

May 23, 2000

Question: My client has been admitted to an inpatient psychiatric unit through the medicaid program. She speaks only Farsi. She received interpretive services during her admission to the emergency room. Afterwards, she was given a schedule of her doctor visits so that she could make arrangements with her cousin to act as her interpreter for her visits. Is there any way she can get a qualified interpreter?

Answer: Yes, a patient must be provided with a qualified interpreter free of charge and does not have to provide her own interpreter.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d expressly prohibits discrimination on the basis of national origin discrimination.[1] It also has been consistently interpreted as requiring the provision of translation and interpreter services in related court decisions,[2] Department of Justice regulations, and decisions and directives issued by the Office of Civil Rights ("OCR") of the U.S. Department of Health and Human Services ("HHS.")

In recognizing the serious consequences that can result from language barriers in health and social services programs for limited English proficient ("LEP") persons, OCR issued a key guidance memorandum on January 29, 1998 clarifying the standards consistent with Title VI.[3] OCR explained that any federal financial recipients, including hospitals, managed care organizations and clinics, as well as social service agencies, whether they receive financial assistance directly or through contractual or other arrangements from HHS, are prohibited from adopting and implementing policies and procedures that exclude or have the effect of excluding or limiting participation of beneficiaries in its programs, benefits or activities on the basis of national origin. Although it stressed flexibility, particularly for small providers, in choosing methods to meet their responsibilities to LEP persons, the guidance made it clear that recipients should take reasonable steps to provide services and information in appropriate languages other than English in order to ensure that LEP persons are effectively informed and can effectively participate in and benefit from its programs.

OCR has investigated over 100 complaints regarding national origin discrimination due to linguistic barriers and has issued numerous decisions and settlement agreements, which have included requirements to have written policies for staff and staff awareness of such policies, to

have a system for tracking LEP clients and client needs, to publicize the availability of no cost programs and service in non-English community media outlets, including newspapers, radio, and television, to translate essential written materials in appropriate languages, to provide cultural sensitivity training for staff, and to refrain from asking family and friends of LEP individuals to provide interpreter services. (However, they may be used only after alternative, no cost methods have been offered and the patient insists on choosing family/friends to act as his/her interpreter.)

Any individual, organization or agency can file a complaint with OCR if you believe that there have been violations of Title VI by calling your local OCR office or 1-800-368-1019. Patients may also file private actions against providers based on Title VI and other federal and state statutes and regulations without first exhausting their administrative remedies. For more information on these, please obtain a copy of "Ensuring Linguistic Access in Health Care Settings: Legal Rights and Responsibilities" by calling 1-800-656-4533, and/or visit our website for information on culturally and linguistically appropriate health care and other related issues.

1. Title VI states: "No person in the U.S. 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."

2. See e.g. *Lau v. Nichols*, 414 U.S. 563 (1974) (The court held that the San Francisco school system violated Title VI by failing to take affirmative steps to assist non-English speaking Chinese students); *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69 (9th Cir. 1981) (Clearinghouse No. 37,752); *Mendoza v. Lavine*, 412 F. Supp. 1105 (S.D.N.Y. 1976); *Pabon v. Lavine*, 70 F.R.D. 674 (S.D.N.Y. 1976); see also 28 C.F.R. § 42.405(d)(1) (DOJ regulations requiring the translation of written material.)

3. On the OCR website at: <http://www.hhs.gov/progorg/ocr/lepfinal.html>