



Interpreters for Patients with Limited English Proficiency

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Physicians are well aware of the central role clear communication plays in the physician-patient relationship. Patients who have limited English proficiency (LEP) present special challenges to effective interactions. Ophthalmologists often have questions about how to obtain and reimburse interpreters, and whether family members can fulfill this role. This document provides some basic information on federal rules on these topics, and presents risk management recommendations on how to best meet the needs of these patients and the practice.

How is LEP defined and who must provide assistance?

The HHS Office for Civil Rights has published guidance that is available at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-vi/index.html> (accessed 3/13/19). The Guidance describes LEP persons as “individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.”

All recipients of federal financial assistance from the Department of Health and Human Services (HHS) must take reasonable steps to provide meaningful access to LEP persons at no cost to the LEP person. Recipients of HHS assistance may include physicians, hospitals, universities, and other entities that receive payment from federal programs such as Medicaid, CHIP, and Medicare Part A, and health plans under Medicare Parts C and D. Providers who only receive Medicare Part B payments are not considered recipients of HHS assistance.

How to determine the extent of obligations to provide LEP services

The Guidance explains that the obligation to provide meaningful access is fact-dependent and starts with an individualized assessment that balances four factors. There is no "one size fits all" solution for Title VI

compliance with respect to LEP persons, and what constitutes "reasonable steps" for large providers may not be reasonable where small providers are concerned. The four factors are:

1. The number or proportion of LEP persons served or encountered
2. The frequency with which LEP individuals come into contact with your practice
3. The nature and importance of your services
 - a. Consider both the importance and urgency of your services
 - b. Would denial or delay of access to services have a serious or life-threatening implication for the LEP individual?
 - i. "If the activity is both important and urgent—such as the communication of information concerning emergency surgery and the obtaining of informed consent prior to such surgery—it is more likely that relatively immediate language services are needed."
4. The resources available to you and costs
 - a. "Guidance" clarifies both that "small practitioners and providers will have considerable flexibility in determining precisely how to fulfill their obligations" and that "smaller recipients with smaller budgets will not be expected to provide the same level of language services as larger recipients with larger budgets."

After the four-factor analysis, the practice should decide—and document—what "reasonable steps, if any, it should take to ensure meaningful access for LEP persons." "Guidance" contains a detailed discussion of each factor.

Ways to provide language services

Physicians have two main ways to provide language services: "oral interpretation either in person or via telephone interpretation service and written translation." The Guidance document provides numerous examples of flexible ways of obtaining interpretation and translation help. Translation of documents such as consent forms is addressed in Section VI C and Question 7 in Appendix A.

The discussion of interpreters begins in Section VI, and includes bilingual staff, interpreters as staff members, contracting for interpreters, using telephone interpreter lines, and community volunteers. When assessing whether an interpreter is competent, several factors should be considered:

- Proficiency in and ability to communicate information accurately in both English and the other language
- Orientation and training in skills and ethics (privacy, confidentiality, conflict of interest, impartiality, limits of the role of interpreter)
- Knowledge in both languages of specialized terms or concepts peculiar to the recipient's program activity

The use of family members is addressed in Section VI B, and in Question 9 in Appendix A. It states that if the four-factor analysis indicates the need for an interpreter, then

- Explain to the patient that you can provide an interpreter (e.g., staff member, volunteer, or contracted service), or that the patient may choose to ask a family member or friend to serve as the interpreter.
 - If the patient wants you to provide an interpreter, the patient cannot be charged for the cost.
 - Note that you cannot require a LEP person to use a family member/friend.

- If the patient wants a family member or friend to serve as an interpreter, determine if this is an appropriate choice. Evaluate issues such as competency, confidentiality, privacy, conflict of interest, etc., as discussed in the guidelines.
 - Conflict of interest: “A woman or child is brought to an emergency room and is seen by an emergency room doctor. The doctor notices the patient’s injuries and determines that they are consistent with those seen with victims of abuse or neglect. In such a case, use of the spouse or parent to interpret for the patient may raise serious conflicts of interest and may, thus, be inappropriate.”
 - Competency: “A man, accompanied by his wife, visits an eye doctor for an examination. The eye doctor offers him an interpreter, but he requests that his wife interpret for him. The eye doctor talks to the wife and determines that she is competent to interpret for her husband during the examination. The wife interprets for her spouse as the examination proceeds, but the doctor discovers that the husband has cataracts that must be removed through surgery. The eye doctor determines that the wife does not understand the terms he is using to explain the diagnosis and, thus, that she is not competent to continue to interpret for her husband. The eye doctor stops the examination and calls an interpreter for the husband.”
 - Complexity of healthcare “A family member may be appropriate to serve as an interpreter if preferred by the LEP person in situations where the service provided is of a routine nature such as a simple eye examination. However, in a case where the nature of the service becomes more complex, depending upon the circumstances, the family member or friend may not be competent to translate.”
 - Minors as interpreters Exercise extra caution when the LEP person chooses to use a minor as an interpreter. Determine, as discussed above, if the minor is an appropriate interpreter and if the LEP person has considered the impact on the minor.

Assistance

The HHS Office for Civil Rights has published guidance for health care providers that is available at <https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/guidance-federal-financial-assistance-title-vi/index.html> (accessed 3/13/19). It also provides access to some videos that might help staff understand the impact of LEP on health and healthcare (<https://www.hhs.gov/civil-rights/for-providers/training/index.html>).

The Office of Civil Rights (and its regional offices) provides technical assistance such as language lines and interpreters, translation of written materials, and foreign language web sites. You might also find help from your local hospital and health plans, and from volunteer organizations.

RISK MANAGEMENT RECOMMENDATIONS

- Conduct an analysis of your obligations
 - It is prudent to keep a file of the documents from federal agencies and your analysis of your obligations, as well as the policies and procedures you implement based upon them (your compliance plan).

- If you have questions about the validity of your analysis or compliance plan, contact the Office of Civil Rights in your CMS region.
- Discussions with patients whose primary language is not English
 - Determine whether the patient can participate in the decision-making process in English
 - Ask the patient if he or she needs an interpreter. Document the patient's language and response.
 - If the patient needs a translator and a family member is present, determine the patient's preference and the competency and suitability of the translator as discussed above.
 - If a translator is used, document the person's name and relationship to the patient.

OMIC's Risk Management Department can be an important source of information and support for policyholders engaged in these evaluations and discussions. Please call 1.800.562.6642, option 4 or email us at riskmanagement@omic.com.