

Found in Translation

Legislation Surrounding Language Access
for the Limited English Proficiency
Population of the United States



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The Limited English Proficiency (LEP) population in the United States is rising. Currently, there are over 25 million Americans with a limited ability to read, write, speak or understand English, and between the years of 1990 and 2010, that population grew by 80% (1). While these numbers reflect the melting pot ideals that the United States espouses, they also demonstrate a growing need for adequate language access services. That is why several pieces of legislation were put in place to assure meaningful language access and interpretation services for the entire U.S. LEP population.

POPULATION GROWTH

Between 1990 and 2010, the LEP population grew by 80% in the United States.

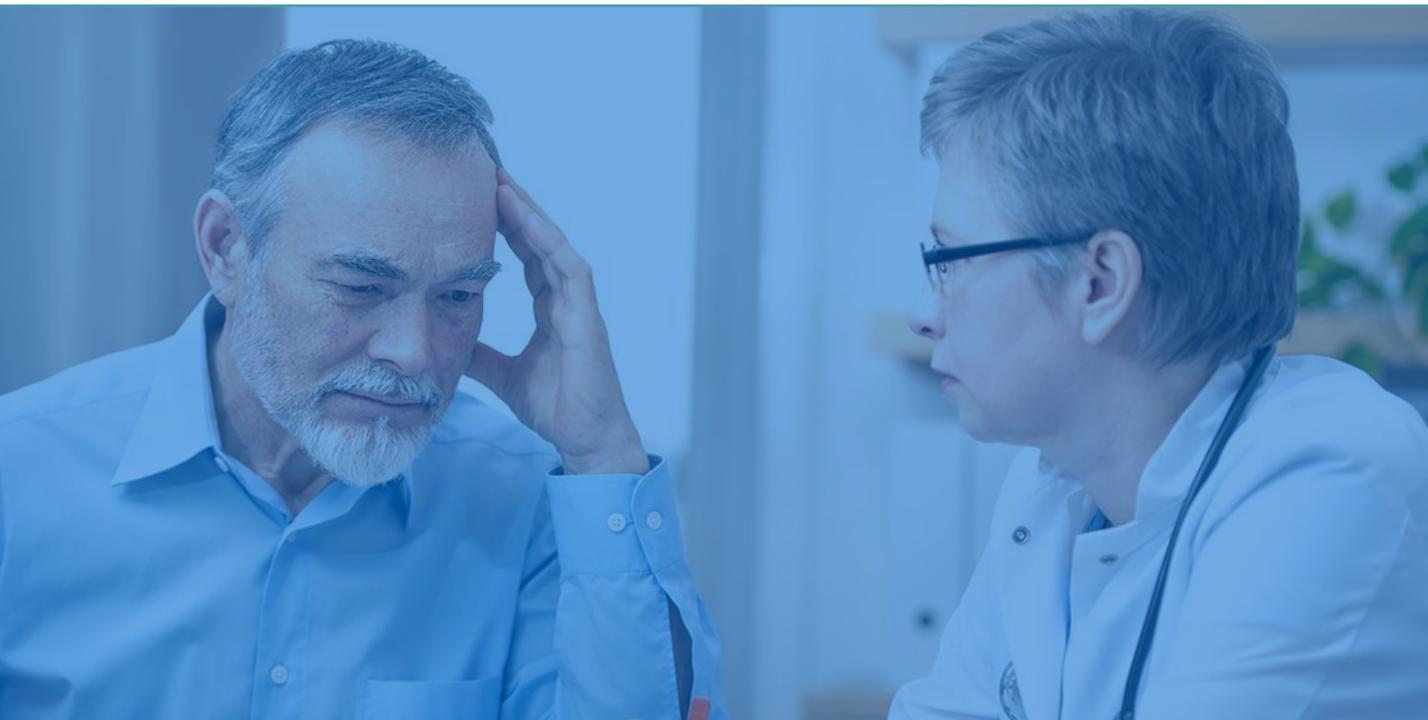
1. Pandya, C., McHugh, M., & Batalova, J. (2011). Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity. Migration Policy Institute.

