OFFICE FOR CIVIL RIGHTS

COMPLIANCE REVIEW INITIATIVE:

Advancing Effective Communication In Critical Access Hospitals

INTRODUCTION

America's diverse population has a variety of communications needs. Nearly 61 million people speak a language other than English at home.[1] Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English may be limited English proficient, or "LEP."[2] Sometimes LEP individuals, for example, require interpreters who can interpret to and from the individuals' primary language so that they may communicate effectively[3] with their health care providers.

Health care providers may be required by federal law to provide language services to LEP individuals.[4] Title VI of the Civil Rights Act of 1964[5] prohibits race, color, or national origin discrimination in programs that receive federal funding. In certain circumstances, the failure to ensure that LEP individuals can effectively participate in, or benefit from, federally funded programs may violate the prohibition under Title VI against national origin discrimination. For instance, the failure of a hospital receiving federal funds to take reasonable steps to ensure meaningful access by LEP individuals to the hospital's programs or services may constitute a violation of Title VI and its implementing regulations.[6]

With 80 percent of hospitals encountering LEP individuals frequently,[7] there is an increasing demand for effective language access services. Through its compliance review initiative, "Advancing Effective Communication in Critical Access Hospitals," the U.S. Department of Health and Human Services Office for Civil Rights (OCR) conducts compliance reviews and provides technical assistance to critical access hospitals (CAHs) to ensure that they provide comprehensive language access services to LEP populations in rural and isolated areas.

ABOUT THE CRITICAL ACCESS HOSPITAL PROGRAM

The Critical Access Hospital Program was created by the 1997 Balanced Budget Act as a safety net to ensure that Medicare beneficiaries in rural and isolated areas have access to the health care services they need.[8] CAHs receive special payments under Medicare to supplement the cost of care and are reimbursed based on actual costs to treat a patient, rather than on the average expected cost for specific diagnoses (how most hospitals are currently reimbursed through Medicare). To qualify for the CAH designation, a hospital must have no more than 25 beds, provide 24-hour emergency services, be located in a rural or isolated area more than 35 miles from the nearest hospital, or be designated as a necessary provider by the state. In 2013, there were 1,328 certified critical access hospitals, across 45 states.[9]

Office for Civil Rights

U.S. Department of Health and Human Services

200 Independence Avenue, SW.
H.H.H. Building, Room 509-F
Washington, D.C. 20201

TELEPHONE
1-800-368-1019

E-MAIL
ocrmail@hhs.gov

TDD
1-800-537-7697

www.hhs.gov/ocr

FACTORS IMPACTING THE CRITICAL ACCESS HOSPITAL PROGRAM

The number of U.S. residents who are deemed limited English proficient (LEP) has increased substantially in recent decades, consistent with the growth in the U.S. foreign-born population.[10] For example, more than 9 million people speak Asian and Pacific Islander languages at home with more than 4 million in this group estimated to be LEP. Similarly, about 36 million people speak Spanish at home, of which nearly 16 million are estimated to be LEP.[11] Language barriers impact the ability of individuals to access health care and affects the capacity of health care providers to communicate effectively with their patients.[12] Language access services are essential to quality health care services. If providers and patients do not understand each other clearly and cannot communicate effectively, quality of care is compromised, sometimes even jeopardized.

Studies have shown that LEP individuals are less likely to have a regular source of primary care and therefore receive fewer preventive health services.[13] Making matters worse, language barriers can adversely affect the delivery of care and have been associated with serious medical errors. A study conducted at two pediatric emergency rooms in Massachusetts with Spanish-speaking LEP patients found that interpretation mistakes that could have "clinical consequences," such as giving the wrong medication dose, were twice as likely when there was an "ad hoc" interpreter or no interpreter present.[14] The failure to ensure meaningful access for LEP individuals "can have serious, even life or death, consequences."[15]

On the other hand, LEP patients who are provided with an interpreter keep more outpatient visits, take their prescription medications consistently, and report a higher level of satisfaction with their care.[16] By tailoring services to a patient's culture and primary language, health care providers can bring about positive health outcomes for diverse populations.[17]

ABOUT THIS INITIATIVE

Critical access hospitals, along with migrant and community health centers,[18] play a vital role in providing health care to limited English proficient patients in rural and isolated areas. To effectively serve LEP populations, it may be necessary for CAHs to provide comprehensive language access services that could include interpreter services and written translation of vital documents.

