



Federal and state law requires that healthcare organizations provide language access. **With hundreds of languages being spoken in the U.S., how can you possibly provide cost-effective and timely language access?**

**THE ISSUE:** : If your organization receives Medicare, Medicaid or reimbursement from federal health programs, you have a legal obligation to provide language access services to limited English proficient (LEP) and Deaf and hard of hearing (HOH) patients.

Healthcare organizations that receive Medicare, Medicaid or other sources of federal funds have an obligation to provide oral interpreters and written translated documents. In Fact, failing to provide language access services to LEP patients is a form of national origin discrimination. There is case law going all the way up to the United States Supreme Court (Lau v. Nichols. 1974) that establishes that basic principle.

Federal law, state law in all 50 states as well as multiple judicial decisions make reference to the need for health-care organizations to provide language access services.

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## **Federal Law**

Three federal laws (Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and the Affordable Care Act) require that providers who receive federal funds provide oral interpreters and written translated materials to LEP and Deaf and HOH patients. Newly adopted changes to Section 1557 of the ACA in 2016 brought about two key changes. First, providers must now use qualified medical interpreters when treating LEP and Deaf and HOH patients. Second, LEP patients, for the first time, were granted the right to sue providers for language access violations.

## **State Law**

According to the National Health Law Program, all 50 states now have language access laws. Knowing the laws in your state is important to remain legally compliant.

## **Judicial Decisions**

These verdicts are another important source of language access laws. For example, courts have long held that failing to use a qualified medical interpreter during informed consent discussions will make the resulting consent invalid in a court of law.

## **Violations Can Be Costly**

Violations of federal language access laws (Title VI, the ADA and the ACA) are civil rights violations and are not typically covered by medical malpractice insurance. The National Health Law Program worked with one of the largest medical-malpractice insurance carriers in the U.S. to examine medical malpractice cases with language access issues and found that language access issues were the root cause of about 2.5 percent of all medical malpractice claims. The study examined 1,373 medical malpractice lawsuits, 35 of which had contested language access issues. The carrier paid a total of \$2,289,000 in damages or settlements and \$2,793,000 in legal fees on these 35 claims. (\$5M total or \$142,857 per case.)

In addition to the risk of lawsuits, failing to provide high-quality language access services can negatively affect hospital accreditation or reaccreditation decisions from The Joint Commission.

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**THE IMPACT:** To successfully manage risk and be compliant with the law, healthcare providers must develop comprehensive programs to provide language access to their patients.

Over 25 million residents in the U.S. require spoken language interpretation, 4 million people are deaf or hard of hearing and require American Sign Language (ASL). With numbers like these, it's no surprise that 80 percent of hospitals report frequent (63 percent daily/weekly; 17 percent monthly) encounters with these patient populations and therefore require access to medically qualified interpreters. Fortunately, today's healthcare providers can choose from a number of interpreting modalities that provide language access: on-site, over-the-phone, and video remote interpreting.

**Issues with On-site Interpretation:**

(Either bilingual staff members or interpreters contracted through a third-party vendor)

- May not be certified or considered a “qualified medical interpreter”
- May not meet compliance requirements
- Difficult to schedule and may be a “no show,” which means a bad experience for both patient and provider
- Most expensive option, often providers are forced to pay a two-hour minimum charge for a 15-minute patient encounter

**Issues with Over-the-Phone Interpretation (OPI):**

- Between 60–90 percent of communication happens non-verbally, which means OPI may not be the most effective option for effective communication

**In comparison, Video Remote Interpretation (VRI) :**

- Allows visual communication that more closely resembles a face-to-face encounter
- Provides immediate access to a medically qualified interpreter
- An approved modality

**HOW INDEMAND CAN HELP**

InDemand is committed to supporting its clients to improve their language services programs. Working with our clients, we have designed solutions that specifically support language access in every clinical setting. InDemand is 100 percent focused on health-care, providing both spoken language interpreting 24 hours a day, seven days a week and 365 days a year to ensure our clients are compliant around the clock. InDemand currently offers 200 OPI languages and 25 VRI languages at the touch of a button.

Our VRI solution exceeds the strict ACA guidelines, delivering high-quality, high-definition video and audio to enable better communication between patients and providers to support better outcomes.

Our qualified medical interpreters are carefully screened and tested to ensure they meet our high-quality standards and receive extensive training. Additionally, we employ a medical document translation process that has been developed to meet the strict, recently updated ACA regulations.

Our real-time analytics and reporting provides visibility into the data necessary to support a compliant and effective language services program. And to keep you up to date on changing legal developments and best practices, we offer webinars featuring top subject matter experts such as David Hunt of Critical Measures. 