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PROFESSIONAL SOLUTIONS INSURANCE COMPANY BRINGS YOU PRACTICAL TIPS FOR AVOIDING A MALPRACTICE ALLEGATION

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Language Barriers in the Physician Office

Language barriers can adversely affect treatment outcomes and patient safety. It also may significantly increase hospital readmission rates and the overall cost of care.

Language barriers are one part of the larger problem of health illiteracy. Health illiteracy affects individuals of all ages, races, ethnic groups and education levels. The National Center for Education Statistics found in its health literacy assessment that 38 percent of adults living in the U.S. either had “limited” health literacy or were unable to be measured because of language barriers.¹

In spite of this, these individuals often go unrecognized in the healthcare setting because they are too ashamed, overwhelmed or intimidated to ask for help. Moreover, it is often quicker for physicians to take a patient’s nodded assent and lack of questions as evidence of comprehension, or to manage with the help of a patient family member who is more proficient in English.

Consider how language barriers affected patient safety in the following scenario:

Mary Santos, age 81, was seen at the request of her daughter, a regular patient

of the practice. Mrs. Santos was in town visiting family and had developed a fever, a productive cough and shortness of breath. She was accompanied to the office by her 14-year-old granddaughter.

After being taken to an exam room for intake and H&P, it was evident to the intake nurse that Mrs. Santos spoke only broken English and had difficulty understanding it. At times, her granddaughter answered the nurse’s questions when the patient seemed to hesitate. Ultimately, the nurse was able to get the information she needed through this process.

When Dr. Potter arrived and examined the patient, his interaction with the patient was the same, but he got by with the help of the granddaughter and was able to complete his questioning and examination. He told Mrs. Santos she had pneumonia in her left lung for which he would prescribe an antibiotic.

He had some samples of azithromycin and gave her a “Z-pack.” He told her to follow the directions in the pack but emphasized: “You MUST take ALL of this medicine.” He reinforced these instructions to her granddaughter by telling her: “Make sure your grandmother takes ALL her medicine.” The next day, Mrs. Santos was found on the bathroom floor by her daughter. She was vomiting blood and

doubled over with severe stomach pain. She was taken to the ED by ambulance.

Upon further questioning by a bilingual nurse who served as the ED’s Spanish interpreter, it was determined that the woman had taken the entire Z-pack at one time. She was following what she and her granddaughter thought were Dr. Potter’s orders. Fortunately, after a three-day hospitalization, Mrs. Santos suffered no long-term effects from this episode.

As a result of the overdose and subsequent hospitalization, Mrs. Santos brought a medical malpractice action against Dr. Potter and his practice. The lawsuit faulted Dr. Potter for failing to

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Patients with limited English proficiency often go unrecognized in the healthcare setting.

What is “Health Literacy”?

According to the Department of Health and Human Services, health literacy is “the degree to which individuals have the capacity to obtain, process, and understand basic health information and services needed to make appropriate health decisions.”

Improvement of health literacy as an objective in health communication is essential, even critical, to a patient’s healthcare decision-making process, compliance to healthcare regimens, good treatment outcomes, prevention and/or reduction of chronic disease.

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recognize that Mrs. Santos did not have the requisite language skills to understand his instructions regarding the antibiotic and for neglecting to offer her the services of an interpreter.

When dealing with patients who have limited English skills, safer patient outcomes can be achieved when you use only trained translators. In this case, a family member, especially a child, should not have been considered an appropriate translator. (For related strategies for addressing literacy issues in your practice, see “What Can We Learn?” on page 3.)

Legal Requirements

Beyond being part of good medicine and quality care, the need to ensure effective physician/patient communication and patient comprehension is a legal issue. Under Title VI of the Civil Rights Act of 1964,² all healthcare facilities and providers receiving federal financial assistance from the Department of Health and Human Services (HHS) must provide their patients with equal access to services. This includes ensuring that patients with limited English proficiency are able to communicate effectively with their providers.

Title VI was reinforced by an Executive Order by President Clinton in 2000. The order requires federal agencies to work with recipients of federal financial assistance to provide “meaningful access” to their applicants and beneficiaries with limited English proficiency.³

The Office of Minority Health of HHS released its National Standards on Culturally and Linguistically Appropriate Services⁴ in late 2000, further emphasizing the need to address the language access needs of patients. Four of the 14 standards specifically target language access in healthcare settings:

- **Standard 4:** Healthcare organizations

The need for good communication between physicians, hospitalized patients and their families is even more critical today.

must offer and provide language assistance services, including bilingual staff and interpreter services, at no cost to each patient/consumer with limited English proficiency at all points of contact, in a timely manner during all hours of operation.

- **Standard 5:** Healthcare organizations must provide to patients/consumers in their preferred language both verbal offers and written notices informing them of their right to receive language assistance services.
- **Standard 6:** Healthcare organizations must assure the competence of language assistance provided to limited English proficient patients/consumers by interpreters and bilingual staff. Family and friends should not be used to provide interpretation services (except on request by the patient/consumer).
- **Standard 7:** Healthcare organizations must make available easily understood patient-related materials and post signage in the languages of the commonly encountered groups and/or groups represented in the service area.