Accordingly, in 2012, OCR piloted a ten-state, on-site examination of CAHs[19] located in each of the ten HHS regions to make certain that their programs comply with Title VI. For each CAH in this compliance review, OCR examined demographic data from the hospital's service area; conducted onsite visits; evaluated language access services policies and procedures; interviewed hospital staff and community stakeholders; and secured corrective action when compliance issues were discovered in the hospital's language access program. In one instance, OCR entered into a voluntary resolution agreement with Shenandoah Memorial Hospital in Woodstock, Virginia.[20] OCR determined it was necessary to negotiate a resolution agreement with the hospital to augment the hospital's policies and procedures to ensure meaningful access by LEP individuals and thus effect systemic change.

OCR provided significant technical assistance to help CAHs audit and enhance their language access programs. OCR's intervention led to the critical access hospitals in the compliance review implementing a number of effective practices. For instance, OCR helped hospitals strengthen their language access policies and procedures and to develop programs to monitor the effectiveness of their language access programs. Additional effective practices are highlighted in Table 1.

CONCLUSION

Not all individuals have equal access to health care or share similar health care outcomes. For low-income individuals, racial and ethnic minorities, and other underserved populations, including limited English proficient individuals, there are persistent barriers to obtaining health care services.[21] One such barrier – the inability to communicate effectively and efficiently — impacts the ability of individuals to access health care. Effective communication between providers and patients is critical, and can be a matter of life or death. The Office for Civil Rights compliance reviews found that by enhancing access to culturally and linguistically appropriate services, the patient and provider experience of LEP individuals improves. Building on the success of the compliance reviews, OCR will continue with the "Advancing Effective Communication in Critical Access Hospitals" initiative by casting a wider net, conducting additional language access compliance reviews, and providing technical assistance to CAHs nationwide.

Table 1: Highlights of Effective Practices
Office for Civil Rights Compliance Review Initiative
Advancing Effective Communication in Critical Access Hospitals

The following effective practices were identified during the on-site examination of the language access programs at the critical access hospitals in the compliance review. Highlighted in column one are components that HHS identified in the Department's 2013 Language Access Plan[22] and were adapted to provide a framework for developing a comprehensive language access program. For example, some key components of culturally and linguistically appropriate language access services include: oral interpreter services, translated vital documents, and training staff interpreters on medical terminology. Detailed descriptions of language access components and effective practices are included below.

COMPONENTS	EFFECTIVE PRACTICES
Needs Assessment Identify and assess the language access needs of current and potential patients. This should include identifying the non-English languages spoken by the population in the hospital's service area. Language data may be collected from various sources, including data from the U.S. Census Bureau, patient records, school systems, and community-based organizations.	One CAH in the pilot, Shenandoah Memorial Hospital (SMH), entered into a voluntary compliance agreement with OCR, in which the CAH agreed to: assess the demographics of its service area; establish and implement policies to utilize professional interpreters and translate vital documents; designate a language access coordinator; develop and implement a checklist to ensure that all major aspects of the patient encounter include language access services; post signs stating that interpreter services are available free of charge; and conduct employee training and consumer outreach. This voluntary compliance agreement demonstrates the benefits of hospitals working cooperatively with OCR to ensure Title VI compliance.
Oral Language Assistance Services Provide oral language access services in both face-to-face and telephone encounters. Language access may be provided by qualified interpreters in a variety of formats, including bilingual and multilingual staff interpreters whose proficiency in non-English languages has been documented, interpreters provided via language line services, and interpreters from community organizations or volunteer interpreter programs.	Having phone numbers readily available can ensure that staff can easily reach qualified interpreter services for LEP individuals. One hospital created a "Language Resource Department" in order to: • provide annual staff training on cultural competency that includes training on the provision of interpretation and translation services available from the Language Resource Department; • provide on-site Spanish interpreters and telephonic interpreters for other languages; and • recertify interpreters through an examination process, including capacity to translate medical terminology.
Written Translations Provide written translations – replacement of written text from one language into another – by qualified translators. Translate vital documents into frequently encountered languages. Establish procedures for handling written communication with LEP individuals who speak less frequently encountered languages.	Important patient forms, discharge instructions, and information about interpreter services are vital documents that should be translated. One hospital in the pilot not only had its bilingual staff translate vital documents into Spanish, but contracted with a translation service to ensure that vital documents are translated into other languages found in its service area.
Notification of the Availability of Language Assistance at No Cost Inform LEP individuals that language access is available at no cost.	Notification methods may include multilingual posters, signs and brochures, as well as statements on application forms and informational material, including electronic forms and websites. One hospital placed "If You Need an Interpreter" posters in admissions areas and administrative offices.

