

Interpreter Services & Resources FAQ Page

Patients with Limited English Proficiency (LEP)

Q: What are the legal requirements for a physician practice to provide language interpretation services for patients with limited English proficiency?

A: The following is a summary of applicable federal and state laws.

Office of Civil Rights Guidance

Title VI of the Civil Rights Act of 1964 states that no person shall be subjected to discrimination on the basis of race, color or national origin under any program or activity that receives federal financial assistance. [42 U.S.C.A. § 2000d.]

In 2000, Executive Order 13166 was issued, which instructed federal agencies to publish guidance for recipients on how to ensure compliance with Title VI of the Civil Rights Act.

In response to the executive order and after a comment period, in 2003 the Department of Health and Human Services issues “*Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*” to clarify the responsibilities of health care providers under Title VI.

The guidance is intended to assist recipients in determining what “reasonable steps to provide meaningful access to Limited English Proficient (LEP) persons” are required to comply with Title VI and existing regulations. “Recipients” include any private institution or organization, or any public or private individual that:

- 1.) Operates, provides or engages in health, or social services programs and activities, and
- 2.) Receives federal financial assistance from the Department of Health and Human Services directly or through another recipient, which includes state Medicaid agencies.

In examining compliance on a case-by-case basis, the Office of Civil Rights will examine four factors to determine if reasonable steps are being taken to ensure meaningful access to LEP patients:

- 1.) The number or proportion of LEP persons expected to be encountered;
- 2.) The frequency with which LEP individuals will come in contact with the provider;
- 3.) The nature and importance of the service;
- 4.) The resources available to the provider and the costs.

Enforcement is premised on voluntary compliance, but the Office of Civil Rights will investigate complaints and issue findings discussing what changes need to be made to ensure compliance.

A challenge to the enforceability of the guidance by physicians and other organizations in California was dismissed in 2005 for a lack of standing, as the judge determined that the plaintiffs had not suffered any injury and even if they did, the injury would not be linked to the guidance, as the Department of Health and Human Services would still have to enforce Title VI and its enacted regulations [Colwell v. Department of Health and Human Services, 2005 US Dist. LEXIS 6566, *14, 26.]

Vermont's Patients' Bill of Rights (18 VSA 1852)

In a hospital inpatient setting, “a patient who does not speak or understand English has a right to an interpreter if the language barrier presents a continuing problem to patient understanding of care and treatment.” Failure to comply with any provision of the Patients' Bill of Rights may constitute a basis for disciplinary action against a physician by the Board of Medicine.

Vermont Public Accommodations (9 VSA 4502)

The law says that “An owner or operator of a place of public accommodation or an agent or employee of such owner or operator shall not, because of the race, creed, color, national origin...of any person, refuse, withhold from or deny to that person any of the accommodations, advantages, facilities and privileges of the place of public accommodation. Public accommodations include any facility in which services are offered to the general public. Failure to comply may result in an action for civil penalties either through the Vermont Human Rights Commission or a private court action.

Deaf or Hard of Hearing Patients

Q: What are the legal requirements for a physician practice to provide language interpretation services for patients who are deaf or hard of hearing?

A: The following is a summary of applicable federal and state laws.

Americans with Disabilities Act (42 USC 12131-12134)

The ADA prohibits public accommodations from discriminating against people with disabilities. This entails furnishing auxiliary aids and services when necessary to ensure effective communication with individuals with hearing impairments, including in certain situations, providing an interpreter who is able to interpret sign language effectively, accurately, and impartially.

The ADA provides an exception for services that would impose an undue burden or would fundamentally alter your offered services. The fact that an interpreter's charge exceeds the fee for the visit is not alone considered an undue burden.

Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the attorney general, who is authorized to bring lawsuits in cases of general public importance or where a pattern or practice of discrimination is alleged. In these cases, the attorney general may seek

monetary damages and civil penalties. Civil penalties may not exceed \$55,000 for a first violation or \$110,000 for any subsequent violation.

Vermont Patients' Bill of Rights (18 VSA 1852)

In a hospital inpatient setting, “a patient who is hearing impaired has a right to an interpreter if the impairment presents a continuing problem to patient understanding of care and treatment.” Failure to comply with any provision of the Patients' Bill of Rights may constitute a basis for disciplinary action against a physician by the Board of Medicine.

