NELSON HARDIMAN
HEALTHCARE LAWYERS

OCR Reminds Covered Healthcare Entities of Their Continued Obligations to Persons With Limited English Proficiency (LEP) During COVID-19

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is reminding covered health entities to take "reasonable steps" to provide meaningful healthcare access to persons with Limited English Proficiency (LEP) during the COVID-19 public health emergency.

In its Bulletin issued on May 15, the OCR clarified that this "longstanding obligation" to LEP individuals is not waived during a National Emergency, and that "reasonable steps" could include written translation of documents and/or language assistance from a qualified interpreter either in-person or using remote communication technology.

The OCR also listed suggestions for ensuring meaningful healthcare access and removing language barriers during this public health emergency, including:

- Contract with entities qualified to provide language access services through multiple types of media (telephonic interpretation, video remote interpreting, etc.);
- Disseminate COVID-19 information and messaging about testing and treatment in plain language and in the non-English languages prevalent in the affected area through all forms of media, including online, television, or social media, and through targeted outreach to community and faith-based organizations that can reach individuals with LEP;
- Post COVID-19 documents in multiple languages in multiple locations, including at providers' initial point of contact;
- Offer services in multiple languages and provide notices of such language access services online, in advertisements, and at points of service;
- Designate a person on every shift to be responsible for ensuring and coordinating the delivery of language access services for patients with LEP at every stage of contact, from intake and admission to treatment and discharge;
- Create and disseminate widely to staff an up to date list of in-person and remote translation and interpreter services and of bilingual staff who are qualified to respond quickly to the needs of patients with LEP;
- Use "I Speak" resources or ask open-ended questions to determine an individual's written and spoken language preference at the first point of contact;
- Upon identifying a patient with LEP, make sure critical information is communicated in the patient's preferred language by using a qualified interpreter or translated materials, remotely if necessary;
- Clearly mark patient charts (or EHR records) with their LEP status and preferred written and spoken language; and
- Where feasible, respect patients' wishes to use their own interpreter, such as an adult friend or family member, if they are qualified and if appropriate under the circumstances.

Where using an in-person interpreter would pose a health risk, providers are encouraged to utilize the flexibility allowed under the law, such as using remote interpretation through audio or video technologies.

OCR enforces Title VI of the Civil Rights Act of 1964, as well as certain regulations implementing the Affordable Care Act, under which entities receiving HHS-provided federal financial assistance are prohibited from discriminating on the basis of race, color, and national origin—which includes LEP. Accordingly, such covered entities must take the reasonable steps discussed herein to provide meaningful healthcare access to LEP individuals, even during the current PHE.

The complete bulletin can be found here: https://www.hhs.gov/sites/default/files/lep-bulletin-5-15-2020-english.pdf

For more information please contact us at:

info@nelsonhardiman.com
310.203.2800

Author: Kristina Sherry
Email: ksherry@nelsonhardiman.com

For more COVID-19 related legal updates, please consider subscribing to our COVID-19 Task Force Newsletter.

NELSON HARDIMAN
HEALTHCARE LAWYERS