Limited English Proficiency (LEP) Regulations:

Implications and Guidance for U.S. Hospitals Serving Minority Populations

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- ❑ Does your hospital or health system receive federal financial assistance through e.g. Medicare, Medicaid and/or Federal research grants?
- ❑ Are some people who utilize your services not proficient or limited in their ability to communicate in English?

If you answered "Yes" to both of these questions, you may be required by Federal law to provide:

- ✓ *language assistance,*
- ✓ *information, and*
- ✓ *services*

in languages other than English.

Overview

Under Title VI, recipients of Federal financial assistance from Health and Human Services must take steps to ensure that LEP persons can meaningfully access health and social services.[1]

This White Paper aims to:

- ❑ ***Provide a summary explanation of Federal Limited English Proficiency (LEP) regulations.***
- ❑ ***Describe recent lawsuits brought against hospitals based on LEP regulations.***
- ❑ ***Provide guidance on ways hospitals can ensure their compliance with LEP regulations.***

Limited English Proficiency (LEP)

A Limited English Proficient (LEP) individual is a person *"who does not speak English as their primary language and who has a limited ability to read, speak, write, or understand English.[1]"* At the time of the 2000 census, 28.4 million Americans were foreign-born, many of whom are LEP persons; this number represents 10.4% of the total U.S. population, up from 7.9% in 1990.[2] Over half of all foreign-born in the United States came from Latin America and speak Spanish.

Legal Obligations of Hospitals

Federal legal authority for LEP regulations

The Federal legal authority mandating language assistance and provision of information and services in languages other than English to LEP persons derives from Title VI of the Civil Rights Act of 1964 and Title VI regulations.[3] Title VI provides 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.[4] Under Title VI, recipients of Federal financial assistance from Health and Human Services (HHS) must take steps to ensure that LEP persons can meaningfully access health and social services.

Until recently, oversight of compliance with language provisions under Title VI had been lax, in large part because there was inadequate guidance from the Federal authorities on this matter.

Executive Order 13166

With objective of improving compliance with the language provisions of Title VI, on August 11, 2000, President Clinton signed Executive Order 13166 - *Improving Access to Services for Persons With Limited English Proficiency*.[5] This Executive Order to federal agencies, required all agencies that provide federal financial assistance to issue guidance on how recipients of that assistance (including hospitals) can take reasonable steps in providing meaningful access consistent with Title VI regulations.

Executive Order 13166 Introduction

"By the authority vested in me as President…and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows…"

- Pres. William J. Clinton, August 11, 2000

HHS Policy Guidance for Hospitals

In complying with this E.O. 13166 order, the Department of Health and Human Services issued such guidelines on Dec 12, 2000.[8] The Plan, titled "***Strategic Plan to Improve Access to HHS Programs and Activities by Limited English Proficient (LEP) Person***", includes strategies for improving technical assistance for language access services to HHS-funded entities.[9] These strategies are summarized in the HHS Office of Civil Rights Policy Guidance document.[7]

Compliance and Enforcement

Who enforces the LEP rules for hospitals?

The Office of Civil Rights within the Department of Health and Human Services is responsible for enforcing Title VI. The Coordination and Review Section of the Civil Rights Division of the Department of Justice[6] has taken the lead in coordinating and implementing Executive Order 13166.

Who must comply with LEP Regulations under Title VI?

All healthcare (and other) institutions receiving federal financial assistance must comply with the LEP regulations under Title VI and EO 13166. Federal financial assistance includes:

- ❑ grants,
- ❑ training,
- ❑ use of equipment,
- ❑ donations of surplus property, and
- ❑ other assistance.

In the healthcare context, hospitals or clinics that receive federal assistance through **Medicare, Medicaid, federal research grants** and the like are all subject to comply. Title VI pertains to a recipient's entire program or activity, and all parts of the recipient's operations are included. *This is true even if only one part of the institution receives federal assistance.*

In determining compliance with Title VI, OCR's concern is whether the recipient's policies and procedures allow LEP persons to overcome language barriers and participate meaningfully in programs, services and benefits. The regulations are designed to be "flexible and fact-dependent,"[1] but the starting point in determining compliance is based on a balance of four factors listed in **Chart 1.** OCR emphasizes that it will always provide recipients with the opportunity to come into voluntary compliance prior to initiating formal enforcement proceedings.[7]

The Policy Guidance also includes specific suggestions regarding:

- ❑ use of oral interpreters,
- ❑ translation of written materials,
- ❑ methods for providing notice of the availability of non-English services,
- ❑ staff training, and
- ❑ monitoring methods.[7]

Chart 1:
OCR considers four factors to determine hospitals' responsibilities regarding LEP[1]

1. The **number** or **proportion** of LEP persons eligible to be served or likely to be encountered by the program or grantee.

2. The **frequency** with which LEP individuals come in contact with the program.

3. The nature or **importance** of the program, activity, or service provided by the program to people's lives.

4. The **resources** available to the grantee/recipient or agency, and costs.

There is no 'one size fits all' solution for Title VI compliance with respect to LEP persons.

