

The Essential Role of Language Services for Patient Access Compliance



SUSAN GRYDER

VP of Over-the-Phone Interpretation
Lionbridge



BETH PITMAN

Partner
Holland & Knight, LLP



WHAT WILL YOU LEARN TODAY?

- 01** Which laws require language assistance services
- 02** Deadlines for compliance
- 03** Who is regulated and who is protected
- 04** How may language access services be provided
- 05** Administrative requirements
- 06** How language is critical to the business of healthcare and patient outcomes
- 07** How language services help achieve a high CMS quality rating

LAWS

SECTION 1557 NONDISCRIMINATION

Providing access to language services in compliance with Section 1557 of the Affordable Care Act



Title VI (42 USC 2000d):

“No person in the United States 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.”

Section 1557 of the Affordable Care Act (42 USC 18116)

prohibits discrimination on the basis of race, color, ***national origin***, sex, age, and disability in certain health programs and activities.

- 1557 consolidates grounds for nondiscrimination arising under
 - title VI of the Civil Rights Act of 1964 (Race, color or national origin),
 - title IX of the Education Amendments of 1972 (Sex),
 - the Age Discrimination Act of 1975 (Age), or
 - section 504 of the Rehabilitation Act of 1973 (Disability).
- August 30, 2024 Order entering a nationwide stay of those portions of the Rule that address discrimination on the basis of “gender identity”
- Enforcement examples

REGULATIONS AND ENFORCEMENT



- Amended effective July 5, 2024
- 42 C.F.R. Part 92 implements Sec. 1557 laws
- 92.4 Definitions
- 92.11 Notice of Availability of language assistance services and auxiliary aids and services
- 92.201 Meaningful Access to for individuals with limited English proficiency
- 92.202 Effective communication for individuals with disabilities
- Enforced by the HHS Office for Civil Rights (OCR)
- 92.6 Remedial Action required if there is a finding of discrimination; voluntary action is encouraged and permitted by the rule
- 92.205 Reasonable modifications required
- Dec. 5, 2024 [“Dear Colleagues” letter](#) from OCR
- [OCR Complaint portal](#)

IMPLEMENTATION DEADLINES



- July 5, 2024 for Language Access Services and other requirements not listed below
- § 92.7 Section 1557 Coordinator: November 2, 2024
- § 92.8 Policies and Procedures: July 5, 2025.
- § 92.9 Training: 30 days after implementation of P&P but no later than May 1, 2025
- § 92.10 Notice of nondiscrimination: November 2, 2024
- § 92.11 Notice of availability of language assistance services and auxiliary aids and services: July 5, 2025
- § 92.207(b)(1) through (5) Nondiscrimination in health insurance coverage and other health-related coverage for health insurance coverage or other health-related coverage that was not subject to this part as of the date of publication of this rule, by the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025.
- § 92.207(b)(6) Nondiscrimination in health insurance coverage and other health-related coverage: By the first day of the first plan year (in the individual market, policy year) beginning on or after January 1, 2025.
- § 92.210(b), (c) Use of patient care decision support tools: May 1, 2025.

WHO IS REGULATED?

RECIPIENT AND SUBRECIPIENTS OF FEDERAL FUNDING



Providers receiving federal funding, including all Medicare and Medicaid reimbursements (hospitals, SNF, IRF, pharmacies, physicians and dentists)



Federal Grant Recipients: Research grants, academic medical centers, CARES Act provider relief fund recipients



Federal and State Health Payors (Medicare, Medicaid)



ACA Title 1: State Marketplace Insurers and Qualified Health Plans

WHO IS PROTECTED?

INDIVIDUALS AND THEIR COMPANIONS WITH LIMITED ENGLISH PROFICIENCY (LEP)



Includes individuals who may have English proficiency in some areas but not all (such as read but not speak)



Applies solely to those whose English proficiency limitation is based on national origin as opposed to literacy or other limitation



Language and communication assistance requirements arising from a disability falls under a different Section of 1557 and the ADA but may also involve LEP when national origin is the cause

MUST PROVIDE MEANINGFUL ACCESS

- Individuals/companions eligible or likely to be directly affected by healthcare programs and activities
- Reasonable steps to provide meaningful access are flexible, taking into account the nature and importance of the health program, the specific communication at issue, and other factors such as geographic location

Example:

“In the event of a natural disaster or locations where high-speed wide-bandwidth video capabilities may not be available, covered entities may not be able to meet the required standards. In these circumstances, a reasonable step to achieving meaningful access may be through using the services of a qualified interpreter via telephone (or in-person, if available). As in all circumstances, OCR will consider the specific facts of whether a covered entity has taken reasonable steps to provide meaningful access under the circumstances.”

