

## **THE OCR CONTINUES ITS ENFORCEMENT EFFORTS REGARDING THE STATUTORY REQUIREMENTS TO PROVIDE INTERPRETERS TO HEARING IMPAIRED AND LIMITED ENGLISH PROFICIENCY PATIENTS**

The Office of Civil Rights ("OCR"), Department of Health and Human Services, continues to investigate complaints related to the alleged failure of hospitals and health systems to provide interpreters to patients and their companions who are hearing impaired or have limited English proficiency ("LEP"). In addition to compensatory damages and civil penalties, various settlement agreements administered by the OCR include monetary compensation for patients and/or their families and onerous policy and staffing requirements to be implemented by the health systems. Requirements range from hiring coordinators to facilitate the provision of aids and services to patients, training of health system personnel, detailed record-keeping of interactions between patients and health system personnel and implementation of prescribed policies to ensure the provision of appropriate aids and services free of charge.

Under the Americans with Disabilities Act ("ADA") regulations, health care providers are required to provide equal access to patients and companions who are hearing impaired. To do this, providers must determine the necessity for appropriate auxiliary aids or services, including interpretive services, based on the medical importance or complexity of the communication, the patient's or companion's preference and the patient's or companion's ability to communicate. Health systems must offer these provisions free of charge unless they can show that doing so alters the nature of the services or creates an undue burden for the health system.

Similarly, Title VI of the Civil Rights Act of 1964 prohibits discrimination of an individual based on national origin. Under Executive Order 13166 and the corresponding guidance by the Department of Health and Human Services, recipients of federal funding must provide LEP persons meaningful access to their programs. The guidance recommends the provision of language services based on four factors:

- The number or proportion of LEP persons eligible to be served or likely to be encountered;
- The frequency of contact with LEP persons;
- The nature and importance of the service provided to the person's life; and
- The resources available and the costs.

The two main methods to provide LEP services are through qualified oral interpretation and/or written translation of vital documents.

For both hearing impaired and LEP patients, the OCR has dictated that interpreters must possess specific skills and abilities aimed at effective communication. The use of hospital staff, family members or friends to act as interpreters is highly discouraged.

Because of the continuing number of investigations and the potentially onerous requirements under OCR settlements, we recommend that hospitals, health facilities and health systems review their current policies and procedures to ensure compliance with ADA and Title VI requirements.

If you have any questions, please contact:

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