

Interpreters & Auxiliary Aids

Question

Are healthcare practices required to accept patients who need interpreters or auxiliary aids? Is the practice obligated to provide these services, and may it bill patients for the associated costs?

Answer

Deciding to provide clinical care — whether for a prospective or a current patient — should *never* be made on the basis of a patient’s disability or limited English proficiency (LEP).

Physicians, hospitals, healthcare facilities, and other healthcare providers who receive federal financial assistance or funding are generally responsible for providing auxiliary aids or other service accommodations at no cost to the patient as specified in Section 1557 of the Affordable Care Act (ACA), “Nondiscrimination in Health Programs and Activities.”¹ The latest Section 1557 final rule, which went into effect August 18, 2020, also requires that covered entities provide a notice of nondiscrimination and taglines whenever necessary to ensure meaningful access.²

The complexity of the communication and the patient’s accommodation choice are primary considerations when selecting an auxiliary aid or language-assistance service. The healthcare provider’s predominant goal should be to facilitate effective communication and avoid misunderstandings that could result in poor outcomes, such as medication errors, delayed diagnoses, or confusion about care plans.

Ask the patient — either through an interpreter or through the use of an assistive device — “What is the best way for us to talk about your health problem?”

Some risk strategies to assess whether patients need interpreters or auxiliary aids include:

- Conducting a four-factor LEP analysis that considers the following:
 - The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee
 - The frequency with which LEP individuals come in contact with the program
 - The nature and importance of the program, activity, or service provided by the program to people's lives
 - The resources available to the grantee/recipient and costs³
- Developing a written policy and procedure on auxiliary aids and language-assistance services for patient who have disabilities or LEP. The policy/procedure should outline a process for (a) identifying and assessing need, (b) notifying patients about the availability of services, and (c) providing auxiliary aids and services.⁴
- Periodically educating staff regarding the written policy. Document education in each staff member's employment file.
- Documenting in the health record (a) identification and assessment of need, and (b) each time an interpreter or assistive device was used (including the name and phone number of the interpreter or the type of device).

Resources

- Agency for Healthcare Research and Quality: Health Literacy Universal Precautions Toolkit, 2nd Edition: Address Language Differences: Tool #9
- AMA Journal of Ethics: Language and Hierarchy in Medicine
- MedPro Group: Risk Tips: Communicating Effectively With Patients Who Have Limited English Proficiency
- National Academy of Medicine: Language, Interpretation, and Translation: A Clarification and Reference Checklist in Service of Health Literacy and Cultural Respect

- Office for Civil Rights, U.S. Department of Health and Human Services: Example of a Policy and Procedure for Providing Auxiliary Aids for Persons with Disabilities
- Office for Civil Rights, U.S. Department of Health and Human Services: Limited English Proficiency
- Office for Civil Rights, U.S. Department of Health and Human Services: Limited English Proficiency (LEP) Resources for Effective Communication

¹ 42 U.S.C. § 18116

² 85 *Fed. Reg.* 37160-37248 (June 19, 2020), www.federalregister.gov/documents/2020/06/19/2020-11758/nondiscrimination-in-health-and-health-education-programs-or-activities-delegation-of-authority

³ Office for Civil Rights. (2003). Guidance to federal financial assistance recipients regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. U.S. Department of Health and Human Services. Retrieved from www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/index.html

⁴ Office for Civil Rights. (n.d.). Example of a policy and procedure for providing auxiliary aids for persons with disabilities. U.S. Department of Health and Human Services. Retrieved from www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/auxiliary-aids-persons-disabilities/index.html

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