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SUMMARY OF STATE LAW REQUIREMENTS

Addressing Language Needs in Health Care

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Introduction[1]

There are a number of federal laws that address language access in health care settings. Virtually all health care providers must comply with Title VI of the Civil Rights Act of 1964. Its purpose is to ensure that federal money does not support activities that discriminate on the basis of race, color, or national origin.[2] Another federal law requires hospitals that received funding through the Hill-Burton Act to have an ongoing "community service" obligation which includes non-discrimination in the delivery of services.[3]

According to the U.S. Department of Health and Human Services Office for Civil Rights, these hospitals must post notices of this obligation in English, Spanish, and other languages spoken by ten percent or more of the households in the service area.[4] There are also federal laws that implicate the need for meaningful language access if they are to be effectively implemented. Under the Emergency Medical Treatment and Active Labor Act, for instance, it would be difficult for a hospital to comply with the Act's screening, treatment and transfer requirements without effective communication with a limited English proficient (LEP) patient.[5] Despite such federal requirements, lack of knowledge and enforcement leaves millions of LEP individuals without meaningful access to health care.

State laws provide an additional source of protection. Indeed, state legislatures and administrative agencies are increasingly recognizing the need for linguistically-appropriate health care and have adopted measures that require or encourage health and social service providers to overcome language barriers.

This publication of state-by-state laws offers citation to and a short description of each state's statutes and regulations regarding services to LEP persons in health care settings. It supersedes the previous listings originally published by the National Health Law Program in August 2003 and updated in 2005.[6]

All 50 states have enacted laws concerning language access in health care settings. California continues to have the most laws; however, every state now has at least two such laws. A limited number of states have enacted comprehensive laws while most states' provisions focus on a particular type of health care provider, service, payer, or patient group. Some of these laws provide detailed guidance; others note the importance of language access but do not specify activities to improve it. Recent

trends include provisions addressing cultural competency training for health professionals and Medicaid funding for language services.

Some highlights are:

Comprehensive Laws.
California has enacted a number of comprehensive provisions, including a Title VI look-alike that authorizes enforcement by individuals who are not provided language services. California has developed some of the most comprehensive provisions that guide state agencies, general acute hospitals, and the provision of services for individuals with developmental disabilities and/or mental health needs. Based on the finding that an inability to speak, understand, or read English is a barrier to public services, **Maryland**'s 2002 "Equal Access to Public Services for Individuals with Limited English Proficiency Act" requires State agencies to provide equal access to public services for LEP individuals. **Washington, D.C.** followed suit in 2004—any District agency, department, or program that furnishes information or renders services directly to the public or contracts with other entities to furnish such services must provide oral language services to LEP persons who seek the services offered by the covered entity.

Health Insurance Coverage.
Some states address the interplay between health insurance and language access. **California** requires the Department of Managed Health Care and the Insurance Commissioner to promulgate regulations establishing language standards and requirements for health care service plans (or managed care plans) and for individual and group insurers to provide insured individuals with appropriate access to translated materials and language assistance in obtaining covered benefits. A **Washington** law requires all health carriers to file an access plan with the insurance commissioner that includes a description of the health carrier's efforts to address the needs of covered persons with limited English proficiency. Meanwhile, **Texas** repealed a provision that prohibited health insurers from using underwriting guidelines based on the ability of the insured or applicant to speak or read English (former Tex. Ins. Code § 21.21 7).

Health Educational Requirements.
New Jersey, California and Washington require cultural competency instruction as an educational component or continuing education for health professionals.

Mental Health.
Laws in 46 states address mental health, including in- and out-patient services.[7] These range from translating patient rights notices to mandating interpreters for commitment proceedings. For example, **Illinois** requires state mental health facilities to provide interpreters during admission and intake, when denying admission, and during assessments or evaluations while the individual is being interviewed or tested by a psychologist, psychiatrist, or physician.

Women's Health.
Thirty-five states have laws concerning women's health, including 30 that focus on

abortion or sterilization and 14 that address other issues such as pre-natal care. Provisions in 17 states to assure that Medicaid will cover sterilization only after informed consent has been obtained in the LEP patients' primary language.[8] Eleven states have "Women's Right to Know Acts," which typically require information about adoption, fetal pain associated with abortion, the possible detrimental psychological effects of abortion, and fetal development at two-week intervals to be published in English and in each language that is the primary language of two percent or more of the state's population.

