Language Access:
Understand and advocate for your clients’ interpretation rights

Mara Youdelman | Managing Attorney, National Health Law Program (NHeLP)
Teresita Ramos | Language Access Attorney, Massachusetts Law Reform Institute

Tweet us your questions and thoughts during the webinar!
@NPCT_Refugee
Language Access – It’s the Law!

Mara Youdelman, Managing Attorney (DC Office)
youdelman@healthlaw.org

October 11, 2016
National Health Law Program

• NHeLP protects and advances the health rights of low income and underserved individuals
• The oldest non-profit of its kind, NHeLP advocates, educates and litigates at the federal and state level
• Offices in Washington, D.C.; Los Angeles, CA; Carrboro, NC
Demographics

- Over 59 million people speak a language other than English at home, over 20% of the population
- Over 25 million (9% of the population) speak English less than “very well,” and may be considered Limited English proficient (LEP)
- 8.5 million children under age 19 live in a household with at least one LEP parent

Treating LEP Patients

• 80% of hospitals encounter LEP patients frequently – 63% daily/weekly; 17% monthly

• 81% of general internal physicians treat LEP patients frequently – 54% at least a few times a week; 27% a few times per month

• 84% of Federally Qualified Health Centers (FQHCs) provide clinical services daily to LEP patients – 45% see more than ten patients a day; 39% see from one to 10 LEP patients a day

SOURCE: Reports commissioned by NHeLP from AHA/HRET, ACP, NACHC; available at www.healthlaw.org
Language Barriers & Medical Errors

- $71 million settlement in FL case for young man rendered quadriplegic
- Oregon $250k jury verdict over loss of sight in patient’s eye due to delayed treatment because of communication barriers
- A 6-week-old infant was admitted for a barbiturate overdose caused by a 10-fold medication dosing error by an LEP mother who did not understand the outpatient dosing instructions available only in English.
Language Barriers & Medical Errors

• 35 claims over 4.5 years
  • 2.5% of carrier’s total
  • Over $5 million paid in damages, settlements, legal fees
  • 32 of 35 cases – failure to utilize competent interpreters
  • 12 cases involved failing to translate important documents
  • Nearly all cases had poor documentation of language needs, language services utilized, etc.

• 2 children and 3 adults died; others suffered major harm (amputation, organ damage)

Source: NHeLP commissioned UC Berkeley School of Public Health to conduct this study.
Title VI of the
Civil Rights Act of 1964

• “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d

• “National origin” includes individuals with limited English proficiency (LEP)
What does Title VI Require?

• Longstanding expectation that LEP individuals must have **meaningful access** to federally funded programs & activities

• Who is LEP? – a person who is unable to speak, read, write or understand the English language at a level that permits him/her to interact effectively with health and social service agencies and providers

• 2003 – Health and Human Services (HHS) Office for Civil Rights (OCR) issued final guidance explaining expectations for its federal fund recipients
What Are “Covered Entities” Prohibited From Doing?

• Providing services more limited in scope or lower in quality
• Delaying the delivery of services unreasonably
• Limiting participation in a program
• Requiring LEP persons to provide their own interpreters or pay for interpreters
Affordable Care Act (ACA) Section 1557

Why did we need a new civil rights law?

• For language access, limited ability to enforce Title VI
  • Sandoval limitations
  • Priorities & budget for administrative enforcement

• ACA broaden scope of health care enrollment and access

• Need to include private insurers

• Need to address additional forms of discrimination – sexual orientation & gender identity
Section 1557 of the Affordable Care Act

• Broad nondiscrimination protection

• First time healthcare discrimination is prohibited based on:
  • sex;
  • gender identity, including transgender individuals; and
  • sexual stereotyping

• Reinforces longstanding protections for race, ethnicity, **national origin**, age & disability
Section 1557 & Title VI

• Cannot discriminate on the basis of **national origin**
• Supreme Court & HHS have said language can be a proxy for national origin so can’t discriminate on the basis of language
• HHS issued final regulations implementing Section 1557 on May 18, 2016
Section 1557 – Scope

• Any health program or activity any part of which receives federal funding;

• Any health program or activity that is administered by an Executive agency; and

• Any entity created under Title I of the Affordable Care Act (including health insurance marketplaces)

• This is **broader** than Title VI which only applied to those receiving federal funding
Who Is Covered by Title VI & 1557?