These laws apply to hospitals and medical clinics, nursing homes, home health agencies, managed care organizations, universities with health or social service research programs, individual physicians, and other healthcare providers. [Note: physician practices should consult with legal counsel if unsure of their status and responsibilities.]

HHS issued guidelines to assist

facilities and providers with compliance. These guidelines were relaxed in 2003⁵ to encourage voluntary compliance by providers. However, they did not relieve physicians of their responsibilities to provide meaningful access to patients with limited English proficiency.

The 2003 guidelines provided a “four-factor analysis” for providers to use in determining their practice’s requirements. Language services may be provided to these patients through oral interpretation by an in-person interpreter, by using telephone or video services, through written translation, or through a combination of methods. Physicians have some flexibility in determining the appropriate mix of the language services they provide.

The HHS guidelines provide the necessary steps to develop a written language assistance plan, as well as a sample policy. (See “Policy and Procedures for Communication with Persons with Limited English Proficiency” on page 3.)

- 1 White, S. (2008). *Assessing the nation’s health literacy: Key concepts and findings of the National Assessment of Adult Literacy (NAAL)*. American Medical Association Foundation.
- 2 42 U.S.C §§ 2000d–2000d-7.
- 3 Department of Justice, Limited English Proficiency Access Plan, Executive Order 13166, 65 CFR § 159 (2000) [cited 2010 Aug 29]. www.dol.gov/oasam/regs/statutes/Eo13166.htm.
- 4 U.S. Department of Health and Human Services, Office of Minority Health. National Standards for Culturally and Linguistically Appropriate Services (CLAS). December 2000. <http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15>
- 5 U.S. Department of Health and Human Services, Office of Civil Rights. Guidance to federal financial assistance recipients regarding Title VI prohibition against national origin discrimination affecting limited English proficient persons [68 CFR § 153]. 2003. www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html

What Can We Learn?

Language barriers can affect physician/patient and patient/staff encounters, along with communication, medication and treatment compliance, informed consent, patient intake and history, patient education, discharge instructions, and patient satisfaction. Here are some tips:

- **Be proactive.** Make sure important forms and patient information are available in different languages, as needed by your practice's patient population (especially intake/patient history forms, privacy notices, consent-to-treatment/surgery forms, discharge or post-op instructions).
- **Make staff aware of the need to identify any non-English speaking patients or patients with limited proficiency in English and provide those patients with interpreter services and the appropriate printed materials.** (The HHS Policy Guidelines can help healthcare providers develop and/or assess their practices' policies and procedures to ensure compliance with laws and regs addressing the provision of language access services to these patients.)

SAMPLE POLICY AND PROCEDURES FOR COMMUNICATION

SAMPLE POLICY AND PROCEDURES FOR COMMUNICATION WITH PERSONS WITH LIMITED ENGLISH PROFICIENCY

POLICY:

(Insert name of your facility) will take reasonable steps to ensure that persons with limited English proficiency (LEP) have meaningful access and an equal opportunity to participate in our services, activities, programs and other benefits.

The policy of *(Insert name of your facility)* is to ensure meaningful communication with LEP patients/clients and their authorized representatives involving their medical conditions and treatment. The policy also provides for communication of information contained in vital documents, including but not limited to, waivers of rights, consent to treatment forms, financial and insurance benefit forms, etc. *(include those documents applicable to your facility)*.

All interpreters, translators and other aides shall be provided as needed to comply with this policy. They will be provided without cost to the person being served. Patients/clients and their families will be informed of the availability of such assistance free of charge.

Language assistance will be provided through use of competent bilingual staff, staff interpreters, contracts or formal arrangements with local organizations providing interpretation or translation services, or technology and telephonic interpretation services. All staff will be provided notice of this policy and procedure, and staff that may have direct contact with LEP individuals will be trained in effective communication techniques, including the effective use of an interpreter.

(Insert name of your facility) will conduct a regular review of the language access needs of our patient population, as well as update and monitor the implementation of this policy and these procedures, as necessary.

PROCEDURES:

1. Identify LEP persons and their language.
2. Obtain a qualified interpreter.
3. Provide written translations.
4. Provide notice to LEP persons.
5. Monitor language needs and implementation.

For guidance on each component of the procedures, please see full version on enclosed insert or go to www.hhs.gov/ocr/civilrights/clearance/exampleofapolicyandprocedureforlep.html.

Source: U.S. Department of Health and Human Services, Office for Civil Rights.

