Washington State Coalition for Language Access Tools for Health
Language Access in Healthcare for LEP Persons:
What Providers in Washington State Need to Know

WASCLA created this fact sheet as an introduction for providers about language access rights and responsibilities in healthcare. It is a companion resource to our Tools for Health multilingual consumer materials available for 31 languages. This fact sheet discusses language access exclusively for spoken and/or written languages and it does not cover rights and responsibilities under the Americans with Disabilities Act.

Why are Language Services Vital to Health and Healthcare?

The Hippocratic Oath requires physicians to *Do No Harm*. When working with individuals with whom a physician does not share a common language, the way to uphold this commitment is through professional interpreter services.

A large body of evidence supports the **medical case** and the **business case** for language assistance in healthcare, illustrating the serious harms to patients as well as the greatly increased costs that result from the lack of, or inadequate, language services, for patients and providers. Research has shown that communication problems rank high among health inequalities linked to race and ethnicity, nationally and locally, compromising patient safety and creating risk management concerns[1]. When a patient is limited English proficient (LEP), the risks increase, resulting in: increased rates of medical errors including those with prescription drugs; more unnecessary diagnostic tests and procedures; increased rates of hospitalizations; longer hospital stays and more re-admissions; worse health outcomes; and higher (and avoidable) expenses for individuals, families, governments, healthcare systems, and insurers alike.

What are the requirements to offer language services in healthcare settings?

Title VI of Civil Rights Act of 1964 bans recipients of federal financial assistance from discriminating against individuals on the basis of race, ethnicity, or national origin. The law states that:

> *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}*

The Supreme Court ruled that language can be an identifier of national origin. The Patient Protection and Affordable Care Act (ACA) of 2010 established additional mandates for meeting the communications needs of LEP consumers. Washington has its own civil rights law and also rules for State medical and social services programs, which specify qualifications, testing, and credentialing of interpreters and translators, plus service delivery guidelines. Some localities, such as Seattle and King County, have their own language access initiatives.

HHS, through its Office of Minority Health, established the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care as practice standards for healthcare

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[1] *Improving Patient Safety Systems for Patients With Limited English Proficiency: A Guide For Hospitals*, Agency for Healthcare Research and Quality, No. 12041 (Sept. 2012). Available at: http://www.ahrq.gov/populations/lepguide/; L. Ku, G. Flores. "Pay Now or Pay Later: Providing Interpreter Services in Health Care." *Health Affairs*, Mar. 2005, 24 (2): 435-44. Available at: http://content.healthaffairs.org/content/24/2/435.full; M. Youdelman. *The High Costs of Language Barriers in Medical Malpractice (2009),* National Health Law Program, Available at: http://tinyurl.com/lhka7mr; ACA of 2010, Section 3025, Hospital Readmission Reduction Program; American Hospital Association, *Eliminating Disparities in Health Outcomes-Bibliography* (2011); C. Wilson, "Patient Safety and Healthcare Quality: The Case for Language Access," *International Journal of Health Policy and Management,* Dec. 2013; 1: 251–253. Available at :http://ssrn.com/abstract=2362201

services of all types. Known as the *National CLAS Standards*, they were created in 2004 and updated in 2014, and contain specific directives on language assistance services as well as explain how communication is at the core of healthcare. In addition, The Joint Commission requires hospitals to have plans and services in place for providing language assistance as a condition for accreditation.

What are the general language access requirements for recipients of federal funds?
Any covered entity that receives federal funds for any part of its operations must provide language services at no cost to all LEP consumers at all points of service, and during all hours of operation. This means that if only one program or division of the covered entity receives federal financial assistance, then the entire entity must offer meaningful language access in all of its programs and services. In addition, language assistance services must be provided to all current and potential patients and to those responsible for a patient's care, such as parents, relatives, and guardians. To receive language services, individuals do not themselves need to be beneficiaries of federal financial assistance, nor are there any income or citizenship requirements to receive language assistance.

Which providers are recipients of federal financial assistance?
Any licensed healthcare provider and the public and private facilities where they practice (covered entitles) which receive any form of federal financial assistance, directly or indirectly, is a recipient and must comply with Title VI. This includes entities that that operate, provide, or engage in health programs and activities, and receive funds from the U.S. Department of Health and Human Services or from any other federal agency or program.

Common sources of federal financial support in healthcare are:

- HHS: Medicaid, Medicare Part A, Indian Health Service, Urban Indian Health Program, US Public Health Service, and the Hill-Burton Program[2]
- Department of Defense: Tricare
- Veterans Administration

Providers which are considered as covered entities under Title VI include:

- Hospitals, nursing homes, home health agencies, and managed care organizations
- Universities and institutions with health or human services research programs
- State, county, and local health and social services agencies and facilities, including Medicaid agencies
- Programs for families, youth, and children, including Head Start programs
- Outpatient clinics, pharmacies, and other facilities (e.g. laboratories, blood banks, dialysis centers, mental health services, diagnostic centers, rehabilitation centers, physical medicine clinics, etc.)
- Public and private contractors, subcontractors, and vendors
- Physicians and other healthcare providers who receive financial assistance from any federal agency
- Correctional facilities
- State health insurance marketplaces or exchanges, established under the ACA

What does it mean to provide language assistance services?