OTHER REQUIREMENTS



Accurate

- Qualified Interpreter required to assure accuracy to address need for specialized skill for less common languages as well as dialects and cultural distinctions
 - Demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language (qualified interpreters for relay interpretation must demonstrate proficiency in two non-English spoken languages); and
 - Is able to interpret effectively, accurately, and impartially to and from such language(s) and English (or between two non-English languages for relay interpretation), using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement.
 - “Relay interpretation” may be required to address need for interpretation services of uncommon or indigenous languages through interpretation from one language to another through an intermediate language.

Auxiliary aids and services: staff must be trained to use the technology

Free

Timely

Includes both written translation and oral interpretation

Protect the privacy and independent decision-making authority of the LEP individual

STAFF AND FAMILY/FRIENDS



Staff

Staff must be qualified interpreters, qualified translators, or qualified bilingual/multilingual staff to communicate with individuals with limited English proficiency



Family/Friends

- Prohibited except as a temporary measure in emergencies or
- Individual can use an accompanying **adult** as an interpreter if LEP individual:
 - Consents,
 - the request & agreement is documented; and
 - reliance on the accompanying adult is **appropriate under the circumstance**

TECHNOLOGY FLEXIBILITY



- Use of technology is permitted when a certified translator or interpreter is also available
- Permits uses of technology for translation services with human review in some circumstances
- Extends applicability to technology including information and communication technologies, AI and machine-learning tools used to guide healthcare decision-making and to telehealth services
- A qualified human translator/interpreter must review machine translation/interpretation if an entity uses machine translation for text that is critical to the:
 - rights, benefits, or meaningful access of a limited English proficient individual;
 - when accuracy is essential; or
 - when the source documents or materials contain complex, non-literal or technical language

AUXILIARY AIDS AND SERVICES



- Qualified interpreters (on-site and VRI)
- Note takers; real-time computer-aided transcription services; written materials; exchange of written notes
- Telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning
- Voice, text, and video-based telecommunications products and systems; videotext displays; accessible information and communication technology (ICT); or other effective methods of making aurally delivered information available to persons who are deaf or hard of hearing
- Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible information and communication technology; or other effective methods of making visually delivered materials available to persons who are blind or have low vision
- Acquisition or modification of equipment and devices
- Other similar services and actions

ADMINISTRATIVE REQUIREMENTS



Notice



- Nondiscrimination, language assistance services, and availability of auxiliary aids
- On website and physical locations; 20-point sans serif font
- Certain important communications and documents
- English and top 15 languages
- Annually, upon request
- Opt-out option

Language Access Policy and Plan



- Contact for coordinator
- How staff assesses LEP
- How staff obtains services
- Identity of qualified bilingual staff
- List of translated materials
- Similar requirements for effective communication with disabled individuals

Section 1557 Coordinator




- 15 or more employees
- Designate coordinator to oversee compliance and response to complaints

Assurances



- Submit assurance of compliance when applying for Federal financial assistance
[HHS portal](#)



HOW LANGUAGE SERVICES ENHANCE HEALTHCARE OUTCOMES AND BUSINESS SUCCESS

LANGUAGE: AN INTEGRAL PART OF SUCCESSFUL HEALTHCARE OUTCOMES



Accuracy: Achieve better diagnoses and quicker path to treatment



Safety: Avoid misdiagnoses, incomplete understanding of patient symptoms



Trust: Provide patient-centered treatment to create an environment of trust



Equity: Ensure access to treatment for all patients



Results: Deliver better clinical outcomes for patients

Current estimates indicate that over 25 million people in the United States have Limited English Proficiency, representing more than 8% of the population.

