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LANGUAGE ACCESS LEGAL 'CHEAT SHEET'

A number of laws exist at the federal, state and local level to ensure that patients who are Limited English Proficient (LEP) can access health care in their own language. The purpose of this guide is to provide a synopsis of each of these laws so that advocates and patients can better understand the existing legal infrastructure related to language access in the health care setting.

NOTE: If you are reading this document online, it is possible to click on the name of each law discussed below and link directly to its text. For those reading hard copies of the guide, the URL to access the full text of each law is provided in brackets at the end of its description.

If you have any questions or would like more information about anything covered in this guide, please contact the **New York Lawyers for the Public Interest** (NYLPI) at **212-244-4664** and ask for **the Health Justice Program.**

FEDERAL LAWS RELATED TO LANGUAGE ACCESS

Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et. seq.): Provides that no person 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." Failure to provide linguistically-appropriate services has been interpreted by the Supreme Court to be discrimination on the basis of national origin under Title VI. (See: *Lau v. Nichols*, 1974.) [http://tinyurl.com/3p5ays9]

Department of Health and Human Services Regulations (45 C.F.R. §80.1, et. seq): HHS regulations interpreting Title VI prohibit federal aid recipients from utilizing "criteria or methods of administration which have the *effect* of subjecting individuals to discrimination because of their race, color, or national origin." The emphasis on "effect" is important because it means that a federal aid recipient does not have to act in an intentionally discriminatory fashion in order for HHS to take action against it for violating Title VI. It is sufficient that an entity's actions have a discriminatory *impact* in order for HHS to commence an enforcement action. Failure to provide language access has a discriminatory impact on the basis of national origin. [http://tinyurl.com/oznvad].

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Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency: Requires each federal agency to "work to ensure that recipients of Federal financial assistance… provide meaningful access to their LEP applicants and beneficiaries." [http://www.usdoj.gov/crt/cor/Pubs/eolep.htm]

Department of Health and Human Services Guidance Regarding National Origin Discrimination Affecting Limited English Proficient Patients (68 Fed. Reg. 47311): Requires federal aid recipients "to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons" based upon a four-factor standard: (1) the number or proportion of LEP patients to be served by the aid recipient; (2) the frequency with which LEP individuals will interact with the aid recipient; (3) the nature and importance of the activity involved; (4) the resources available to the aid recipient. [http://www.justice.gov/crt/about/cor/lep/hhsrevisedlepguidance.pdf]

National Standards on Culturally and Linguistically Appropriate Services (CLAS): Issued by the Office of Minority Health at HHS; standards 4-7 on Language Access Services are requirements for all federal fund recipients. [http://tinyurl.com/gap9h]

Medicare Regulations for Medicare Advantage Program (42 C.F.R. §§422.2264 & 422.112): Medicare Advantage plans, which are private health plans receiving Medicare payments, are required to provide multilingual marketing materials in those areas where there is a significant non-English speaking population. Medicare Advantage plans must also ensure that services are provided in a culturally and linguistically competent manner to all enrollees. [http://tinyurl.com/2yeqny]

Medicaid Managed Care Requirements (42 C.F.R. §438.10): Under the federal rules governing Medicaid managed care, New York State must identify the major non-English languages spoken by enrollees and potential enrollees in the State and make written information available in those languages. Managed care organizations participating in the program must make oral interpretation services available to enrollees free of charge, and they must notify enrollees about the availability of such services. [http://tinyurl.com/o8eqmp]

Patient Protection and Affordable Care Act § 1557 (Pub.L. 111-149.): Provides that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any health program or activity receiving Federal financial assistance on the grounds of race, color, national origin, gender, or age as prohibited under title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 4 of the Rehabilitation Act of 1973. [http://www.naic.org/documents/index_health_reform_general_ppaca_ins_provs.pdf]

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STATE LAWS RELATED TO LANGUAGE ACCESS

New York State Mental Hygiene Regulation Section 527.4 and Office of Mental Retardation and Developmental Disabilities Regulation Section 633.4: Both the New York State Office of Mental Health (OMH) and Office of Mental Retardation and Developmental Disabilities (OMRDD) have patients' rights regulations in place requiring that licensed facilities make free, competent interpreter services available to service recipients in a timely fashion; that necessary steps be taken to provide information in appropriate languages; and that plans of treatment or services be developed for LEP individuals. [http://tinyurl.com/3cevhzm and http://tinyurl.com/43pac4r]

