

## Interpreters for Limited English Proficiency and Hearing or Vision Impaired Patients

### Purpose of risk management recommendations

OMIC regularly analyzes its claims experience to determine loss prevention measures that our insured ophthalmologists can take to reduce the likelihood of professional liability lawsuits. OMIC policyholders are not required to implement risk management recommendations. Rather, physicians should use their professional judgment in determining the applicability of a given recommendation to their particular patients and practice situation. These loss prevention documents may refer to clinical care guidelines such as the American Academy of Ophthalmology's *Preferred Practice Patterns*, peer-reviewed articles, or to federal or state laws and regulations. However, our risk management recommendations do not constitute the standard of care nor do they provide legal advice. Consult an attorney if legal advice is desired or needed. Information contained here is not intended to be a modification of the terms and conditions of the OMIC professional and limited office premises liability insurance policy. Please refer to the OMIC policy for these terms and conditions.

June 17, 2024

### RISK ISSUE

Communication challenges and language barriers can result in poor quality of care, patient noncompliance, and potential liability exposures. Patients with limited English proficiency (LEP), hearing impairments, or vision issues may require communication and language assistance to ensure comprehension, proper informed consent, and legal compliance. There are legal requirements to provide communication assistance services to avoid discrimination based on national origin or disability. Patients have rights under federal law to access health care using their communication preferences. Evidence suggests that language assistance services aid in favorable outcomes, patient satisfaction, and patient compliance, and reduce the likelihood of adverse events.

### BACKGROUND

#### KEY TERMS

##### Limited English Proficient (LEP)

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.

##### Communication Assistance

Refers to services necessary for effective communication with individuals with vision or hearing disabilities. They may include auxiliary aids such as transcription services, written materials,

assistive listening devices and systems, text telephones for deaf persons (TTYs), or large print or Braille materials.

#### **Language Assistance Services**

Refers to services used to facilitate communication with individuals who do not speak English, who have limited English proficiency, or who are deaf or hard of hearing. These services can include qualified in-person interpreters, qualified bilingual staff, sign language interpreters, or remote interpreting systems such as telephone or video interpreting.

#### **Interpretation versus translation**

Interpretation is the real-time conversion of spoken or sign language from one language to another. Translation is the conversion of written text from one language to another language.

### **ASSESSMENT**

It can be considered discriminatory to not provide communication or language assistance for LEP or hearing and vision-impaired patients. These interpretation and translation services should be at no cost to the patient. Medically qualified interpreters and translators should be used instead of friends and family unless requested by the patient and determined to be appropriate by the provider. Practices should not decline care or terminate a patient due to their communication needs.

In the United States, patients with LEP or who require communication assistance due to a disability, have a legal right to access health care in their preferred language or be provided language assistance services. The foundation of this right is established in [Title VI of the Civil Rights Act of 1964](#) and [Section 1557](#) of the Patient Protection and Affordable Care Act (ACA). Both prohibit discrimination based on race, color, and national origin. Additionally, the ACA prohibits discrimination based on sex, age, or disability. These requirements apply to [federal financial assistance](#) programs (including Medicaid and Medicare funding) and are enforced by The U.S. Department of Health and Human Services Office for Civil Rights (OCR). OCR enforcement actions could include fines, sanctions, or penalties. The Americans with Disabilities Act of 1990 ([ADA](#)) and [Section 504 of the Rehabilitation Act of 1973](#) also protect individuals who are deaf, hearing impaired, or vision impaired by granting them the right to effective communication to obtain a benefit or service.

### **QUESTION & ANSWER**

#### **1. Can I use Google Translate?**

Google Translate can be used for limited communication needs. A qualified medical interpreter is required when you have to relay medical information, including diagnosis, orders, surgery, medication, or consent.

#### **2. May an LEP or hearing-impaired patient use a family member or friend as his or her interpreter or translator?**

In many cases, especially when information about important medical decisions or consent is at issue, friends and family members may not have the ability to ensure the LEP or hearing-impaired patient fully understands what a health provider is communicating to them. In other cases, a family member or friend may have an interest in misrepresenting what is being said, such as when domestic abuse is the cause of a medical visit or when attempting to protect the

patient's feelings by not emphasizing the gravity of the situation. Therefore, when important information is being conveyed and providing language assistance services is a reasonable way to give an LEP or hearing-impaired patient meaningful access to a [federally-funded?] program, it is the provider's responsibility to offer a competent interpreter or translation service at no cost to the person being served. The patient can decline to use the services, but the provider must decide if that is appropriate. An example is using a minor family member to interpret; the decision is dependent on the importance of the information being conveyed. These discussions and decisions should be documented.

**3. For the hearing impaired, who decides on the aid or service provided?**

The practice should consult the patient and give primary consideration to fulfilling their request. The practice may use a substitute if the alternative also provides effective communication. If an auxiliary aid or service is needed, the practice must provide it free of cost after considering:

- How many people are participating in the communication and their characteristics.
- The particular situation or context and the nature, length, complexity, and importance of the communication.
- Whether a fundamental alteration of the program or service would result in an undue burden.

These decisions must be made on a case-by-case basis. All decision should consider the needs of the individual, the circumstances, the importance, nature, and complexity of the communication, and whether providing an interpreter would constitute an undue burden under the law.

**Example Scenario:**

A person who is deaf went to the doctor's office to have a blood test. The doctor knew that the visit would be very short and that there would be very little communication during the visit. After consulting with the individual, the doctor determined that an interpreter was not needed and that writing notes and gestures would be effective for this patient in this situation. For the next appointment, to discuss the results of the blood test and to talk about treatment decisions, the doctor provided an interpreter.

