Language Access Requirement in Healthcare

Government Mandates and the Joint Commission

BY JASON ROBERSON, MA

In recent years, there have been a number of regulatory developments in the United States that affect the healthcare industry, protecting the rights and interests of patients. An early example is Title VI of the 1964 Civil Rights Act, which states that: “No person in the U.S. shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

National origin does not necessarily include citizenship, but instead refers to a person’s ancestry, which includes the language(s) he or she speaks. Title VI protects individuals from discrimination based on their inability to read, write or speak English. (For reference, see www.justice.gov/crt.)

In 2000, the Clinton administration issued Executive Order 13166 in order to “… improve access to federally-conducted and federally-assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP).” (See www.justice.gov/crt.) Under this executive order, any federal agency and its recipients (e.g., recipients of Medicaid or Medicare reimbursements or any other form of federal funding or material assistance) must comply with the following:

1. Each federal agency shall examine the services it provides and develop a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency.

2. Each federal agency shall also work to ensure that recipients of federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries.

3. Recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI.

4. Recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Recipients are all state and local governments and other agencies that receive federal financial assistance. Examples of recipients are hospitals, police departments, fire departments, housing authorities, food stamp offices, and welfare agencies. Meaningful access, or the amount of language services that should be provided, can be measured using this following four-factor analysis:

a) What is the number or proportion of LEP persons that live in the community? The language services needed should be proportionate with the number of individuals that speak a certain language or languages in the community.

b) How frequent is the contact the recipient has with LEP persons? More frequent contact requires more language assistance.

c) How important or urgent is the service being provided and what are the consequences if language access is not provided? Emergency medical services are considered more important than other, less critical services.

d) What resources are available to provide language services (e.g., budget, staff, etc.)? Smaller recipients with smaller budgets are not required to provide more extensive language services to the same degree as larger recipients.

Trained, qualified, and competent interpreters and translators (not simply bilingual staff) must be used. A combination of staff, contract, and agency interpreters or translators is commonly used to accommodate language need that might arise. Contracted telephonic and video remote interpreting services are cost-efficient and effective ways to meet these needs.

Since 2000, The Joint Commission (formerly known as the Joint Commission on Accreditation of Healthcare Organizations) has been working to help hospitals improve their meaningful access to services provided to all patients, including those of other national origins and with different linguistic and cultural needs. In 2010, The Joint Commission published its monograph titled “Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care: A Roadmap for Hospitals.” The document addresses issues including language, culture, health literacy, other communication needs, mobility issues, and the concerns of lesbian, gay,
biseexual, and transgender (LGBT) patients. An electronic copy can be downloaded at www.jointcommission.org.

The Roadmap for Hospitals makes suggestions for hospitals throughout the various components of the care continuum: admission, assessment, treatment, end-of-life care, discharge and transfer, and organization readiness. The document includes practical examples and checklists on how to address recommended issues, as well as resources concerning laws and regulations and references to relevant Joint Commission standards and requirements.

With regard to the provision of language access, either by the use of hospital staff and/or contracted or vendor services, the following Joint Commission standards and elements of performance (EPs) are of concern:

- RI.2.130, EP 1 – Patient information is kept confidential (HIPAA compliance).
- IM.2.20, EP 1-8 – The organization provides safeguards to information and the integrity of that information (HIPAA compliance).
- HR.01.02.05, EP 1-6 – The hospital verifies staff qualifications.
- HR.01.02.01, EP 1 – The hospital defines staff qualifications specific to their job responsibilities.
- HR 01.06.01 – Staff are competent to perform their responsibilities.
- HR 01.04.01 – The hospital provides orientation to staff.
- HR 01.05.03, EP 1 – Staff participates in ongoing education and training to maintain or increase their competency.
- PI 03.01.01, EP 1-4 – The hospital improves performance.
- LD 04.03.09, EP 4 – Leaders monitor contracted services by establishing expectations for the performance of the contracted services.

The Joint Commission issued this most recent update on their website: “The patient-centered communication standards, approved in December 2009 and released in January 2010, will be effective July 1, 2012. Joint Commission surveyors began evaluating compliance with these standards on January 1, 2011, but findings did not affect the accreditation decision. While two of the patient-centered communication standards were implemented in order to align with the Centers for Medicare & Medicaid Services’ (CMS) Conditions of Participation (CoPs) on visitation rights, the remaining requirements (HR.01.02.01, EP 1; PC.02.01.21, EPs 1 and 2; and RC.02.01.01, EP 28) will be effective on July 1, 2012.”

The message here is that the provision of ample language access for LEP citizens is not only a tenet of good patient care, but a regulatory necessity. It is critical for all healthcare providers to have staff assigned to the implementation and monitoring of language access needs to ensure compliance.

Jason Roberson, MA, is the training manager for Pacific Interpreters, Inc. Mr. Roberson previously served as the Coordinator of Interpreter Services at the Medical University of South Carolina, and worked as a medical interpreter and a court interpreter in Georgia, Pennsylvania, and South Carolina. Contact: jasonr@pacificinterpreters.com