Introduction

The LEP Population

The United States has no official language, though English is generally accepted as the most common. Second to that is Spanish, followed by Chinese, Vietnamese and Korean (2). Individuals with Limited English Proficiency (LEP) struggle to read, write, speak or understand English. Considering that the majority of healthcare, court proceedings, police interactions and a plethora of other official processes are conducted in English in the U.S., LEP individuals are set at an extreme disadvantage.

In 1990, the LEP population in the United States came in at 6.1%. By 2000, that number rose to 8.1% and in 2010 the LEP population was at 8.7% (1). In those brief 20 years, the U.S. saw an influx of over 11 million LEP individuals. As the LEP population has risen, so too has the need for qualified language services. In order to provide informed consent to healthcare information, LEP individuals must possess a complete and meaningful understanding. This can be achieved through the use of qualified medical interpreters.



1. Pandya, C., McHugh, M., & Batalova, J. (2011). Limited English Proficient Individuals in the United States: Number, Share, Growth, and Linguistic Diversity. Migration Policy Institute.

2. Ryan, C. (2013). Language Use in the United States: 2011. American Community Survey Reports. Retrieved from www.census.gov/prod/2013pubs/acs-22.pdf

Examples of Problematic Language Barrier Situations in Healthcare

In Salinas Valley, California, there is a large indigenous Triqui and Mixteco speaking population from Southern Mexico. Several instances have occurred in which indigenous interpreters were needed to relay culturally sensitive information to patients and family members in the area. Due to a lack of resources, patients and health care providers attempted to communicate via improvised sign language. As a result, one of the LEP patients suffered a heart attack and had a pacemaker installed without the opportunity to communicate in her native tongue (3). A practitioner resorted to telling a family she had exhausted all options and could not save their one-year old child who suffered from fatal congenital heart failure without the assistance of an interpreter. She never knew whether or not they fully understood (3).



In South Florida, an unresponsive LEP patient was brought to the hospital in a coma state. His Spanish-speaking relatives told health professionals that he was “intoxicado”, meaning “nauseous,” but were misinterpreted as saying “intoxicated”. No qualified interpreters were brought to the scene. As a result, the patient was admitted to the intensive care unit with a diagnosis of “probable intentional drug overdose” (4). The patient became quadriplegic as a result of the misdiagnosis. The hospital paid \$71 million in a malpractice settlement (4).



These great disparities in care can be avoided with the use of a qualified interpreter. Interpreters who are medically qualified can quickly determine when a cultural difference is negatively impacting patient-provider communication and act accordingly, resulting in improved patient care and outcome.

3. Palta, R. (2014). Lack of Raff, Jeremy. "Hospitals Struggle To Help Farmworkers Who Speak Triqui Or Mixteco." *NPR*. NPR, 29 Sept. 2015. Web. 30 June 2017.

4. Foden-Vencil, Kristian. "In The Hospital, A Bad Translation Can Destroy A Life." *NPR*. NPR, 27 Oct. 2014. Web. 30 June 2017.

LEP Legislation

There are several pieces of legislation mandating the level of interpretation service required of hospitals, health systems and other healthcare facilities. Any organization that receives federal funding (directly or indirectly) is required to provide interpretation services to LEP citizens at no cost.

The following pieces of legislation include clauses that require meaningful access services for the LEP community:

- Title VI of the Civil Rights Act of 1964
- Executive Order 13166
- The Americans with Disabilities Act Title III Regulations
- Section 1557 of the Affordable Care Act

1.) Title VI of the Civil Rights Act

Title VI prohibits discrimination based on nationality or origin, including primary language. In order to stay in compliance with Title VI, federally funded organizations and their affiliates go through four steps to adequately provide language access services:

1. Assess the language diversity and access needs in the area
2. Develop a comprehensive language access solution for the LEP population
3. Train staff on how to use and/or operate the language solution
4. Consistently monitor language access and adjust as necessary to ensure compliance is maintained (5)

These requirements ensure that there is a dynamic interpretation solution in place for the entire LEP population at every organization that benefits from federal resources.

5. OASAM Federal Register Notice (2003) Policy guidance on the prohibition of national origin discrimination as it affects persons with limited English proficiency. United States Department of Labor. Retrieved on 28 April 2014.



