



Language Access – It's the Law!

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

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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 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 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

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 LEF 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)

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 – 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

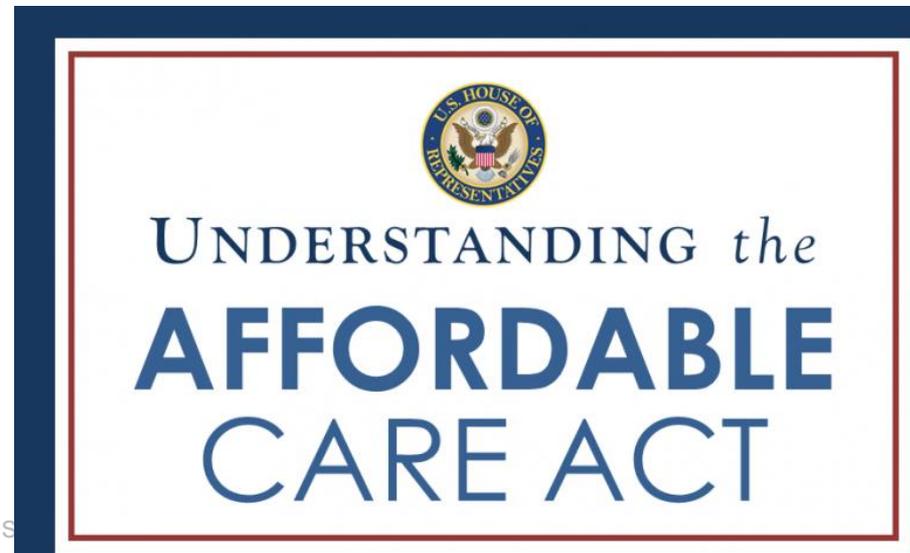


ACA sec. 1557 – Why did we need a new civil rights law?

- 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

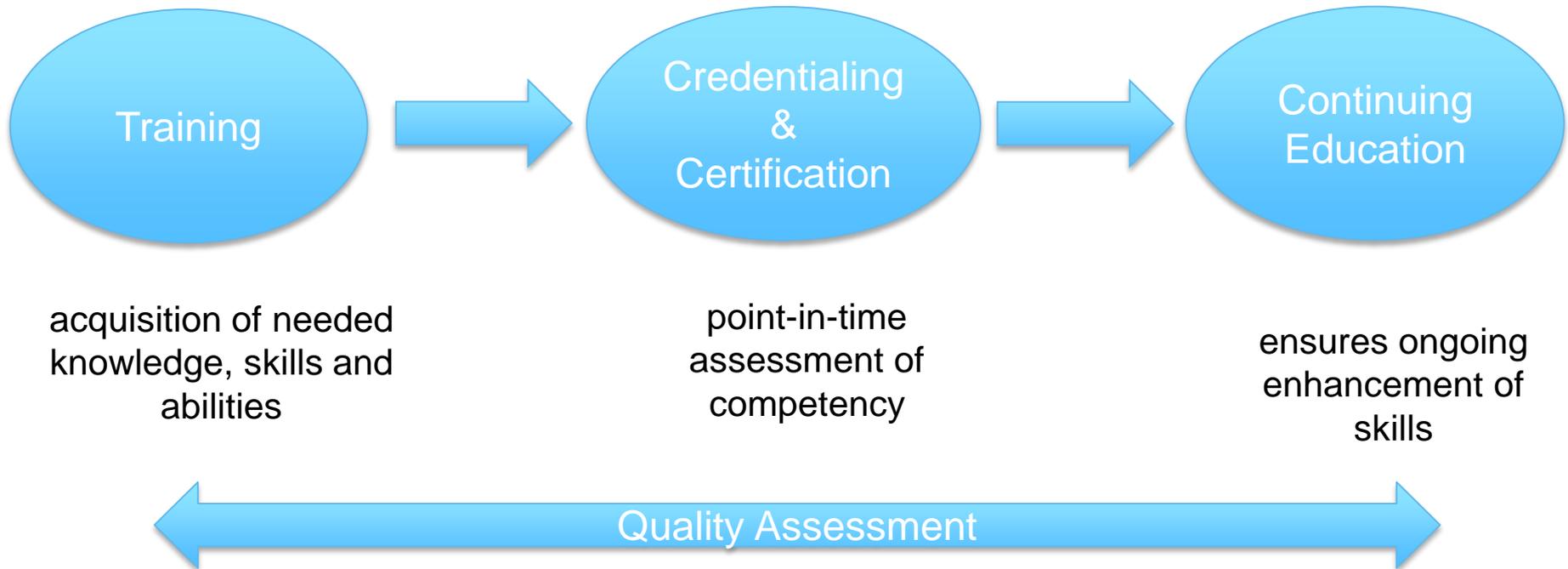
- Individual with limited English proficiency – individual whose primary language for communication is not English is considered an individual with limited English proficiency if the individual has a limited ability to read, write, speak or understand English
- Other definitions:
 - language assistance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

