



Major Changes to the ACA —

How Will They Affect Your Language Access Program?

Executive Summary

Limited English proficient (LEP) individuals represent some of the fastest growing populations in healthcare in the United States.

The language access provisions of the **Affordable Care Act (ACA) Section 1557** has been updated to **require** the use of qualified interpreters and **significantly restrict** the use of untrained family members and friends, minor children and untrained bilingual staff as medical interpreters. These are no longer guidelines; they are enforced regulations.

Key Impacts to Providers

- By moving the legal standard from “competent” interpreters to “qualified” interpreters, the Department of Health and Human Services (DHHS) is increasing the standard of care and legal duty owed to limited English proficient (LEP) and Deaf and hard of hearing patients.
- Providers will bear the financial burden of increasing the professionalism of their language access services.
- Healthcare organizations must now pressure physicians and nurses to actually use “qualified” interpreters instead of untrained family members and friends, minor children and bilingual staff.

At-a-Glance: Section 1557 of the ACA

- Section 1557 of the ACA prohibits discrimination on the basis of race, color, national origin, sex, disability and age by any health program/activity that receives federal funding (and failing to provide interpreters is a form of national origin discrimination).
- Creates major changes in the law of language access.
- Significantly expands the universe of patients to whom providers owe a legal duty to provide language access services. Providers must serve all LEP patients who are “eligible to be served” not just those who are “likely to be encountered.”
- Gives LEP patients a new, private, right to sue under ACA for language access violations.
- Effective date: July 18, 2016. (Except for health plans - effective January 1, 2017)

“Qualified Interpreters” REQUIRED

- Previous federal regulations required the use of “COMPETENT” interpreters.
- The new ACA regulations require the use of “QUALIFIED” interpreters
- Under the final ACA regulations a “qualified” interpreter is defined as:
 - An individual who adheres to interpreter ethics and client confidentiality requirements, and who, via a remote interpreting service or in-person appearance,
 - Has demonstrated language proficiency and the ability to interpret effectively, accurately and impartially including specialized medical terminology
- Presumably, to be a “qualified” interpreter, one must first have gone through some qualification process.
- Above-average familiarity with speaking or understanding a language other than English does not suffice.

MAJOR CHANGES TO THE ACA

“Qualified Interpreters” REQUIRED (Continued)

- Final ACA Regulations specifically restrict:
 - The use of minor children as medical interpreters
 - The use of adult family members and friends as medical interpreters
 - The use of bilingual staff without formal training as medical interpreters

Effective Communication for Individuals with Disabilities

- The final rule specifically states that: “a covered entity shall take appropriate steps to ensure that communications with individuals with disabilities (i.e. Deaf, hard of hearing) are as effective as communications with others in health programs and activities...”
- A covered entity shall make reasonable modifications to policies, practices or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity.

Note: Requiring providers to give primary consideration to the preferences of patients with disabilities is not the same as saying that the provider must adopt the patient’s preferred accommodation.

Compliance With New ACA Section 1557 Regulations

- Language services must be provided free of charge, accurately and in a timely manner and protect the privacy and independence of the limited English proficient patient.
- Legal Violations
 - Requiring LEP patients to provide their own interpreters during medical encounters.
 - Coercing LEP patients to decline language assistance services.
 - Charging patients for language assistance services.
 - Failing to provide adequate public/patient notice of non-discrimination provisions.
 - Failing to provide appropriate interpreters and auxiliary aids and services, free of charge to ensure effective communication for individuals who are LEP or who have a disability.

Enforcement of the New ACA Regulations

- Enforcement mechanisms under Title VI, Title IX, the Age Act and Section 504 apply to violations of Section 1557
- Enforcement agency: OCR (not DOJ). OCR authorized to conduct compliance reviews and complaint investigations as well as to provide technical assistance and guidance. OCR may consider conducting unannounced onsite compliance reviews
- Covered entities required to keep records, submit compliance reports to OCR, name a designated official to be responsible for compliance.
- Noncompliance could result in suspension of, termination or of refusal to grant or continue Federal financial assistance or a referral to DOJ with recommendation to bring legal proceedings.
- Private right of action and compensatory damages are available for violations of Section 1557 regulations. Note applicability of Civil Rights Attorney’s Fees Act of 1976.
- Violations by one hospital in a system may occasion remedial action by the entire system.

Additional Resources

Webinar: [Major Changes to the ACA – How Will They Affect Your Language Access Program?](#)

E-Book Series: Major Changes to the ACA – How Will They Affect Your Language Access Program?

[Part 1: What Are the New Regulations?](#)

[Part 2: How to Comply With the New Regulations](#)

[Part 3: Leveraging Technologies as Part of Your Compliance Strategy](#)