[2] The Hill –Burton program funded construction of healthcare facilities, which were then required to offer free and reduced-cost patient care. It ended in 1997 and few obligated facilities remain, including 3 in Washington.

It means that all parties are provided with high quality spoken and written language communications which allow them to comfortably discuss the patient's health and health care – to ensure meaningful access to healthcare services.
The following core concepts may help inform the development of language access services:

Understanding the difference between interpreting and translation: Interpretation or interpreting refer to communication from one spoken language (the source language) to another (the target language), while translation or translating is done between written languages. Language assistance may involve spoken and/or written languages.
Language Access Plan: Each covered entity should develop a Language Access Plan (LAP) proactively as a guide to all aspects of serving LEP persons in their community and should train staff on the plan and how to access language assistance services.
Qualifications for language assistance personnel: Entities must assure that language services are provided only by qualified persons, including bilingual providers and staff, and trained interpreters and/or translators. Each entity may determine who will provide the language assistance, such as by staff interpreters or contract interpreters, or a combination. To serve State medical and social services programs, DSHS has a Language Testing and Certification (LTC) program to assess and credential interpreters, translators, and state employees.
Language service modalities: Each entity may select the modality of language services to be offered (unless local law is different[3]) such as by in-person interpreters or by interpreters located in another location who communicate remotely by phone or over the internet.

Who is qualified to provide language services?
A qualified interpreter is a person who has been assessed for professional skills including the following:

- high level of verified proficiency in at least two languages
- knowledge of medical terminology and concepts in each language
- appropriate training and experience to interpret with skill and accuracy
- knowledge of, and adherence to, codes of ethics and standards of practice for medical interpreters[4]

A professional interpreter accurately conveys messages between the two languages without any additions, omissions, or opining, and with awareness of the cultural context of the communications. Physicians or other personnel who self-identify as bilingual need verification of their dual language skills as well as their knowledge of medical terminology and concepts in the target language before they offer clinical care in another language.

Is there anything that providers must NOT do regarding language services?
Yes. They may not:

- Decline to care for patients on the basis of their need for language services
- Ask patients to bring their own interpreter to appointments

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[3] For example, Massachusetts requires that patients in hospital emergency departments be served by competent interpreters in-person, and only via remote services under certain circumstances. https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section25J

[4] National Council on Interpreting in Health Care, National Standards of Practice for Interpreters in Health Care; DSHS Language Interpreter and Translator Code of Professional Conduct (WAC 388-03-050).

- Require that a patient's family member or friend interpret for them, except in emergencies
- Ask minors to serve as interpreters, unless there is no other option in emergencies
- Ask anyone who is untrained as an interpreter and/or whose language skills have not been verified, to interpret for patients

Who is an LEP person protected by Title VI?
The official definition of limited English proficiency is

> *Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP."*

How many people in Washington need language assistance?
There is no single definitive source of data on LEP populations, and calculations usually derive from the Census and American Community Surveys. On this basis, current data on state population across all age groups shows an overall LEP rate of 8% for Washington residents age 5 and up, or some 520,000 people. Averages alone are not enough, as Census reports on only 39 distinct languages while over 200 are spoken in Washington, with wide geographic variation. About half of LEP residents here speak Spanish, half of whom report having LEP. Likewise, among speakers of Chinese languages, Korean, Khmer, Russian and Vietnamese, the reported LEP rate[5] is 50% or higher. It should be noted also that interpreter services are for both patients and providers.

Is there a connection between LEP status and health literacy?
Yes. By recent estimates, only one-third of the English speaking public is considered to have adequate health literacy to be able to negotiate their own healthcare. Difficulty communicating in English compounds the situation, as another negative social determinant of health.

Who pays for interpreter services?
Recipients of federal financial assistance must offer language services at no cost to current and potential LEP patients and/or their families. Provision of language assistance is the responsibility of the provider.

Do insurance plans pay for interpreter services as a covered benefit?
Washington State pays for interpreter services at appointments for patients in the Washington Apple Health (Medicaid) program. To access this program benefit, providers must follow the Health Care Authority's procedures to request interpreters as well as its documentation requirements. Details can be found on HCA's Interpreter Services page. Currently, interpreter services are not a covered benefit under private insurance plans sold in Washington nor are they covered by Medicare.

Where can I get more information about language services in healthcare?
WASCLA has collected a list of Selected Resources on Language Access on the following page. We are available to answer your questions, and offer professional consultation and custom training services.

WASCLA is a 501 (c)(3) charitable organization, EIN 90-0517290, dedicated to eliminating language barriers to essential services in Washington State through collaborative efforts. Website: http://www.wascla.org/

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[5] Migration Policy Institute (2015). Frequently Requested Statistics on Immigrants and Immigration in the United States: Demographic, Educational, and Linguistic Characteristics.