New York State Code of Rules and Regulations Section 405.7: Requires all hospitals in New York State to develop a language access plan, appoint a Language Access Coordinator, provide interpreters within 10 minutes in the emergency room and 20 minutes elsewhere in the hospital, and notify patients about their rights to language services, among other things. The regulations also prohibit the use of family members, strangers and minor children as interpreters except in emergencies. [http://www.health.state.ny.us/nysdoh/phforum/nycrr10.htm. The easiest way to access the text is to click on "Search Title 10" and Search for "405.7."]

New York State Health Insurance and Managed Care Laws and Regulations (Insurance Law §§3217a, 4324 and 4802; Public Health Law §§4403 and 4408): All health care insurers and health maintenance organizations in New York must disclose, upon request, information about how they address the needs of non-English speakers. Insurers are required to provide "reasonable access" to non-English speakers in their grievance procedures. Additionally, one of the criteria the State Department of Health must use in deciding whether to grant or renew certification to an HMO is the ability of the HMO to ensure access to culturally and linguistically competent care. [http://public.leginfo.state.ny.us/menuf.cgi. Click on "Laws of New York" at the bottom of the page. Then, scroll down to Insurance Laws ("ISC") or Public Health Laws ("PBH"). You will have to click on each individual section identified above to pull up the text.]

New York State Executive Order 26: Requires all executive state agencies that provide direct public services to develop language access plans, appoint a Language Access Coordinator, translate vital documents in the top 6 languages in New York State, and provide interpretation services in those same languages. [http://www.nyc.gov/html/om/pdf/2008/pr282-08_eo_120.pdf]

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LOCAL LAWS RELATED TO LANGUAGE ACCESS

New York City Human Rights Law Chapter 1, Section 8-107: Prohibits discrimination on the basis of race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status in all places of public accommodation. This includes the failure to provide language assistance services in hospitals and other health care facilities. [http://www.nyc.gov/html/cchr/html/ch1.html#7]

New York City Local Law 73, Equal Access to Human Services Act of 2003: Requires all city social service departments, health departments and Workforce Investment Act Offices and their subcontractors to provide language assistance services to LEP clients that they serve. [http://www.nyc.gov/html/imm/downloads/pdf/language_access_law.pdf.]

New York City Emergency Room Interpreter Law (NYC Administrative Code §17-174): Requires the immediate provision of an interpreter for non-English speaking patients in all hospital emergency rooms in New York City.
[http://public.leginfo.state.ny.us/menuf.cgi. Click on "Laws of New York" at the bottom of the page. Then, scroll down to "New York City Administrative Code". Click on Title 17, Chapter 1. Then click on Section 17-174.]

New York City Language Access in Pharmacies Act (NYC Administrative Code §20-620-625): Covers pharmacies with 4 or more stores in NYC. Requires interpretation services for all languages and translation of medication labels into the top 7 languages spoken in NYC.
[http://public.leginfo.state.ny.us/menuf.cgi. Click on "Laws of New York" at the bottom of the page. Then, scroll down to and click on "New York City Administrative Code". Scroll to Title 20, Chapter 4, Sub-chapter 3*2.]

New York City Executive Order 120: Requires all city agencies that provide direct public services to develop language access plans, appoint a Language Access Coordinator, provide services in the top 6 languages in New York City, and translate all essential public documents. [http://www.nyc.gov/html/imm/html/executive/eo120.shtml click on read the Executive Order]

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ADDITIONAL RESOURCES

GOVERNMENT

U.S. Department of Health and Human Services, Office of Civil Rights: http://www.hhs.gov/ocr

Let Everyone Participate: A government portal for information related to language access programs and policies. http://www.lep.gov.

NON-GOVERNMENTAL

New York Immigration Coalition, Health Access: Comprehensive resource for immigrant health access issues in New York. [http://www.thenyic.org/healthcare]

National Health Law Program, Language Access Resources: National public interest law firm that seeks to improve health care for America's working and unemployed poor, minorities, the elderly and people with disabilities; website provides a range of legal and non-legal materials related to language access.
[http://www.healthlaw.org/index.php?option=com_content&id=239&Itemid=196]