Other Population Groups.
States have also adopted provisions addressing services for children (29 states) and the elderly (27 states). The provisions affecting children generally govern notices about Medicaid's Early and Periodic Screening, Diagnostic and Treatment Program (EPSDT) (12 states),[9] or about mental illness (18 states).[10]

Facility Licensure.
Recently adopted provisions in **Colorado, Massachusetts, and New Jersey** link facility licensure to the provision of language services. The **Colorado** law requires long-term care facilities, as a condition of licensure, to inform residents of their rights, including the right to be adequately informed of their medical condition and proposed treatment and to participate in the planning of all treatment. For residents whose primary language is other than English, the facility shall arrange for persons speaking the resident's language to facilitate daily communications and to attend assessment and care planning conferences.

Funding.
A number of states have enacted laws to provide funding to pay for language services. **Texas** authorized Language Interpreter Service Pilot Programs to pay for language services in Medicaid in five sites statewide. In 2007, **Connecticut** authorized Medicaid payments for language services, and **New York** enacted funding for hospitals.

Interpreter Certification.
Four states require or are initiating state-based certification. This is due, in part, to recognition that self-identification as bilingual is insufficient to be a competent interpreter. **Washington** has the oldest certification program. More recently, **Iowa, Indiana, and Oregon** have enacted laws requiring development of interpreter standards,[11] while other states are requiring the use of certified or competent interpreters but do not specify standards.[12]

In sum, it is clear that the needs of LEP patients are receiving attention at the state level, due in part to changing demographics but also to the renewed focus on health care quality and patient-centered care. As a result, the breadth and scope of state laws continue to grow, and new opportunities are arising to ensure that LEP individuals have access to meaningful language services in health care settings.

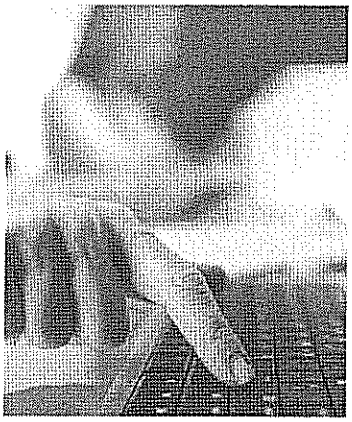
Using the State Charts

The Charts present information for each state along three columns. The first column provides a three-letter code that signifies the subject matter of the law being cited. The second column gives the citation to the provision, and the last column offers a brief summary of the provision. The first column coding is as follows:

Code	Subject Matter
AGY	Government agency requirements (excluding hearings/legal proceedings)
CHC	Community health centers
CHI	Children's health (excluding EPSDT and early intervention)
CON	Consent (e.g. informed consent)
CRD	Credentialing or profiles for health professionals (e.g. nurses' aides testing)
EIS	Early Intervention Services for children and newborn screening
EPS	Medicaid Early and Periodic Screening, Diagnostic and Treatment Services
FAM	Use of family members, friends, children as interpreters
HEA	Hearings/legal proceedings
HHC	Home health agencies, personal care services, and adult day health centers (not related to mental illness/developmental disabilities)
HIV	HIV/AIDS
HOS	Hospitals
INS	Insurance carriers (may include health maintenance organizations)
INT	Interpreter standards/certification/qualifications
LTC	Long-term care, including nursing homes, assisted living (not related to mental illness/ developmental disabilities)
MED	Medicaid

Code	Subject Matter
MEN	Services for people with mental health issues or developmental disabilities, including behavioral health services, habilitation services and Independent Living services (not facilities)
MCE	Medicare
MCO	Managed care organization/Prepaid in-patient/ ambulatory health plan
MFA	Facilities for mental illness, ICF/MRs, and other facilities for the provision of psychiatric or mental health services
OAA	Services for the elderly or services under the Older Americans Act
PAY	Reimbursement/payments
PRO	Health professions standards/requirements
PUB	Public health
PWD	People with disabilities
RGT	Patient/client rights
STA	Sterilization/abortion
TRA	Translation
UNI	Universal
WOM	Services related to women's health but not abortion/ sterilization
XXX	Other

Methodology



To compile the state laws on language access, the researchers conducted electronic research using a well-recognized, searchable legal database. State statutes and administrative regulations were reviewed for the 50 states and the District of Columbia. Research was limited to state statutes and administrative regulations that were related to health, insurance and government functions. The researchers were over-inclusive to ensure that provisions would not be overlooked because of how they were classified in state law. The search terms were developed based upon the prior research of the authors, as well as from test searches conducted in three states. Numerous and varied search terms were used to assure the broadest possible identification of existing laws. The boundaries of the search were drawn to exclude state laws and administrative regulations related to vocational rehabilitation, alcohol/substance abuse, WIC, and other programs not directly related to the provision of health care. Provisions that only address requirements to provide information in English were also excluded (*e.g.,* laws that require licensing examinations to be administered in English). The information provided on the charts is current as of August 1, 2007.