**Title VI & Sec. 1557**
- All public and private entities receiving federal financial assistance, including:
  - State, county, and local agencies (inc. Medicaid, CHIP)
  - Hospitals, clinics, and clinicians’ offices
  - Refugee resettlement agencies
  - Nursing homes
  - Mental Health Centers
  - All entities receiving federal funds or under contract to those receiving federal funds

**Section 1557**
- Federally administered programs
  - Medicare
  - Federally Facilitated Marketplace
- Entities created under ACA Title I
  - State Marketplaces
  - Qualified Health Plans (also receive federal funds)
Section 1557 regulations

• Individual with limited English proficiency – individual whose primary language for communication is not English is considered an individual with limited English proficiency if the individual has a limited ability to read, write, speak or understand English

• Other definitions:
  • language assistance services;
  • qualified bilingual/multilingual staff;
  • qualified interpreter for an individual with limited English proficiency;
  • qualified translator; and
  • taglines
Section 1557 regulations

“Qualified” Interpreter (& translator)

• An individual who adheres to generally accepted interpreter ethics principles

• Interprets (translates) effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary

• Demonstrates proficiency in, and has above average familiarity with speaking or understanding, both spoken English and at least one other spoken (written) language

• **NOTE**: Due to this definition, implicit recognition that not all interpreters can translate and vice versa
Oral Language Services

• Oral communication should be provided for all individuals
  • In-person, telephonic & video are all ok
    • Method depends on balance of factors
  • Consecutive & simultaneous modes
    • Consecutive – 1 person speaks at a time, interpreter interprets
    • Simultaneous – interpreter speaks just a few words after the person speaking (like the United Nations)

• Interpreters need to be “qualified”
Interpreter Training & Certification

Section 1557 regulations do not specify training or certification requirements but they can help document that an interpreter is “qualified”

- **Training**: acquisition of needed knowledge, skills and abilities
- **Credentialing & Certification**: point-in-time assessment of competency
- **Continuing Education**: ensures ongoing enhancement of skills

Quality Assessment
Competency of Language Services

• Interpreting v. translations
  • NHeLP, NCIHC, ATA – What’s in a Word: A Guide to Understanding Interpreting and Translation in Health Care

• Translators
  • American Translators Association – general certification, not healthcare specific

• Interpreters
  • Registry of Interpreters for the Deaf – general certification for sign language interpreters
  • Certification Commission for Healthcare Interpreters – national certification for healthcare interpreters
Section 1557 regulations – Use of Family Members/Minors

- Prohibits use of minors except in emergencies
- Prohibits use of accompanying adults except in emergencies or upon patient request

**NOTE:** Some entities may want to have their own interpreter present even if patient wants to use family member/friend
Section 1557 regulations – Notices

• New requirement for employers with at least 15 employees to
  • provide notices about its nondiscrimination policies
  • designate at least one employee to carry out the responsibilities under Section 1557
  • adopt grievance procedures with appropriate due process standards to resolve actions prohibited under Section 1557
• Must include taglines in top 15 languages in each state
Translation of Written Materials

• No specific thresholds for when to translate documents
• HHS LEP Guidance recommended translating “vital” documents & includes safe harbor
• Section 1557 regulations require taglines in “significant” publications & communications

**SUMMARY**

“Vital” documents should be translated

“Significant” communications should include taglines
Medicaid

• Both Title VI and Section 1557 apply
  • States have to provide language services in their offices
  • Providers have to provide language services in their facilities
    (provider’s offices, clinics, hospitals, etc.)