Vermont Public Accommodations (9 VSA 4502)

The law says that, “A public accommodation shall provide an individual with a disability the opportunity to participate in its services, facilities, privileges, advantages, benefits and accommodations. It is discriminatory to offer an individual an unequal opportunity or separate benefit; however, it is permissible to provide a separate benefit if that benefit is necessary to provide an individual or class of individuals an opportunity that is as effective as that provided to others.” Failure to comply may result in an action for civil penalties either through the Vermont Human Rights Commission or a private court action.

Informed Consent

Q: Do the interpretation requirements affect the requirement to provide informed consent to patients?

A: The Vermont Patients' Bill of Rights provides that “the patient has the right to receive from the patients' physician information necessary to give informed consent prior to the start of any procedure or treatment.”

Additionally, failing to obtain informed consent may be a factor in medical malpractice litigation, although there are some exceptions. For the purposes of medical malpractice actions, “lack of informed consent” is defined as a failure to disclose to the patient reasonably foreseeable risks, benefits, and alternatives to the proposed treatment, in a manner permitting the patient to make a knowledgeable evaluation. In addition, patients are entitled to reasonable answers to specific questions about foreseeable risks and benefits. [12 V.S.A. § 1909]

Using interpreters, translations services or other communication aids and services may be necessary to ensure that patients with LEP, deaf, or hard-of-hearing receive appropriate information about the proposed treatment to enable them to give informed consent to treatment.

HIPAA and Disclosure to Interpreters

Q: Is a written authorization required to disclose health information to interpreters?

A: An interpreter or bilingual employee is covered under the health care operations exception for purposes of HIPAA, and the patient's authorization to disclose protected health information is not required.

Providers who utilize a private company for interpretation on an ongoing contractual basis should ensure that their contract conforms to the HIPAA Privacy Rule business associate agreement requirements.

In other situations, with disclosures to family members, friends, or other persons identified by an individual as involved in his or her care, when the individual is present, the health care professional or facility may obtain the individual's agreement or reasonably infer, based on the exercise of professional judgment, that the individual does not object to the disclosure of protected health information to the interpreter.

Reimbursement Issues

Q: Is there any way to bill for the extra time spent with a patient in the office when a translator is involved?

A: The only way to account for this extra time is to submit one of the prolonged services codes (99354-99357), which requires that the face-to-face time spent with the patient extend at least 30 minutes beyond the typical time associated with the appropriate CPT services. Note that Medicare and most other payers, will not pay for the services of the translator even if they are willing to pay for the extra visit time associated with using a translator.

Interpreter Resources and Rates

Organization: Language Line Services (LEP)

Phone: 1-877-866-3885

Web: www.language.com

Fee Structure: \$3.50-\$4.50 per minute, based on "membership interpretation" fees

Type of Service: Over-the-phone.

Organization: Language Learning Enterprises (LLE)

Phone: 1-888-464-8533

Web: www.lle-inc.com

Fee Structure: \$1.37 per minute

Type of Service: Over-the-phone

Organization: Vermont Refugee Resettlement Program (VRRP)

Phone: 1-802-654-1706

Fee Structure: \$70 per hour, 1-hour minimum, additional \$20 outside business hours, and \$1 per mile outside travel area

Type of Service: In-person interpretation

Organization: Language Services Associates (LSA)

Phone: 1-800-305-9573

Web: www.lsaweb.com

Fee Structure: \$75 per hour, 2-hour minimum, and \$37.50 per hour of travel, \$0.37 per mile

Type of Service: In-person interpretation

Sign Language Specific

Organization: Vermont Interpreter Referral Service (Deaf and Hard of Hearing)

Phone: 1-802-254-3920

Web: www.virs.org

Fee Structure: \$30-\$35 finder fee for each interpreter in addition to interpreter fee

Type of Service: In-person interpretation

Organization: Registry of Interpreters for the Deaf (Deaf and Hard of Hearing)

Type of Service: Online searchable national database of interpreters for the deaf. The database can be searched by state and includes links to contact information for interpreters from Vermont.

Web: www.rid.org

Fee Structure: Not available – contact individual interpreters for information about fees.

State Agencies

Vermont Medicaid: Reimbursement for \$15 per unit in 15-minute increments for interpreter services.

Vermont Agency of Human Services: In-house contract for interpretation services.