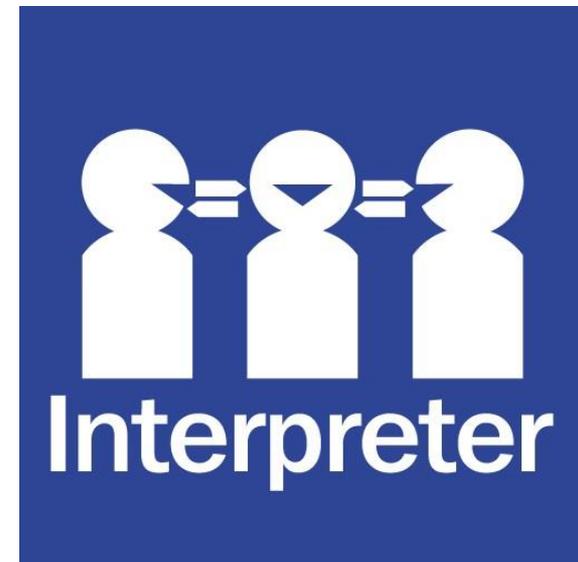
Interpreter Training & Certification

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



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, then the interpreter interprets
 - Simultaneous – interpreter speaks just a few words after the person speaking (like the United Nations)
- Interpreters need to be “qualified”



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

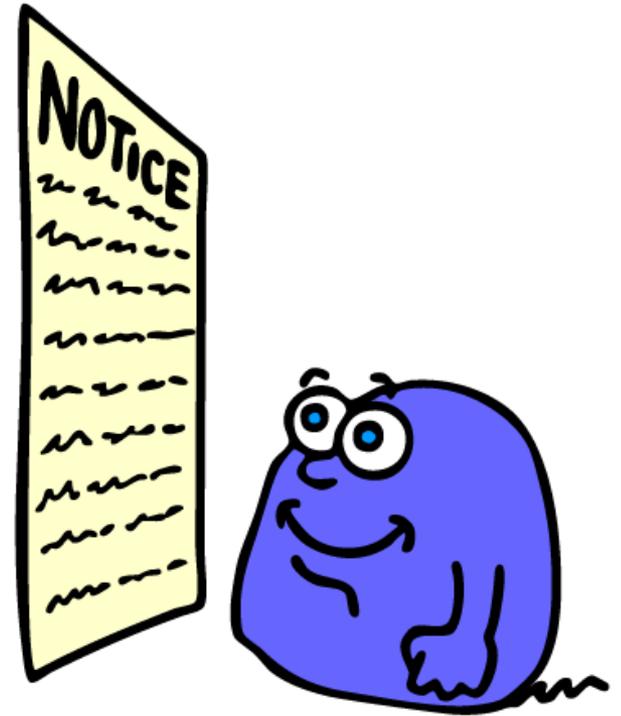
- Prohibits use of minors except in emergencies
- Prohibits use of accompanying adults except in emergencies or upon patient request

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



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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



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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](#)
- CCHI's webpage with resources for healthcare providers:
- <http://www.cchicertification.org/our-cchi-community/healthcare-providers>



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