Chart 2: Four keys to ensuring meaningful access to LEP persons[7]

1. Assess: Conduct an assessment of the language needs of the population served.

2. Write a Plan: Develop a written policy to ensure communication.

3. Train Staff: Staff must understand the policy and is capable of carrying it out.

4. Monitor: Conduct regular oversight of the language assistance programs.

Safe Harbor Guidelines

When considering LEP regulations, Federal funding recipients often ask *"How many people within a certain language preference group and/or LEP classification would require my institution to provide translations in that language?"*

The new HHS Policy Guidance on LEP regulations under Title VI specifically addresses this area of confusion by providing numeric "Safe Harbors." The policy states that to be in compliance with its Title VI obligation, a recipient/covered entity should provide written materials in non-English languages if:

A. The recipient/covered entity provides translated written materials, including vital documents[10], for each eligible LEP language group that constitutes **10% or 3,000 people** (whichever is **less**) of the population of persons eligible to be served or likely to be directly affected by the program.

B. For LEP language groups that constitute **5% or 1,000** (whichever is **less**), the entity ensures that at a minimum, vital documents are translated in the appropriate non-English languages of such LEP persons.

C. For **100 or less** LEP persons in a language group, written notice must be provided in the primary language of the LEP language group of the right to receive competent oral translation of written materials.

OCR emphasizes that these "safe harbor" provisions are "not intended to establish numeric thresholds for when a recipient must translate documents."[7] They are a guide, and compliance will be based on the balancing of factors mentioned in Chart 1.

OCR Safe Harbor Guidelines:
Number or percent of people in target LEP group

	<100	<1,000 or (5%)	<3,000 or (10%)
Oral translation of written materials	x	x	x
Translation of written documents		x	x
Translation of all documents			x

Examples of Prohibited Practices

A good way hospitals can better understand their obligations under Title VI is through examples of prohibited practices. OCR provides the following as examples of practices which may violate Title VI:

- ❑ Providing services to LEP persons that are more limited in scope or are lower in quality,
- ❑ Subjecting LEP persons to unreasonable delays in the delivery of services,
- ❑ Limiting participation in a program or activity on the basis of English proficiency,
- ❑ Providing services to LEP persons that are not as effective as those provided to those who are proficient in English, or
- ❑ Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.

Summary regarding LEP regulations

In summary, Executive Order 13166, related policy guidance and recent case law have reaffirmed regulations requiring provision of language assistance to persons of limited English proficiency as established under Title VI. The Bush Administration also has reaffirmed its commitment to these regulations.

Headline:
"Lack of Interpreters Impacts Immigrant Healthcare"

- Reuters, April 26, 2002

Risks to Hospitals of Not Being in Compliance with LEP Regulations

Hospitals are subject to fines and can lose their federal funding if they are found to not be in compliance with these regulations. Within just the past two years, OCR has investigated complaints against the University of Utah Health Science Center[11] and the Maine Medical Center[12]. In both cases, these cases were resolved, but were obviously seriously disruptive and created negative press for the institutions involved.

Threat of Legal Action by Local Grass-Roots Organizations

Recently, local activist health organizations have filed lawsuits against hospitals for not providing adequate non-English services. These organizations used the legal guidance for the lawsuits.

LEP Regulations

"Addressing language barriers in healthcare should not be marginalized but instead be an integral part of improving our medical system.

Without addressing language barriers...we can't achieve a health-care system that provides the highest quality of care to all Americans."

- Dr. Joseph R. Betancourt, Massachusetts General Hospital and Harvard Medical School

Case Study NYC Hospitals Sued for Lack of Spanish Services*

NEW YORK (Reuters Health) - *A grass roots organization filed suit against two Brooklyn hospitals, accusing them of failing to offer non-English-speaking patients translation and interpretation services mandated by federal, state and city law. The legal action was taken by the New York Lawyers for the Public Interest, Inc. (NYLPI) on behalf of Make the Road by Walking (MRW) - a local nonprofit organization.*

The suit was filed with the New York State Attorney General's office against Wyckoff Heights Hospital and Woodhull Hospital, both of which are situated in Bushwick, a heavily Hispanic section of northern Brooklyn. The plaintiffs allege that the hospitals have violated the civil rights of a large proportion of their surrounding community, effectively denying equal access to healthcare by not providing health services in Spanish.

"In order to access vital life-saving healthcare services, immigrant communities need to be able to communicate with their doctors and nurses," Andrew Friedman, MRW's Co-Director, told Reuters Health. *"And what we found is that these hospitals remained fundamentally inaccessible to these communities, because the hospitals don't have translation and interpretation services."*

Friedman added, "When practical concerns do not drive hospital policy, there is legal protection in the form of Title VI of the 1964 Civil Rights Act and the New York City Human Rights Law - both of which prohibit discrimination based on race, national origin or color."

Woodhull Hospital spokesperson Stephen Bohlen told Reuters Health. "We feel very confident that we are meeting the needs of our diverse community. We have one of the most diverse provider staff probably in the nation, and we have a plethora of services available to patients who don't speak English."