- **Determine during new patient intake whether an interpreter is needed** and flag a patient's chart to indicate limited English proficiency and the patient's native language. Similarly, ambulatory surgical centers could "flag" a patient's wrist band and the chart to ensure this information stays with the patient as the patient moves from pre-op to discharge.
- **The practice should maintain an up to date, easily accessible list of available interpreters** for the various languages of its patient population. This will help ensure there is no undue delay in communicating with a patient when the need arises. This list should include professional medical interpreters, telephonic medical interpretation services, staff members who are fluent in a particular language and competent to serve as medical interpreters, and other appropriate volunteer medical interpreters from the community. Practice staff should know where this list is kept and how to obtain interpretative services.
- **Remember that family members are generally not trained medical interpreters.** Translating a normal conversation is one thing—translating information about a patient's medical condition and the physician's treatment plan is another. It is best to avoid, or at least minimize, the use of patient family members or friends as interpreters. What's more, it is advisable to specifically prohibit family members under the age of 16 from serving as an interpreter. If a patient insists on using a family member to translate, it is wise to also involve a medical interpreter or a staff member fluent in the patient's language to translate the medical terminology and assist with ensuring the correct translation.
- **The practice must take "reasonable" steps to find an appropriate interpreter,** but if this means a delay in necessary treatment or an "unreasonable burden" on the practice, it may be acceptable to consider other options (e.g., a family member). Whatever interpreter option you choose, take steps to ensure compliance with the HIPAA privacy guidelines. (See resources on page 4 for additional guidance.) As always, document your efforts and consult legal counsel as needed.
- **Review all practice documentation with an eye toward "plain language."** It's best to keep it simple in any language.

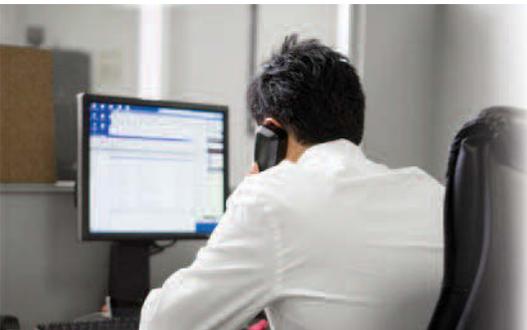
Questions?

if you have any questions you'd like our Connection experts to answer, please e-mail them to riskmanagement@psicinsurance.com

Resources

Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. Final Guidance, *Federal Register*, 69(7):1763–1768, January 12, 2004. www.archives.gov/eo/laws/title-vi.html

Quick Guide to Health Literacy. U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Health Communication Activities. www.health.gov/communication/literacy/quickguide/



Health Literacy Basics. U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Health Communication Activities. www.health.gov/communication/literacy/quickguide/factsbasic.htm

Health Literacy and Health Outcomes. U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Health Communication Activities. www.health.gov/communication/literacy/quickguide/factsliteracy.htm

Effective Communication Resources for Health Providers:
For persons with limited English proficiency: www.hhs.gov/ocr/civilrights/resources/specialtopics/hospitalcommunication/eclpep.html

For persons who are deaf or hard of hearing: www.hhs.gov/ocr/civilrights/resources/specialtopics/hospitalcommunication/eccdisability.html

Health Literacy Online: A Guide to Writing and Designing Easy-to-Use Health Web Sites. (2010). U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Health Communication Activities. www.health.gov/healthliteracyonline/

Health Literacy Universal Precautions Toolkit. Agency for Healthcare Research and Quality (AHRQ). Toolkit is designed to help clinicians implement practice-wide efforts to ensure that information provided to patients is accessible by those with limited health literacy. The kit includes a quick start guide, six easy implementation steps, resources to help identify and address areas that need improvement, and an appendix with sample forms, PowerPoint presentations and worksheets. www.ahrq.gov/qual/literacy/

“New Federal Policy Initiatives to Boost Health Literacy Can Help the Nation Move Beyond the Cycle of Costly ‘Crisis Care.’” *Health Affairs*. February 2012 31:2, 434–443. <http://content.healthaffairs.org/content/31/2/434.full?ikey=HfkOgU2splhhQ&keytype=ref&siteid=healthaff>

Clear Communications: An NIH Health Literacy Initiative. National Institutes of Health. www.nih.gov/clearcommunication/healthliteracy.htm

Free Online Training Courses

- **HRSA: Unified Health Communication: Addressing Health Literacy, Cultural Competency and**

Limited English Proficiency. www.hrsa.gov/publichealth/healthliteracy/index.html

- **CDC: Health Literacy for Public Health Professionals.** www.cdc.gov/healthcommunication/

The Health Literacy and Patient Safety: Help Patients Understand. AMA Foundation’s primary tool for informing physicians, healthcare professionals and patient advocates about health literacy. The health literacy kit includes an instructional video, an in-depth manual for clinicians, continuing medical education credit, and additional resources for education and involvement. www.ama-assn.org/ama/pub/about-ama/ama-foundation/our-programs/public-health/health-literacy-program/health-literacy-kit.page

Reducing the Risk by Designing a Safer, Shame-Free Healthcare Environment. AMA’s 68-page monograph offers new supporting research, explores how ineffective communication and low health literacy combine to affect patient safety, provides tools to decrease communication-related adverse events at a system-wide level, and helps physicians initiate changes toward a safer and shame-free practice environment. https://catalog.ama-assn.org/Catalog/product/product_detail.jsp?productId=prod1100004

Resources from the Harvard School of Public Health Health Literacy Site: www.hsph.harvard.edu/healthliteracy/resources/index.html



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