2.) Executive Order 13166

Executive Order 13166 came from the Presidential office in 2000. The order essentially reaffirms and provides guidelines for Title VI compliance. This order serves as a stern reminder of the 4 steps outlines in Title VI: assessment, policy, training and monitoring (6).

Title III protects the rights of the Deaf & HOH population.

3.) Americans with Disabilities Act (ADA) Title III Regulations

The ADA protects the rights of the deaf and hard of hearing population. It affirms that any individual with a hearing disability receiving a public accommodation must not be treated differently based on their disability, which includes meaningful access to language services (7). The ADA lists proper strategies for maintaining compliance, which include on-site face-to-face interpreters and video remote interpreters.

4.) Section 1557

Section 1557, the nondiscrimination provision of the Affordable Care Act (ACA), prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities.

Section 1557 standards surrounding language services are as follows:

- Qualified interpreters must be used for LEP patients.
- The use of ad-hoc interpreters for medical interpretation is expressly prohibited barring extreme circumstances.
- LEP patients must not be encouraged to turn down language access services or to provide their own interpreters.
- Patients must be made aware of their language access rights, notice must be posted in the top 15 languages in each state and written translation must be provided (8).

Any healthcare facility receiving federal financial assistance, the federally facilitated insurance marketplace and anything created under Title I of the ACA must adhere to these standards (8).

6. Limited English Proficiency. LEP.gov FAQ. Retrieved on April 28 2014 from www.lep.gov/faqs/faqs.html#OneQ2

7. Americans with Disabilities Act Title III Regulations. (2010). Department of Justice. Retrieved on April 28 2014 from www.ada.gov/regs2010/titleIII_2010_regulations.pdf

8. Secretary, H. O. (n.d.). Nondiscrimination in Health Programs and Activities Proposed Rule. Retrieved June 30, 2017, from <http://www.hhs.gov/civil-rights/for-individuals/section-1557/nondiscrimination-health-programs-and-activities-proposed-rule/index.html>

What Happens When Compliance Is Not Maintained



Both the Department of Justice (DOJ) and the Joint Commission are involved in keeping various organizations, specifically healthcare facilities, in compliance with the above legislation.

The DOJ handles lawsuits against organizations that have failed to maintain compliance. They supply a guideline for Civil Rights compliance titled “Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons with Limited English Proficiency”.

As an example, in 2012, a DOJ case involving a deaf man resulted in a settlement between himself and a healthcare facility that did not provide access to ASL interpretation. The man was told he would have to provide his own interpreter, which is unacceptable under Title VI (9).

The Joint Commission is a healthcare accreditation organization. Many state governments rely on the Joint Commission accreditation as a marker for which facilities will receive Medicaid reimbursement. Without language access compliance, healthcare facilities lose their Joint Commission accreditation.

**Joint Commission
accreditation
directly impacts
Medicaid
reimbursement.**

9. The United States Department of Justice (2012). Retrieved on April 28 2014 from www.justice.gov/crt/

Summary



Maintaining
compliance with

Title VI

of the Civil Rights
Act of 1964

The Limited English Proficiency population is granted meaningful language access services through a variety of legislations. These legislations include Title VI of the Civil Rights Act of 1964, Executive Order 13166, The Americans with Disabilities Act Title II Regulations and Section 1557 of the Affordable Care Act. If organizations that receive federal funding (directly or indirectly) do not maintain compliance with these laws, the Department of Justice and the Joint Commission may strip reimbursement. The LEP and Deaf/Hard of Hearing patient population must be provided meaningful access to healthcare information. Such access can be provided through the use of a qualified medical interpreter.

Stratus Video

Stratus Video offers a complete language access solution that includes over-the-phone, video remote, and onsite interpretation along with an easy-to-use translation service. Our services leverage every day technology like tablets, smartphones, and laptops to ensure easy integration into your existing processes. Led by a team of dedicated individuals with decades of experience in the health care and technology markets, Stratus Video is committed to enabling visual connections and vital conversations.

To learn more, visit our website now at
www.stratusvideo.com