• **BUT** funding is an issue – no requirement that states pay
  Medicaid providers for the costs of interpreters
  • About 13 states separately pay Medicaid providers
  • Most don’t pay separately but say the payment is included in the
    ‘regular’ service payment
Making the Case – Resources

• Migration Policy Institute (www.migrationpolicy.org)
  Practitioners’ Corner Archive
  • Top 10 Best Practices for Multilingual Websites
  • Doing More with Less on Language Access
  • How to Assess the Effectiveness of Language Access Programs
  • Drafting RFP and Contracts for Language Access Services
  • Tips for Testing and Certifying Multilingual Employees
  • Tips for Ensuring Translation Quality
THANK YOU

Washington DC Office
1444 I Street NW, Suite 1105
Washington, DC 20005
ph: (202) 289-7661
fx: (202) 289-7724
nhelpdc@healthlaw.org

Los Angeles Office
3701 Wilshire Blvd, Suite #750
Los Angeles, CA 90010
ph: (310) 204-6010
fx: (213) 368-0774
nhelp@healthlaw.org

North Carolina Office
101 East Weaver Street, Suite G-7
Carrboro, NC 27510
ph: (919) 968-6308
fx: (919) 968-8855
nhelpnc@healthlaw.org

www.healthlaw.org
Language Rights of Limited English Proficient Individuals

Tere Ramos
Massachusetts Law Reform Institute
Who is an LEP person?

- “Individual with a limited ability to read, write, speak, and understand English.”
- Can be the family member of an English speaker who is involved in the care of that person.
- Person “does not have to be limited in all “speaking, reading, writing and comprehending.”
- “Flexibility” in addressing needs “should not diminish, and should not be used to minimize the obligation that those needs be addressed.” Must take “reasonable steps” to ensure access.

Executive Order 13166
Executive Order 13166 (2000) mandated language access in all federally funded programs. Requires interpretation for all LEP persons and to identify need for translation through 4 factor assessment:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service provided by the program to people’s lives;
4. The resources available to the grantee.

Declares a “safe harbor provision” if program population meets 5% or 1,000 person threshold- whichever is less.
What is a Vital Document?

- Important written information **must** be translated!
- These include:
  - Applications
  - Notices
  - Appeal letters
  - Standard forms that are considered “vital” to a program
  - Income verification letters
  - School documents
  - Court notices

It if is a “vital” notice, it usually must be provided in a native language. If they do not provide it, *ask for it!*
MA State Directives

- Executive Office issued Administrative Bulleting 16 in 2010
- Provides guidelines for state agencies to create language access plans
- MassHealth developed a draft language access plan but never completed it; just proposed the draft
Refugee Health in MA

- The Refugee Health Assessment Program (RHAP) administered by the Massachusetts Department of Public Health (MDPH) through an Interdepartmental Service Agreement with Office of Refugees and Immigrants.

- Refugees in MA are provided MassHealth standard - the Commonwealth's combined Medicaid and State Children's Health Insurance Program (CHIP). Considered our “gold standard”

- RHAP program includes reimbursement for interpretation in the global fee that is paid for each health assessment.
RHAP Sites Language Access Requirements

• RHAP sites should have systems to assure engagement of a trained medical interpreter, such as:
  • In-House Interpreter Services
  • Bilingual, bicultural staff functioning in dual or multiple roles, including interpreting
  • Telephonic Interpretation
  • Interpreter Pools: In some geographic areas, a central pool coordinates interpreters for a number of providers.
  • Bilingual health staff: An alternative to the medical interpreter model is the utilization of fully bilingual clinical and health education staff
Who is an appropriate interpreter?

**Appropriate:**

- Professional
- Trained in subject
- Qualified
- Impartial

**NOT Appropriate:**

- Minor children
- Doesn’t know subject
- Unqualified to translate
- Partial

“To be meaningfully effective, language assistance should be timely... provided at a time and place that avoids the effective denial of the service, benefit or right at issue or the imposition of an undue burden on or delay in important rights or benefits...”
Interpreter: Should vs. Should Not

An Interpreter Should:

- Treat with Respect
- Make sure they understand what everyone says
- Make sure client understands what they say
- Interpreter **everything** everyone says

An Interpreter Should Not:

- ✗ Change Words
- ✗ Leave out information
- ✗ Talk about the client
- ✗ Take Sides
- ✗ Tell someone what to do
Challenges Faced by Providers

• Only a few states that provide reimbursement for language services through their Medicaid and SCHIP programs; no reimbursement is provided for Medicare.