Virginia

Type	Provision(s)	Description
AGY, TRA	Va. Code Ann. § 18.2-76(D)	Department of Health shall publish in English and in each language that is the primary language of 2 percent of more of the population of the state and display at every local health department information about adoption alternatives, description of fetal development at two-week increments, and risks of abortion.
MFA	Va. Code Ann. §§ 37.2-802(B), 37.2-804(B), 37.2-1002(B)(9)	In any mental health, mental retardation, or substance abuse services proceeding pursuant for admissions and dispositions, emergency custody and voluntary or involuntary civil admissions in which a non-English-speaking person is alleged to have mental retardation or mental illness or is a witness in such proceeding, an interpreter for the person shall be appointed by the district court judge or special justice, or a magistrate, before whom the proceeding is pending. Failure to appoint an interpreter when an interpreter is not reasonably available or when the person's level of English fluency cannot be determined shall not be a basis to dismiss the petition or void the order entered at the proceeding. The compensation for the interpreter shall be fixed by the court in accordance with the guidelines set by the Judicial Council of Virginia and shall be paid out of the state treasury. Petition for the appointment of a guardian, a conservator, or both, shall to the extent known as of the date of filing, include the native language of the respondent and any necessary alternative mode of communication.
PUB, CHI	12 Va. Admin. Code § 30-10-50(A)(3)	With respect to any population of vaccine-eligible children a substantial portion of whose parents are LEP, the state will identify program-registered providers who are able to communicate with vaccine-eligible population in the appropriate language and cultural context.
XXX	12 Va. Admin. Code § 5-20-80(A)(6)-(7), 22 Va. Admin. Code § 40-890-70(B)(6)	No human research shall be conducted or authorized by the institution or agency unless a research review committee has reviewed and approved the proposed human research project giving consideration to whether the voluntary informed consent is to be obtained by methods that are adequate and appropriate to the individual's language of greatest fluency and whether the written consent form is adequate and appropriate in both content and wording for the particular research and for the particular participants of the research relative to their language of greatest fluency.
INS	12 Va. Admin. Code § 5-408-260	The Managed Care Health Insurance Plan licensee shall incorporate strategies into its access procedures to facilitate utilization of health care services by covered persons with language or cultural barriers.
MED, TRA	12 Va. Admin. Code § 30-50-210(A)7.c.(2)	The preferred drug list through the Medicaid fee-for-service program shall include computer and website access to multilingual material.
MED, LTC	12 Va. Admin. Code § 30-130-200	Evaluations performed under Preadmission Screening and Annual Resident Review (PASARR) and PASARR notices must be adapted to the cultural background, language, ethnic origin, and means of communication used by the individual being evaluated.
MEN	12 Va. Admin. Code § 35-105-660(C)(4)	Individualized services plan (ISP) for mental health services shall include a communication plan for individuals with communication barriers, including language barriers.
CRD	18 Va. Admin. Code § 60-20-260(A)(10)	Profile of information for oral and maxillofacial surgeons shall include whether there is access to translating services for non-English speaking patients at the primary practice setting and which, if any, foreign languages are spoken in the practice.
CRD	18 Va. Admin. Code § 85-20-280(A)(9)	Profile of information for doctor of medicine, osteopathic medicine, or podiatry shall include whether there is access to translating services for non-English speaking patients at the primary and secondary practice settings and which, if any, foreign languages are spoken in the practice.

Virginia continued

Type	Provision(s)	Description
PWD	22 Va. Admin. Code § 5-20-20	Department of the Aging definition of "greatest social need" means the need caused by non-economic factors which include language barriers and cultural isolation, including that caused by racial or ethnic status, which restricts an individual's ability to perform normal daily tasks or which threatens such individual's capacity to live independently.
PWD	22 Va. Admin. Code § 30-30-80(B)(5)	Independent Living Services Program funds may be used to provide interpreter services.
PWD	22 Va. Admin. Code § 30-30-120(A)(4)	Independent Living Services Programs must ensure that persons who are unable to communicate in English or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be adequately understood by them.
PWD	22 Va. Admin. Code § 30-30-160(D)	Centers for independent living (CIL), to the maximum extent feasible, must make available personnel able to communicate in the native languages of individuals with significant disabilities whose English proficiency is limited.