

Summary of State Law Requirements Addressing Language Needs in Health Care

There are a number of federal laws that address language access in health care settings. Virtually all health care providers must comply with Title VI of the Civil Rights Act of 1964. Its purpose is to ensure that federal money does not support activities that discriminate on the basis of race, color, or national origin. Another federal law requires hospitals that received funding through the Hill-Burton Act to have an ongoing “community service” obligation which includes non-discrimination in the delivery of services.

According to the U.S. Department of Health and Human Services Office for Civil Rights, these hospitals must post notices of this obligation in English, Spanish, and other languages spoken by 10 percent or more of the households in the service area. There are also federal laws that implicate the need for meaningful language access if they are to be effectively implemented. Under the Emergency Medical Treatment and Active Labor Act, for instance, it would be difficult for a hospital to comply with the Act’s screening, treatment and transfer requirements without effective communication with a limited English proficient (LEP) patient. Despite such federal requirements, lack of knowledge and enforcement leaves millions of LEP individuals without meaningful access to health care.

State laws provide an additional source of protection. Indeed, state legislatures and administrative agencies are increasingly recognizing the need for linguistically-appropriate health care and have adopted measures that require or encourage health and social service providers to overcome language barriers.

This publication of state-by-state laws offers citation to and a short description of each state’s statutes and regulations regarding services to LEP persons in health care settings. It supersedes the previous listings originally published by the National Health Law Program in August 2003 and updated in 2005.

All 50 states have enacted laws concerning language access in health care settings. California continues to have the most laws; however, every state now has at least two such laws. A limited number of states have enacted comprehensive laws while most states’ provisions focus on a particular type of health care provider, service, payer, or patient group. Some of these laws provide detailed guidance; others note the importance of language access but do not specify activities to improve it. Recent

Summary of State Law Requirements Addressing Language Needs in Health Care trends include provisions addressing cultural competency training for health professionals and Medicaid funding for language services. Some highlights are:

Comprehensive Laws

California has enacted a number of comprehensive provisions, including a Title VI look-alike that authorizes enforcement by individuals who are not provided language services. California has developed some of the most comprehensive provisions that guide state agencies, general acute hospitals, and the provision of services for individuals with developmental disabilities and/or mental health needs. Based on the finding that an inability to speak, understand, or read English is a barrier to public services, Maryland’s 2002 “Equal Access to Public Services for Individuals with Limited English Proficiency Act”

requires State agencies to provide equal access to public services for LEP individuals. Washington, D.C. followed suit in 2004—any District agency, department, or program that furnishes information or renders services directly to the public or contracts with other entities to furnish such services must provide oral language services to LEP persons who seek the services offered by the covered entity.

Health Insurance Coverage

Some states address the interplay between health insurance and language access. California requires the Department of Managed Health Care and the Insurance Commissioner to promulgate regulations establishing language standards and requirements for health care service plans (or managed care plans) and for individual and group insurers to provide insured individuals with appropriate access to translated materials and language assistance in obtaining covered benefits. A Washington law requires all health carriers to file an access plan with the insurance commissioner that includes a description of the health carrier's efforts to address the needs of covered persons with limited English proficiency. Meanwhile, Texas repealed a provision that prohibited health insurers from using underwriting guidelines based on the ability of the insured or applicant to speak or read English (former Tex. Ins. Code § 21.21 7).

Health Educational Requirements

New Jersey, California and Washington require cultural competency instruction as an educational component or continuing education for health professionals.

Mental Health

Laws in 46 states address mental health, including in- and out-patient services. These range from translating patient rights notices to mandating interpreters for commitment proceedings. For example, Illinois requires state mental health facilities to provide interpreters during admission and intake, when denying admission, and during assessments or evaluations while the individual is being interviewed or tested by a psychologist, psychiatrist, or physician.

Women's Health

Thirty-five states have laws concerning women's health, including 30 that focus on abortion or sterilization and 14 that address other issues such as pre-natal care. Provisions in 17 states to assure that Medicaid will cover sterilization only after informed consent has been obtained in the LEP patients' primary language. Eleven states have "Women's Right to Know Acts," which typically require information about adoption, fetal pain associated with abortion, the possible detrimental psychological effects of abortion, and fetal development at two-week intervals to be published in English and in each language that is the primary language of two percent or more of the state's population.

Other Population Groups

States have also adopted provisions addressing services for children (29 states) and the elderly (27 states). The provisions affecting children generally govern notices about Medicaid's Early and Periodic Screening, Diagnostic and Treatment Program (EPSDT) (12 states), or about mental illness (18 states).

Facility Licensure

Recently adopted provisions in Colorado, Massachusetts, and New Jersey link facility licensure to the provision of language services. The Colorado law requires long-term care facilities, as a condition of licensure, to inform residents of their rights, including the right to be adequately informed of their medical condition and proposed treatment and to participate in the planning of all treatment. For residents whose primary language is other than English, the facility shall arrange for persons speaking the resident's language to facilitate daily communications and to attend assessment and care planning conferences.

Funding

A number of states have enacted laws to provide funding to pay for language services. Texas authorized Language Interpreter Service Pilot Programs to pay for language services in Medicaid in five sites statewide. In 2007, Connecticut authorized Medicaid payments for language services, and New York enacted funding for hospitals.

Interpreter Certification

Four states require or are initiating state-based certification. This is due, in part, to recognition that self-identification as bilingual is insufficient to be a competent interpreter. Washington has the oldest certification program. More recently, Iowa, Indiana, and Oregon have enacted laws requiring development of interpreter standards, while other states are requiring the use of certified or competent interpreters but do not specify standards.

In sum, it is clear that the needs of LEP patients are receiving attention at the state level, due in part to changing demographics but also to the renewed focus on health care quality and patient-centered care. As a result, the breadth and scope of state laws continue to grow, and new opportunities are arising to ensure that LEP individuals have access to meaningful language services in health care settings.

Source: National Help Law Program (www.healthlaw.org/)