• The diversity of languages and the recent arrivals of some groups pose challenges in finding interpreters who can speak uncommon languages.

• Some clinics cannot cost-effectively hire bilingual staff to cover their needs or face difficulties in recruiting and retaining health care staff.
What Does This All Mean?

• If refugee walks into a government benefits office (DTA, Social Security), office should be able to service client using phone or in-person interpreter.

• Depending on frequency of language, documents should also be provided in the person’s language.

• Benefits need to be provided in the same manner as if person spoke English.
What Does This All Mean?
Some examples...

Q. My client attends health screening and requires an interpreter. What can I do to help?

A. *Options:*

1. Request the interpreter when you make the appointment. If denied, ask for administrator and remind them of their language access requirements.

2. Depending on language availability medical offices can refer each other for language access.

3. Make a written complaint with U.S. HHS OCR or state government agency if applicable.
What About the Dentist’s Office?

Q. Our dentist does not provide language access. What can a case worker or the dental office do to align themselves with legal obligations?

A. Requirements are similar to any other doctor’s office, clinic or hospital if the patient is using a health plan that is funded through federal funds. The patient has a right to an interpreter, either in person or by phone.

Sample complaints to US HHS can be found at:
http://www.hhs.gov/civil-rights/for-providers/compliance-enforcement/examples/limited-english-proficiency/index.html
Use of Family Members

- Q. The clinic we use will only call phone interpreters if using a family member isn’t an option.

- Clinic must offer interpretation and let LEP person know it is free of charge and will not affect quality/speed of service.

- Even if LEP person bring a family member, it is recommended medical providers have interpreter at hand, as quality of interpretation by family members is hard to know.

- Minors can never interpret unless it is an emergency (life or death situation).

- You can tell the clinic use of family members is strongly discouraged by RHAP – difficult to be bearer of bad news.
If a Medical Provider Refuses to Provide Language Access

1. Offer training to help educate the administration of legal requirements
2. Discuss reasons for refusal and determine if community partners can help fill in any service gaps
3. Ensure your agency is providing supportive services to help ease referral processes and appointments
4. Make a written complaint to the State Health Agency and to the state refugee agency, ORR. or the U.S. HHS OCR

https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf
Other Important Questions

• How can we provide cost-effective Medical Interpreting Options?
  – New England Translators Association has a list of resources. http://www.netaweb.org/T-&-I-Classes
  – Partner with a community organization that may be training interpreters, in MA Found in Translation.
How about Language Rights Cards?

¡Tiene derecho a un intérprete gratuito!

Si no le dan un intérprete, repórtelo a LAC.*
Puede:
- Llamar al: (857) 267-3171
- Textear NEGADO al: (857) 267-3171
- Reportarlo en: MassLegalHelp.org/interpreter

Tiene derecho a un intérprete gratuito en la mayoría de:
- Escuelas
- Programas de gobierno
- Cortes
- Policía
- Viviendas públicas
- Hospitales / Médicos

*Massachusetts Language Access Coalition (LAC) – 2015 Spanish

I don’t speak English!

¡No hablo inglés!

La mayoría de las oficinas públicas tienen que darle un intérprete gratuito que mantendrá su privacidad. Y no deben:
- Pedirle que traiga su propio intérprete, o
- Dejar de atenderlo debido a su idioma

Muestra esta tarjeta para pedir intérprete.
Si no le ayudan, llame en español al: (857) 267-3171
o en inglés al: (260) 232-2557

Hablo español.
Necesito un intérprete para hablar con usted.
La ley me da derecho a:
- un intérprete e información traducida a mi idioma, y
- a presentar una queja si no me dan intérprete.
Sus Derechos de Idioma

Conozca sus derechos de idioma.

www.masslegalhelp.org/language-rights
Questions?

Tere Ramos
Language Access Attorney
MA Law Reform Institute
40 Court Street, Suite 800
Boston, MA 02108
Tel. (617) 357-0700 x 350
Email: tramos@mlri.org
Contact Information

www.gcjfcs.org/refugee
partnership@gcjfcs.org
305-349-1221