

Language Access Rights: Tips for Advocates of Limited English Proficient Older Adults

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Over five million older adults across the country are Limited English Proficient (LEP). LEP older adults do not speak English as their primary language or they have a limited ability to speak, read, write, or understand English. The number of LEP older adults is growing. Federal and state laws protect the vital right to receive health information in a language one understands. However, many barriers make it difficult for older adults to assert these rights, impairing their ability to understand their healthcare and make decisions. This ultimately leads to poorer health outcomes and health disparities. This Practice Tip offers advice to advocates and counselors working with LEP older adults to better assert their language access rights.

- **Language access rights are guaranteed under federal law.** Title VI of the Civil Rights Act of 1964 and its corresponding regulations protect against discrimination on the basis of national origin.¹ Courts have interpreted this protected class to include spoken language.² In 2000, President Clinton signed an executive order requiring federal agencies and those receiving federal financial assistance to develop and implement systems to ensure meaningful access to services for LEP individuals.³ State laws may offer additional protections.
- **The Affordable Care Act (ACA) offers specific language access protections for healthcare.** The ACA not only expanded coverage but also reaffirmed healthcare non-discrimination protections. Entities receiving federal financial assistance are prohibited from discriminating on the basis of national origin and several other protected classes.⁴ They are also required to offer interpreter services and translate certain materials.⁵ The ACA health care non-discrimination regulations also contain specific in-language notice and tagline requirements.⁶
- **Changes to Medicare guidance require more documents to be translated.** In the Medicare Advantage and Part D Prescription Drug context, the Centers for Medicare & Medicare Services (CMS) guidance used to require translation of only nine marketing documents into languages spoken by five percent or more of the population in a plan's service area. However, CMS issued new guidance, effective this year, requiring the translation of many more documents.⁷ For example, appeals and grievance notices, disenrollment notices, explanation of benefits, and termination notices now all must be translated.⁸ Receiving these important documents in-language will help LEP older adults better understand and make decisions related to their healthcare.
- **Legal protections and requirements for language access are meaningful when they are utilized.** Older adults may be reluctant to assert their rights for a number of reasons, including not knowing their rights, not wanting to inconvenience a provider, or feeling more comfortable with a family

1 42 U.S.C. § 2000d, et. seq.

2 Lau v. Nichols, 414 U.S. 563 (1974).

3 Exec. Order No. 13166, 65 Fed. Reg. 50121 (Aug. 11, 2000).

4 42 U.S.C. § 18116.

5 45 C.F.R. § 92.201(d)(1); 81 Fed. Reg. 31376, 31416 (May 18, 2016).

6 45 C.F.R. § 92.8.

7 Medicare Communications and Marketing Guidelines 100.4 (July 20, 2018).

8 *Id.*

member interpreting. Advocates and counselors working with LEP older adults should counsel them on the importance of language access and interpreter services. Advocates should also remind older adults to request interpreter services in advance and that their appointment might take more time because of interpretation.

- **Language access rights are an important component of culturally competent services.** Providing language access is part of a larger framework of culturally competent and person-centered care. When advising an older adult looking for a healthcare provider, whether a primary care doctor, adult day center, or skilled nursing facility, consider assisting them with screening for culturally competent services as well. For example, ask questions that get to a provider's understanding of different cultural interpretations of healthcare and wellbeing and whether culturally appropriate meals are offered.

Helping a client with language access issues? Justice in Aging provides legal professionals with advice on language access and healthcare as part of NCLER's case consultation service. Through this service, Justice in Aging, the National Consumer Law Center, and the ABA Commission on Law and Aging provide free case consultations to legal and aging network professionals on a range of legal issues impacting older adults.

Please contact ConsultNCLER@acl.hhs.gov for free case consultation assistance. Sign up for our email list and access more resources at NCLER.acl.gov.