confidentiality, or conflict of interest. Providers should take reasonable steps to inform patients about problems associated with having a minor child or other family member interpret rather than choosing to have an objective, competent interpreter provided by the practice at no cost. The patient may refuse the offered interpreter services, but the provider will have complied with the law by informing the patient of the availability of the service and the corresponding risks of ineffective communication.

What are the legal consequences of not providing assistance?

The Office for Civil Rights (OCR) investigates all complaints against entities that are not in compliance. OCR will first seek corrective action through voluntary compliance, but if a party fails to comply, the action can then be referred to the Department of Justice for further enforcement action, including termination of federal financial assistance and additional penalties as the situation warrants.

What should health care providers do to meet their obligations?

While services must be provided at no cost to the patient, offices that see relatively few LEP patients can greatly increase their capacity to provide meaningful access to language assistance by simply training staff to identify situations where language assistance is needed, having a plan in place for getting in touch with qualified translators, and having critical documents available in translation.

The most effective way to demonstrate compliance with the Title VI requirements is to complete a written LEP Plan. HHS’s policy guidance suggests that an effective plan follows five steps: (1) identifies LEP individuals who need language assistance, (2) describes the practice’s language assistance measures, (3) trains staff, (4) notifies the practice’s or service area’s LEP population about the availability of language

assistance services, and (5) monitors and updates the LEP plan on an ongoing basis. A plan may be as simple as being prepared to use a commercially-available telephonic interpretation service to obtain immediate interpreter services via dual handset phones, speakerphone, or even mobile phone apps. Note: a qualified interpreter does not need to be certified, but must be able to understand and communicate medical terminology.

For help in navigating the intricacies of the HHS website or assistance in developing and implementing an LEP plan, contact:

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