Don't Get Lost in Translation

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Last year, the U.S. Department of Health and Human Services (HHS), and the Office for Civil Rights (OCR) issued the final rule for Section 1557, the nondiscrimination provision of the Affordable Care Act (ACA). In this article, we focus specifically on the elements of Section 1557 that outline what information should be posted and what reasonable steps should be taken for individuals with limited English proficiency (LEP) who are encountered within a medical practice.

Case study

A physician calls the MagMutual Risk Management Hotline with a question. He saw a patient for a follow-up appointment for her rheumatoid arthritis. The patient is from Mexico, only speaks Spanish, and was accompanied by her 14-year-old son, who was there to interpret for his mom. The physician discussed starting methotrexate and, as part of the conversation, he told the son to inform his mother that she cannot get pregnant while on methotrexate. After they leave, the physician mentioned the situation to his office manager who said that they should not use the minor son as an interpreter even if it was okay with the patient. The MagMutual representative who speaks with the physician confirms that the office manager is correct.

Who are “covered entities” that Section 1557 impacts?
Under Section 1557 “covered entities” applies to every health program or activity that receives HHS funding; including every health program or activity administered by HHS, such as the Medicare Part D program, and the Health Insurance Marketplaces and all the plans offered by issuers that participate in those marketplaces. Covered entities may include hospitals, health clinics, health insurance issuers, state Medicaid agencies, community health centers, physician’s practices and home health care agencies.

While the final rule applies only to HHS and the health programs and activities it funds, Section 1557 applies more broadly to health programs and activities that receive financial assistance from any federal department or agency. The rule does not apply to physicians who only receive payments from Medicare Part B (traditional Medicare), unless they are also receiving other federal financial assistance such as meaningful use incentive payments or Medicaid payments.

**Posting information to notify LEP patients of their rights**

- Covered entities are required to post information telling patients with LEP about the right to receive communication assistance.
- Taglines (short statements in non-English languages) must be posted in the top 15 languages spoken by individuals with LEP in the states in which the covered entity operates (see website links below). These taglines serve to advise patients of the availability of free language assistance services and should be published in significant publications and posted in prominent locations and on a covered entity’s website.

OCR has prepared translated materials that include model notices, model nondiscrimination statements, and taglines that covered entities can use. These are available at [www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html](http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html) [1].

A list of the top 15 languages spoken in each state is available at: [www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf](http://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf) [2]

**Taking reasonable steps to provide meaningful access to LEP patients**

- The standards incorporated into the final rule are flexible and context-specific, taking into account factors such as the nature and importance of the health program, the communication at issue, and other relevant considerations, such as whether an entity has developed and implemented an effective language access plan appropriate to its circumstances.
- Where language services are required, they must be provided free of charge and in a timely manner.
- A covered entity must:
  - Offer a qualified interpreter when oral interpretation is a reasonable step to provide an individual with meaningful access.
  - Adhere to certain quality standards in delivering language assistance services. For instance, a covered entity may not:
    - Require an individual to provide his or her own interpreter
    - Rely on a minor child to interpret, except in a life threatening emergency where there is no qualified interpreter immediately available
    - Rely on interpreters that the individual prefers when there are competency, confidentiality or other concerns
    - Rely on unqualified bilingual or multilingual staff
    - Use low-quality video remote interpreting services

What happens if a covered entity is not compliant with Section 1557?
When OCR finds violations, a covered entity will be required to take corrective actions, which may include revising policies/procedures, and implementing training and monitoring programs. Covered entities may also be required to pay compensatory damages. If a covered entity refuses to take corrective actions, OCR may undertake proceedings to suspend or terminate federal financial assistance from HHS. OCR may also refer the matter to the U.S. Department of Justice for possible enforcement proceedings. Section 1557 also provides individuals the right to sue covered entities for discrimination if the program or activity receives federal financial assistance from HHS or is a State-based Marketplace.

Conclusion

The case study at the beginning of this article provides an example of a questionable use of children as interpreters. A covered entity cannot require LEP individuals to use children as interpreters when there are serious concerns such as competency, confidentiality, and conflicts of interest. Sometimes, a patient prefers and requests to have a family member or friend interpret for them. A covered entity may allow the patient’s adult companion to interpret if the companion agrees to interpret, the covered entity’s reliance on the companion is appropriate under the circumstances, and there are no competency or confidentiality concerns. The patient’s agreement to having a companion interpret, and the absence of competency or confidentiality concerns, should be documented in the medical record.

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