**4. How does this guidance affect small practices with LEP patients who are recipients of federal funding?**

Small practitioners and providers have some flexibility in determining how to fulfill their obligations to take reasonable steps to provide meaningful access for persons with limited English proficiency. OCR will assess compliance on a case-by-case basis by evaluating whether a health care provider is administering its federally-funded programs in a manner that has the effect of delaying or denying services to persons based on their national origin. OCR will continue to be available to provide technical assistance to such providers, including sole practitioners and other small recipients seeking to operate an effective language assistance program and to comply with Title VI.

**5. Is there any funding provided for the costs associated with translation and interpretation services?**

- States are not required to reimburse providers for the cost of language services, nor are they required to claim related costs to Medicaid. States may consider the cost of language services to be included in the regular rate of reimbursement for the underlying direct service. In those cases, Medicaid providers are still obligated to provide language services to those with LEP and bear the costs for doing so. Still, states do have the option to claim Medicaid reimbursement for the cost of interpretation services, either as medical-assistance related expenditures or as administration.
- [Currently 18 states directly reimburse providers for language services.](#)
- There are tax benefits to help offset the costs for small businesses that have expenses for providing access to people with disabilities. [IRS](#)
- Medicare and most private insurance does not currently reimburse for language assistance services.

**6. [Do our consent forms have to be written in the patient's language if it is non-English?](#)**

If the forms are not in the relevant non-English language, provide an interpreter to read the written forms in the patient's preferred language and document the form was interpreted and the interpreter's name.

**7. I am a physician who speaks Spanish; can I serve as an interpreter?**

No standards prohibit a bi- or multi-lingual physician or staff member from communicating directly with a patient in another language while providing care, treatment, or services as long as the communication is effective. There is no requirement that interpreters be certified but they should be qualified and competent. If there is a need in your patient population, consider having staff obtain certifications to provide interpretation services.

**8. What if a state has an English-only law? Do the federal requirements still apply?**

Yes, federal law applies regardless of whether state law makes English its only recognized language because federal law preempts any conflicting state law.

**9. Is there a required method (in person, phone, or virtual) for language services and where can I locate medically qualified interpreting language services?**

There is no requirement for how the language services are provided. The key is that the patient is able to understand the information. In-person is not mandated and can be expensive and difficult to coordinate. Language services are available over the phone or virtually. Search the Internet using the key words "phone and video remote medical interpreting services for LEP or hearing impaired" to find vendors. You want to make sure the technology used is HIPAA compliant and the interpreter is qualified.

**10. Where can I find guidance and resources?**

[LEP Resources](#)

[Guide to Providing Language Services for LEP](#)

[Guide to Developing a Language Access Plan](#)

[ADA Requirements and Resources for Effective Communication](#)

[Interpreter and Translation Language Access Organizations Map](#)

[HHS sample policy and procedure for LEP patients](#)  
[HHS sample policy and procedure for disabled patients](#)

## RISK RECOMMENDATION

- Develop a [policy and procedure](#) on providing communication or language assistance services for LEP, hearing-impaired, or vision-impaired patients.
  - Sample Policy and Procedure
    - [LEP](#)
    - [Hearing and Vision Impaired](#)
- Let patients know about language assistance services and ask the patient their preferred communication method to ensure comprehension and compliance, and to avoid complaints.
- Provide written materials and videos in patients' languages.
- Have contacts or contracts for medically qualified interpreting and translation services.
- Train staff on the policy and procedure for compliance to ensure communication is adequate by scheduling or planning for language assistance services prior to the appointment.
- Document in the medical record the patient's communication and language assistance needs; each time an interpreter, translator, or assistance was used to communicate; who provided the assistance; and any refusal to use an interpreter.
- Be aware, if patients are not offered reasonable and adequate language services, they may file a civil rights complaint to the Office for Civil Rights (OCR), pursue a discrimination lawsuit, or a medical malpractice claim.
- Never deny care or terminate a patient based on the requirement to provide language assistance services to the patient.
- [Best Practices for Working With an Interpreter in Clinical Practice](#)
  - Avoid the use of patient's family members or friends as interpreters.
  - Document the use of an interpreter in the patient's medical record.
  - Address the patient directly and watch for physical responses clues during interpretation.
  - Avoid medical jargon; use layman's terminology.
  - Speak in short sentences at a slow pace, allowing time for interpretation.
  - Check in with the patient to ensure comprehension by using the teach-back method through the interpreter.

## RESOURCES

1. Centers for Medicare & Medicaid Services. (2017, April). [Understanding Communication and Language Needs of Medicare Beneficiaries.](#)
2. Centers for Medicare & Medicaid Services (CMS). (2024, May 6). Nondiscrimination in Health Programs and Activities. [Federal Register](#)
3. U.S. Department of Health and Human Services (HHS). [HHS.gov](#)
4. National Health Law Program. (2024, March 19). Medicaid and CHIP Reimbursement Models for Language Services. [Healthlaw.org](#)

5. National Health Law Program. (2024, May 9). What is required under Title VI and Section 1557 to ensure Language Access for Individuals with Limited English Proficiency? [Healthlaw.org](https://www.healthlaw.org)
6. Medicaid. Translation and Interpretation Services. [Medicaid.gov](https://www.medicaid.gov)
7. American Medical Association. (2017). Clinicians' Obligations to Use Qualified Medical Interpreters When Caring for Patients with Limited English Proficiency. [AMA](https://www.ama-assn.org)

**Need confidential risk management assistance?**

OMIC-insured ophthalmologists, optometrists, and practices are invited to contact OMIC's Risk Management Department at (800) 562-6642, option 4, or at [riskmanagement@omic.com](mailto:riskmanagement@omic.com).