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MEDICAL INTERPRETATION AND THE LAW: REGULATIONS IN THE U.S.

What do federal laws and regulations have to say about certified interpretation services in medicine?

Certified interpretation services have been shown to produce greater outcomes among Limited English Proficiency (LEP) patients, reducing the risk for physical injury- or death-inducing errors in hospitals and clinics.

And with one in five U.S. residents speaking a language other than English at home, providing strong interpretation services is more than a necessary service in cities and states around the country. Unfortunately, individuals with limited English skills don't always get the care they need.

Not abiding by federal interpretation standards can result in malpractice suits costing healthcare providers hundreds of thousands or even millions of dollars. But, more importantly, it can result in misdiagnoses that have fatal or life-changing consequences.

There is no one universal set of interpretation standards that hospitals and clinics must follow, but rather an amalgam of laws handed down from the federal and state level. Too often, LEP patients and physicians alike aren't aware of medical interpretation requirements, and a lack of knowledge is bad for both parties.

This ebook will examine some of the core U.S. laws and policies that regulate medical interpretation at the federal level, with the hope that imparting this information will give healthcare providers a better sense of their responsibilities, while helping LEP patients to better understand their rights.

TITLE VI OF THE CIVIL RIGHTS ACT

Title VI of The Civil Rights Act of 1964 requires that no agency receiving federal funds discriminate against an individual based on their race, color, or country of origin. One's country of origin relates to the language they speak, and doesn't allow for LEP patients to go without interpretation services.

According to LEP.gov, patients who "do not speak English as their primary language and have a limited ability to read, speak, write, or understand English can be limited English proficient, or 'LEP.' These individuals may be entitled language assistance with respect to a particular type of service, benefit, or encounter."

Through Title VI, any healthcare provider that receives federal assistance -- including grants, Medicaid, CHIP, or Medicare payments – must provide adequate language services for LEP patients. However, according to Medicaid.gov, individual states are not required to reimburse providers for language services. The Department of Health and Human Services is responsible for enforcing language requirements mandated by the Civil Rights Act.

EXECUTIVE ORDER 13166

Executive Order 13166 was issued in 2000 by then President Bill Clinton and requires that healthcare providers analyze the interpretation services they have in place to ensure they meet the needs of LEP patients. The order outlines four guidelines that providers need to take into consideration when providing interpretation services.

The order asks healthcare providers to consider the following:

- How many LEP patients a particular provider serves
- Which languages appear frequently in that service
- The nature or importance of the services provided and the cost of those services
- The allocation of funds for interpretation based upon the size of the provider

The issue of cost for interpretation services has been a setback to LEP patients. As of 2012, only 13 states and the District of Columbia reimburse providers for medical interpreter services.

In reality, the cost of medical interpretation is likely far less than payments made for providing insufficient care. A 2012 study found that LEP patients who were not provided with interpretation services averaged longer hospital stays than who were. This extra and unnecessary use of resources is an added cost for healthcare providers.

An instance in which poor interpretation leads to patient health issues also means more money spent by providers.

CLAS STANDARDS

In 2014, The Department of Health and Human Services updated the National Standards for Culturally and Linguistically Appropriate Services in Health Care. These standards include provisions related to interpretation services. Specifically, standards five through eight address the issue. The standards require health organizations to:

- Offer language assistance to individuals who have limited English proficiency and/or other communication needs, at no cost to them, to facilitate timely access to all health care and services.
- Inform all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing.
- Ensure the competence of individuals providing language assistance, recognizing that the use of untrained individuals and/or minors as interpreters should be avoided.
- Provide easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area.

THE AFFORDABLE CARE ACT

The Affordable Care Act (ACA), commonly referred to as Obamacare, extends rights granted to LEP patients, with protections for individuals participating in:

- Any health program or activity any part of which receives funding from HHS
- Any health program or activity that HHS itself administers
- Health Insurance Marketplaces and all plans offered by issuers that participate in those Marketplaces

In addition, section 1557 of the ACA further developed the rights granted to LEP patients by requiring "qualified" interpreters to be available in healthcare settings and by not allowing family members or children to act as de facto interpreters.

According to the provision, a qualified interpreter refers to someone who abides by interpreter ethics, is able to speak English and one other language fluently, and understands the necessary vocabulary required to effectively interpret in a healthcare setting.

AVOIDING LEGAL ACTION

In instances where proper language interpretation is not provided, hospitals and clinics can face legal penalties. A study carried out by the National Health Law program in 2010 looked at 35 malpractice claims involving LEP patients. The article looked to identify cases where a language barrier may have had an effect on patient outcomes. The study followed an insurance carrier that provides insurance services in four states.

The insurer paid $2,289,000 in damages or settlements and $2,793,800 in legal fees in total throughout the cases that were analyzed. In 32 out of the 35 cases, healthcare providers did not provide competent interpreters.

In one of the cases, a child who died due to improper medical care was used as an interpreter before suffering respiratory arrest. Of the cases, many wound up causing death and irreparable harm, the study states. The study also observed that when patients and physicians appeared to be of the same race or ethnic group "healthcare providers and lawyers alike" seemed to think this meant the two could successfully communicate with one another.

In reality, those who belong to the same race, or even speak the same language, doesn't mean they will be able to understand one another. Differences in cultural backgrounds and regions can affect communication.

IMPROVING PATIENT OUTCOMES

The National Health Law study makes it obvious that a failure to provide interpretation services can cost healthcare providers millions of dollars. Malpractice suits can ruin the reputations of hospitals, and suffering monetary losses and a loss of confidence is not what providers want. But, more importantly, the absence of interpretation services means LEP patients are put at risk. And the consequences can be deadly.

A notorious case of misinterpretation is that of Willie Ramirez. Ramirez was 18 in 1980, when he entered a Florida hospital in a comatose state. His Spanish speaking family members explained to a doctor that Ramirez was "intoxicado," thinking he had food poisoning. The medical staff interpreted the word to mean Ramirez was intoxicated or suffering from a drug overdose.

The incorrect interpretation resulted in a misdiagnosis, and subsequently Ramirez becoming a quadriplegic. A lawsuit was settled in Ramirez's favor for $71 million, with payments being made to him over the course of his lifetime.

LAWS TO PROTECT PATIENTS FIRST, INSTITUTIONS SECOND

Legislation regarding medical interpretation is meant to make sure all LEP patients receive the necessary language solutions they require. These federal regulations have paved the way for a foundation that creates positive outcomes for patients, but there are still doubts about the reach of these guidelines. In particular, many wonder if individual states are doing enough to combat the problem of subpar interpretation services in hospitals. Roughly one third of U.S. hospitals are not providing language services at all – and federal requirements are deemed burdensome by many medical practitioners, saying the cost of providing the services hurts small hospitals and clinics.

In addition, some states have language requirements that aren't extensive enough to provide proper care. For example, New Jersey requires the Department of Health to provide brochures on breast cancer in both English and Spanish. However, pamphlets on other medical conditions do not require translated versions. Making sure medical providers and LEP patients have the necessary information in regards to language interpretation services is the first step in solving the problem. The more providers understand the importance of qualified interpreters and surrounding laws, the more likely they'll be to integrate the needed interpretation services into their continuum of care. ////

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