CAPsules

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Are Doctors Required to Provide Interpreters for Office Visits?

The simple answer is yes. The physician is responsible to provide an interpreter[1] *or translator, if one is* ***requested by the*** *patient and the physician is responsible for the cost. This is a common question received by our Risk Management Hotline. Consider the following assertions.*

How often do your patients think, "Are you speaking my language?" Consider this – you are in the midst of seeing your morning patients and then suddenly you are told that there is a patient in the next room who is deaf. Or you find out upon entering one of your exam rooms that the patient does not speak English. What is your responsibility?

This article will address two different laws which pertain to the required use of interpreters and translators in the physicians' office practice. The American with Disabilities Act (ADA) pertains to persons with physical and mental handicaps. (For the purposes of this article, this law will be discussed pertaining to only the deaf and hearing impaired patients will be discussed.) The other important law is Title VI of the 1964 Civil Rights Act (CRA) and it applies to patients with Limited English Proficiency (LEP). If you are receiving federal reimbursement for any of your patients, you are required to follow the CRA.

Both laws generally require that physicians' provide interpreters for these patients in their practice without discrimination unless doing so is an undue burden, or if the cost to the physician substantially exceeds the benefit to the patient. The section which follows attempts to answer some of our physicians' frequently asked question to our Hotline.

[1] For the purposes of this article the terms translator and interpreter will be used interchangeably.

Frequently Asked Questions

May I close my practice to hearing impaired, deaf, or LEP patients?
No. This type of discrimination is prohibited by Federal and State law.

Am I required to have an interpreter for a deaf or LEP patient at every appointment?

The Federal and State guidelines provide that the need for an interpreter depends on the "complexity of the medical matter". The rule of thumb is that the more complicated the length of the interaction, the more likely that an interpreter is necessary.

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Some examples when an interpreter may be necessary are:

- Initial visit (H&P);
- Consent discussions;
- Discussions describing a serious procedure;
- Discussion of long term consequences of required care; or
- Discussions which if misunderstood may cause serious complications.

For hearing impaired or deaf patients, the ADA specifically requires that a physician "furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities." As long as the auxiliary aids and services provide "effective" communication, physicians can choose among various alternatives.

- *For example: An exchange of written notes may suffice for a patient with a "simple" cold, but if the condition or treatment is more complex, then an interpreter may be needed to ensure that physician and patient fully understand each other.*

"A physician should first consult with the patient before deciding that another form of communication can take the place of an interpreter."

If the patient failed to show up to a schedule appointment, and the scheduled interpreter did show and left a bill for the services, can the cost be passed on to the patient?

No. The regulations prohibit charging the patient for the cost of the interpreter's time, in any situation. The physician may spread the costs to all patients like any other overhead cost.

What if the furnishing of an interpreter is a financial burden to my practice?

The ADA requires that the physician is responsible for payment of the interpreter; unless it can be shown that there is an "undue (financial) burden" on the physician. The mere fact that the cost of the patient visit is going to be less than the cost of the interpreter may not be enough to show "undue burden". The showing of undue burden is very "fact based" and is subjective to each case. The courts may be the "ultimate decision maker" regarding undue burden. Therefore, it is important to seriously consider the potential consequences when denying an interpreter and in utilizing an alternate auxiliary service.

Under the CRA, physicians are required to take "reasonable steps" to ensure "meaningful access" to the physicians' services, at no cost to the LEP patient. Reasonable steps may cease to be reasonable if the costs imposed on the physician substantially exceed the benefit. Each situation is evaluated, on a case-by-case basis, by the Office of Civil Rights (OCR) considering the following factors:

- Number of LEP patients;
- The frequency the patients are seen;
- The nature and importance of services provided; and
- The language services available and the cost.

Do I have to provide written translation of any documents?

It depends on the number of LEP patients in your practice. Because it is important that "vital documents" be translated, the Cooperative of American Physicians provides arbitration agreements in six languages and Informed Consent forms in English and Spanish.

For more information about caring for patients with limited English proficiency, go to www.lep.gov, or www.hhs.gov/ocr/lep.

Recommendations

1) *Institute an office policy, which will identify special patient needs. This might be done by asking the following question at the scheduling of the initial office appointment "Does the patient speak and understand English?*
2) *If an interpreter or translator will be needed, ask the patient if a family member could accompany the patient and translate on the first visit. Never use minor children. If not, plan to retain an interpreter in advance.*
3) *At the visit, discuss with the patient if other means of communication can be utilized at future appointments.*
4) *Consider utilizing bilingual staff to assist with interpretation.*