LANGUAGE: A CRITICAL PART OF THE BUSINESS OF HEALTHCARE



Lower Risk:
Patients make
informed decisions



Lower Cost:
Providers avoid
unnecessary tests and
treatments



**Lower
Readmissions:**
Patients comply better
with discharge
instructions

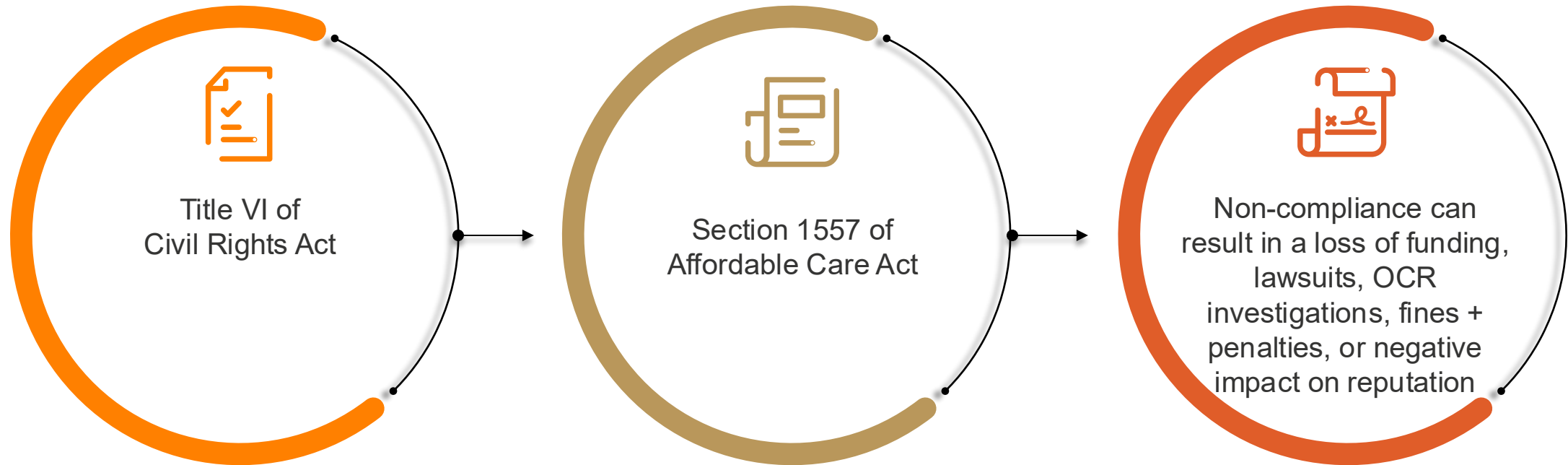


**Enhanced CMS Star
Rating:**
Language provisions
affect the Five-Star
Quality Rating by the
Centers for Medicare
& Medicaid Services



**Regulatory
Compliance:**
Language access
in healthcare is still
the law

COMPLIANCE OVERVIEW



THE ALL-IMPORTANT CMS FIVE-STAR QUALITY RATING

A LOW STAR RATING:

- Lower reimbursement
- Reduced marketing opportunities
- Increased regulatory scrutiny
- Higher potential for contract termination

A HIGH STAR RATING:

- Higher reimbursement
- Increased bonus potential
- Enhanced reputation
- Increased enrollment

The Five-Star Quality Rating System applies to Medicare Advantage Plans, Part D Plans, nursing homes (skilled nursing facilities), and home health care agencies. If you accept Medicare, you must pay attention to the role of language services in Five-Star Ratings.

LANGUAGE SERVICES: ESSENTIAL FOR EXCELLING IN CMS SECRET SHOPPER EVALUATIONS

CMS secret shoppers measure:

- Speed to bring on an interpreter and answer the first question (8 minutes)
- Accuracy of responses to 3 questions (7 minutes)
- Languages: Spanish, Vietnamese, Mandarin, Tagalog, French, Cantonese

Your language partner should support you in meeting these goals.



WHAT IT TAKES TO ACHIEVE A HIGH RATING: PREPARED INTERPRETERS, PREPARED LSP

- Familiarity with healthcare and health insurance terminology
- Preparation for scripted questions
- Ability to handle calls calmly and control nerves
- Knowledgeable LSP with a dedicated account manager practicing open communication, transparency, and teamwork
- Pre-work to prepare agents and help them work effectively with interpreters



THANK YOU

We break barriers and build bridges
to new opportunities. **Everywhere.**



SUSAN GRYDER
VP of Over-the-Phone Interpretation
Lionbridge



BETH PITMAN
Partner
Holland & Knight, LLP