



Providing access to counseling for those with limited English proficiency

Question: A colleague told me that as licensed professional counselors, we must provide language interpreter services for clients who don't speak English. Is that true?

Answer: The short answer is that it depends on the circumstances. Title VI of the Civil Rights Act of 1964 is a federal law that protects people from unlawful discrimination on the basis of race, color or national origin in programs and activities that receive federal financial assistance.

If you participate in Medicaid or the Children's Health Insurance Program (CHIP), you are considered to be a recipient of federal financial assistance and are therefore subject to the nondiscrimination requirements of Title VI. As a recipient, you would be required to take reasonable steps to ensure meaningful access to your counseling services by persons with limited English proficiency (LEP). Detailed guidance is set forth at hhs.gov/ocr/civilrights/resources/specialtopics/lep.

Health care providers who are recipients of federal funds are encouraged to perform a four-factor analysis, which is explained in the guidance document found at the website above. The first step is to assess the number of LEP clients you are likely to encounter. The higher the likelihood that you might be engaged in providing counseling services to LEP clients, the more likely it is that you have an obligation to provide some type of language assistance. For example, if you practice in an area with a large number of immigrants who speak only Spanish, you would probably be expected to provide some communication assistance.

The second step involves ascertaining the frequency with which LEP individuals might need your services. The third step is to ascertain the nature and importance of your service to people's lives. For

example, a counseling practice specializing in treating victims of domestic violence would likely be considered very important, especially to potential LEP clients who may fear reporting to the police. The fourth step is to assess the associated costs to you as the recipient. The government does not expect a solo practitioner to be able to provide the same level of services as a county mental health center or hospital, for instance.

The following is a real-life example of an LEP complaint made against a provider and the resolution reached between the U.S. Department of Health and Human Services Office of Civil Rights (OCR) and the provider. This and other examples can be accessed at hhs.gov/ocr/civilrights/activities/examples/LEP/index.html.

“OCR's Region II resolved a complaint against Erie County Medical Center Psychiatric Department involving a 63-year-old homeless Spanish-speaking person. The individual's language barrier limited medical staff from performing various psychological assessments. OCR's investigation found that the individual did not receive consistent interpretation services during his 150-day stay at the Center. As a result of OCR's intervention, the Center made systemic changes to its policies, procedures and practices for ensuring early identification of interpretation needs to ensure appropriate provision of service. The Center developed a 'clinical alert' system to prompt an objective assessment of the timeliness and quality of service based on the patient's need.”

The real difficulty for counselors who participate in CHIP or Medicaid is figuring out exactly what they must do to comply. As the guidance document suggests, providing live interpreters for each LEP client may be unduly expensive for counselors in certain settings. The guidance document suggests that online or telephone-based interpreter services may

be appropriate in some cases. However, the unique and sensitive nature of counseling would likely prohibit use of a relative to provide interpretation of counseling sessions. Additionally, counselors subject to the Title VI requirements may need to engage in Health Insurance Portability and Accountability Act “business associate” contracts with the interpreters they use to ensure that privacy is protected.

If you are a participating CHIP or Medicaid provider, review the resources mentioned in this article and consider developing a plan for compliance. You should also consider contacting your state Medicaid agency to see if there are similar laws at the state level. The laws governing provision of interpreters or other services for clients who are deaf or partially deaf are somewhat different. For information on these obligations, see the seventh edition of *The Counselor and the Law: A Guide to Legal and Ethical Practice*, a book that I co-authored with Burt Bertram. The book is published by the American Counseling Association.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by ACA. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ♦

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