* Abbreviated version of article
by Alan Mozes published on Feb.22, 2002

Justified or not, the mere existence of a lawsuit such as this clearly becomes a Hospital Administator's and Communications Department's worse nightmare. As a result, hospitals are increasingly attentive to whether or not they are in compliance with LEP regulations.

Quality of Health Care for Minorities

The quality of healthcare received by minority and LEP persons is significantly inferior to that of non-Minority, English speakers. Recent studies have documented that the magnitude of these differences were even greater than supposed.

In one study of more than 4,100 patients, researchers from the State University of New York Health Science Center at Brooklyn, in New York City and The Access Project, a health resource advocacy program affiliated with Brandeis University in Waltham, Massachusetts found that the lack of interpreters and language services significantly affect the quality of immigrant healthcare.

For example, *15% of the patients reported needing the assistance of an interpreter* when interacting with hospital staff, but slightly more than half (8%) said such help was either very slow in coming or impossible to get. Most *(95%) of those patients needing assistance were native-Spanish speakers.*

The study's researchers wrote "the most disturbing finding was that more than *one quarter* of those unsuccessful in finding needed language services *did not fully understand the prescription instructions* they were given, a problem experienced by only 2% of the other patients."

The investigators pointed out that among those who failed to get critical translation help, *nearly one-third said they would not go back to their hospital* in the future if they ever obtained insurance, compared with only 9% who expressed such a sentiment after getting needed help.

Promising Practices: Complying with LEP Regulations, Avoiding Litigation and Improving Healthcare Delivery

Hospitals face significant challenges in providing language services to the increasingly diverse population. Provision of healthcare, not language assistance, is a hospital's core competency. Hospitals are thus increasingly outsourcing the burden of providing high quality language assistance whenever possible.

In its official policy guidance,[7] OCR lists a number of "promising practices" that can advance service to LEP populations without overburdening hospital staff or resources. Some of these promising practices include:

- ❑ use of Internet and intranet systems to easily store and retrieve translated documents,
- ❑ state-of-the-art medical interpretation systems,
- ❑ community language banks, and
- ❑ telephone information lines.

Multilingual health information, including websites

Hospitals, like other entities, are increasingly relying on Internet-based websites and systems for the delivery of health information and marketing. The Internet, as well as intranet-based systems, are excellent ways to offer information, vital documents, and health education materials to LEP populations. A multilingual website also has the significant advantage of promoting the hospital as a "minority-friendly" institution. Other advantages of Internet-based multilingual information are listed in Chart 3.

Conclusion

It is recommended for hospitals to take a proactive approach in providing multicultural services and information. A cost-effective solution for this need is to rely on the availability of advancing technology which offers the dual benefit of ensuring LEP compliance and improving the healthcare services provided to the community.

Chart 3: Benefits of multilingual health information and documents on website

- Easy access by LEP persons
- Perception as LEP friendly
- Can easily outsource translation tasks
- Easily updated
- Globalization software allows for management of multiple foreign languages
- Facilitates communication between doctor/nurse and patient
- Improved outcomes
- Reduced risk of malpractices

References

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2 U.S. Census Bureau, Current Population Reports, Series P23-206, Profile of the Foreign-Born Population in the United States: 2000, U.S. Government Printing Office, Washington D.C., 2001.

3 Officially, Title VI of the Civil Rights Act of 1964 U.S.C. 2000d et. Seq. and its implementing regulation at 45 CFR Part 80. Federal Register / Vol. 65, No. 169, Aug 30, 2000.

4 Federal Register / Vol. 65, No. 169, Aug 30, 2000.

5 Executive Order 13166 - Improving Access to Services for Persons With Limited English Proficiency. Department of Justice Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency; Notice. Federal Register Vol. 65, No. 159, August 16, 2000.

6 www.usdoj.gov/crt/cor/index.htm.

7 U.S. Department of Health and Human Services, Office of Civil Rights. Policy Guidance. Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency. September 1, 2000.

8 Letter from Donna Shalala to Janet Reno, Dec 12, 2000. http://www.hhs.gov/gateway/language/languagememo.html.

9 U.S. Department of Health and Human Services. Strategic Plan to Improve Access to HHS Programs and Activities by Limited English Proficient (LEP) Persons. http://www.hhs.gov/gateway/language.languageplan.html.

10 Vital documents are described by OCR as "applications, consent forms, letters containing eligibility or participation information, notices pertaining to services or benefits, documents that require a response from beneficiaries, and advise of free language assistance, and the like."

11 Feds Investigate U. Med Center's Service for Non-English Speakers. By Kristen Stewart. The Salt Lake Tribune. Thursday, July 12, 2001.

12 OCR and Maine Medical Center Linguistic Access Resolution Agreement. July 17, 2000.

13 What a Difference An Interpreter Can Make - Health Care Experiences of Uninsured with Limited English Proficiency. The Access Project. April 2002. http://www.accessproject.org/cam-spublications.htm.

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