Language Assistance Policies and Procedures Develop, implement and regularly update written policies and procedures that ensure LEP individuals have meaningful access to programs and services. The written policies and procedures should include (but not be limited to) anti-discrimination policies.	Developing a policy for receiving and addressing language access concerns or complaints from LEP individuals is one example of improving access. Hospitals in the pilot established policies stating that: minors cannot be used as interpreters, staff must ensure that an LEP parent can understand explanations of his or her child's medical condition and options for treatment, and a hospital-staffed "patient services" telephone line is available to respond to complaints and grievance procedures.
Staff Training Commit resources and provide employee training to ensure that staff members understand when and how to work with interpreters, how to convey complex information using plain language, and how to communicate effectively with LEP individuals.	Hospitals should build robust compliance programs that include employee training, vigilant implementation of policies and procedures, regular internal audits, and a prompt action plan to respond to grievances and complaints. One hospital implemented an internet-based personnel-training application to provide staff with annual training on cultural competency and diversity issues. Completion of this training program is mandatory and documented in staff employment records.
Assessment: Access and Quality Establish an infrastructure to assess and evaluate language access services.	On a routine basis, monitoring of the language access services provided to LEP individuals can provide valuable data to measure the impact of language access programs and identify best practices for continuous quality improvement. One hospital revised its satisfaction survey to include questions about whether interpreter services were of high quality and offered in a timely manner. Another hospital enhanced the quality of its language access program by recording each patient's primary language in his or her electronic health record.
Stakeholder Consultation Consult with stakeholder communities to identify the language access needs of LEP individuals.	Stakeholder consultations can take place in many formats, including gathering information through town-hall style meetings, webcasts or conference calls, as well as letters and in-person, small group meetings with advocates. Stakeholders can provide valuable assessments of the quality of the language access services provided. For example, one hospital solicited feedback from stakeholders by posting information on its website for public comment. Another hospital engaged an advocacy group in its service area to solicit feedback on the experiences of LEP individuals at the hospital.
Digital Information Develop and implement specific written policies and procedures to ensure that digital information is accessible by LEP individuals in the hospital's service area.	LEP individuals should have meaningful access to existing publicly available online information. Another way to reach LEP individuals is by placing links on the hospital's English language website to documents that are also available for viewing and downloading in languages other than English. One hospital in the pilot created a "Patient Bill of Rights" webpage, which was made available in several different languages.
Assurance and Compliance A culture of compliance is created when an organization's policies and procedures are drafted or modified to achieve compliance with the law. [23]	A Medicare-participating hospital must comply with Title VI of the Civil Rights Act of 1964. The failure of such a hospital to take reasonable steps to ensure meaningful access by LEP individuals to the hospital's programs or services may constitute a violation of HHS's implementing regulation for Title VI.[24] A Medicare-participating hospital should also ensure that its language access program complies with the Joint Commission's revised standards for patient-centered communication, effective communication and cultural competence. [25] When developing their language access programs, many Medicare-participating hospitals have looked to the National Standards on Culturally and Linguistically Appropriate Services (CLAS Standards). The CLAS Standards provide valuable information on the integration of culturally and linguistically competent health care services into hospital operations. [26]

REFERENCES

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[2] U.S. Dep't of Justice, Civil Rights Division, Federal Coordination and Compliance Section, *Commonly Asked Questions and Answers Regarding Limited English Proficient (LEP) Individuals,* at 7 (April 2011), *available at* http://www.lep.gov/faqs/faqs.html#One_LEP_FAQ.

[3] The Joint Commission defines "effective communication" as:

> "The successful joint establishment of meaning wherein patients and health care providers exchange information, enabling patients to participate actively in their care from admission through discharge, and ensuring that the responsibilities of both patients and providers are understood. To be truly effective, communication requires a two-way process (expressive and receptive) in which messages are negotiated until the information is correctly understood by both parties. Successful communication takes place only when providers understand and integrate the information gleaned from patients, and when patients comprehend accurate, timely, complete, and unambiguous messages from providers in a way that enables them to participate responsibly in their care."

The Joint Commission, *Advancing Effective Communication, Cultural Competence, and Patient– and Family– Centered Care: A Roadmap for Hospitals*, at 1 (2010), *available at* http://www.jointcommission.org/assets/1/6/aroadmapforhospitalsfinalversion727.pdf.

