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Question: *My client receives services through a home and community based waiver program for children with autism. He speaks only Spanish. The home health agency refuses to provide an interpreter for its employees who provide the child's respite care and other services. What is the home health agency's obligation to provide an interpreter for my client?*

Answer: The home health agency should take steps to provide meaningful access to your client. The U.S. Departments of Health and Human Services have stated that federal fund recipients should offer competent interpreter services at no cost to limited English proficient (LEP) individuals, if this is necessary to ensure meaningful access to services.

Title VI of the Civil Rights Act prohibits federal fund recipients from discriminating against individuals based upon national origin. 42 U.S.C. § 2000d. Federal regulations implementing the law explicitly prohibit discrimination that has a disparate impact on individuals based upon their national origin. 45 C.F.R. § 80.3(b). The Supreme Court and the US Department of Health and Human Services (HHS) have treated discrimination on the basis of language as national origin discrimination. See *Lau v. Nichols*, 414 U.S. 563 (1974), but see *Alexander v. Sandoval*, 532 U.S. 275 (2001) (questioning continuing vitality of *Lau*); U.S. Dept. Health and Human Services, Policy Guidance: Title VI Prohibition Against National Origin Discrimination As It Affects Persons with Limited English Proficiency, August 2000 (HHS Guidance) <http://cms.hhs.gov/states/letters/lepguide.pdf>

In its Guidance, HHS advised federal fund recipients of their responsibilities to provide meaningful access to LEP individuals. The HHS Office for Civil Rights is using this Guidance during compliance reviews and complaint investigations of federal fund recipients. Federal fund recipients should: (1) undertake assessment of the language needs of individuals in their service area; (2) develop a plan for responding to those needs; (3) offer oral interpretation services at no cost to individuals who are LEP; (4) determine the need to translate written documents, particularly vital documents; (5) provide notices to LEP communities and individuals informing them of language assistance services; and (6) monitor the effectiveness of

language assistance provided. These anti-discrimination requirements apply to all covered entities, which includes state Medicaid agencies and hospitals, clinics, and home health agencies that receive federal funding through such programs as Medicare, Medicaid and the State Children's Health Insurance Program. HHS Guidance, at 10.

The type of language assistance a covered entity must provide to ensure meaningful access will depend on a variety of factors, including: (1) the size of the covered entity, (2) the size of the eligible LEP population it serves, (3) the nature of the program or service, (4) the objectives of the program, (5) the total resources available to the covered entity, (6) the frequency with which particular languages are encountered; and (7) the frequency with which LEP persons come into contact with the program. HHS Guidance, at 11. Moreover, oral interpretation can be provided through a variety of mediums, including bilingual providers, staff interpreters, contract interpreters, and telephone interpretation.

In August 2000 the Centers for Medicare and Medicaid Services (CMS) issued a Dear State Medicaid Director letter reminding states that they can receive federal financial participation for interpreter services provided by Medicaid-participating providers, such as home health agencies. See <http://cms.hhs.gov/states/letters/smd83100.asp>. A recent national survey by the National Health Law Program found that a growing number of states are taking advantage of this federal funding which, depending on the poverty levels in the state, ranges from 50–83 percent of the cost of providing the service.

See

Mara Youdelman and Jane Perkins, National Health Law Program, Providing Language Interpreting Services in Health Care Settings: Examples from the Field (May 2002), available at <http://www.cmwf.org>

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Your client can file a complaint with the HHS Office of Civil Rights and can consult <http://www.hhs.gov/ocr/newfaq.html>

about how to do so. Forty states have enacted state laws that address the provision of services to individuals with LEP in health care settings, so you should consult your state laws and regulations to see if there is an applicable provision.