[4] *See* U.S. Dep't of Health & Human Servs., *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 68 Fed. Reg. 47311, 47313 (Aug. 8, 2003) (hereinafter "HHS OCR LEP Guidance"), *available at* http://www.gpo.gov/fdsys/pkg/FR-2003-08-08/pdf/03-20179.pdf.

[5] 42 U.S.C. §§ 2000d, *et seq*. The HHS Title VI implementing regulation is set forth at 45 C.F.R. Part 80.

[6] *See* HHS OCR LEP Guidance, *supra* at 47313.

[7] Health Research and Education Trust (HRET), *Hospital Language Services for Patients with Limited English Proficiency: Results from a National Survey,* at ii (2006), *available at* http://www.hret.org/quality/projects/resources/languageservicesfr.pdf.

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[14] Glenn Flores, Milagros Abreu, Cara Pizzo Barone, Richard Bachur & Hua Lin, *Errors of Medical Interpretation and Their Potential Clinical Consequences: A Comparison of Professional Versus Ad Hoc Versus No Interpreters,* 60 Annals of Emergency Medicine 545 (Nov. 2012), *available at* http://www.annemergmed.com/article/S0196-0644(12)00115-1/abstract.

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[16] Regenstein *et al., supra* at 1.

[17] U.S. Dep't of Health and Human Servs., Office of Minority Health, *Think Cultural Health: Advancing Health Equity at Every Point of Contact* (2010), *available at* https://www.thinkculturalhealth.hhs.gov/Content/clas.asp.

[18] U.S. Dep't of Health & Human Servs., Health Resources and Services Administration, *What is a Health Center?* (Feb. 2013), *available at* http://bphc.hrsa.gov/about/index.html.

[19] The critical access hospitals in the ten-state pilot program include: Alegent Health Memorial Hospital , Nebraska; Althol Memorial Hospital, Massachusetts; Aspen Valley Hospital, Colorado; Briggs-Gridley Memorial Hospital, California; Columbia Basin Hospital, Washington; Ellenville Regional Hospital, New York; Florida Hospital Wauchula, Florida; Mercy Harvard Hospital, Illinois; Reeves County Hospital District, Texas; and Shenandoah Memorial Hospital, Virginia.

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[21] U.S. Dep't of Health & Human Servs., *Health Disparities and the Affordable Care Act* (2010), *available at* http://www.healthcare.gov/news/factsheets/2010/07/health-disparities.html.

[22] U.S. Dep't of Health & Human Servs., *Language Access Plan* (2013), *available at* http://www.hhs.gov/open/execorders/2013-hhs-language-access-plan.pdf. On February, 26, 2013, the Department published its 2013 Language Access Plan (2013 HHS LAP), thereby augmenting access for LEP individuals to HHS-conducted programs and activities. The covered programs and activities include, but are not limited to: Medicare, Medicaid and the Children's Health Insurance Program. The 2013 HHS LAP was developed by the HHS Language Access Steering Committee, which is led by the Director of the Office for Civil Rights on behalf of the Secretary. The 2013 HHS LAP sets forth the Department's policies for serving LEP individuals and reaffirms the Department's commitment to language access, in accordance with Executive Order 13166, *Improving Access to Services for Persons with Limited English Proficiency,* 65 Fed. Reg. 50121 (Aug. 16, 2000), *available at* http://www.gpo.gov/fdsys/pkg/FR-2000-08-16/pdf/00-20938.pdf. The 2013 HHS LAP also serves as a blueprint for HHS operating and staff divisions who are charged with developing their own agency-specific language access plans. Although the 2013 HHS LAP targets HHS-conducted programs and activities, we believe that the LAP provides useful information on the development of language access programs by external health care providers.

[23] *See, e.g.,* David Gebler, *Creating a Culture of Compliance* 3, 4-10 (Ark Group 2011), *available at* http://www.ark-group.com/Downloads/Culture-of-compliance-Chap1.pdf.

[24] For an extended discussion of the Medicare-participating hospital's obligations to provide language access, *see* U.S. Dep't of Health and Human Servs., *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 68 Fed. Reg. 47311, 47313 (Aug. 2003), *available at* http://www.gpo.gov/fdsys/pkg/FR-2003-08-08/pdf/03-20179.pdf. See also U.S. Dep't of Justice, Civil Rights Division, Federal Coordination and Compliance Section, *Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs* (Aug. 2011), *available at* http://www.lep.gov/resources/081511_Language_Access_CAQ_TA_Guidance.pdf.

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[26] *See* U.S. Department of Health and Human Servs., Office of Minority Health, *National Standards on Culturally and Linguistically Appropriate Services, available at* http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlid=15.