

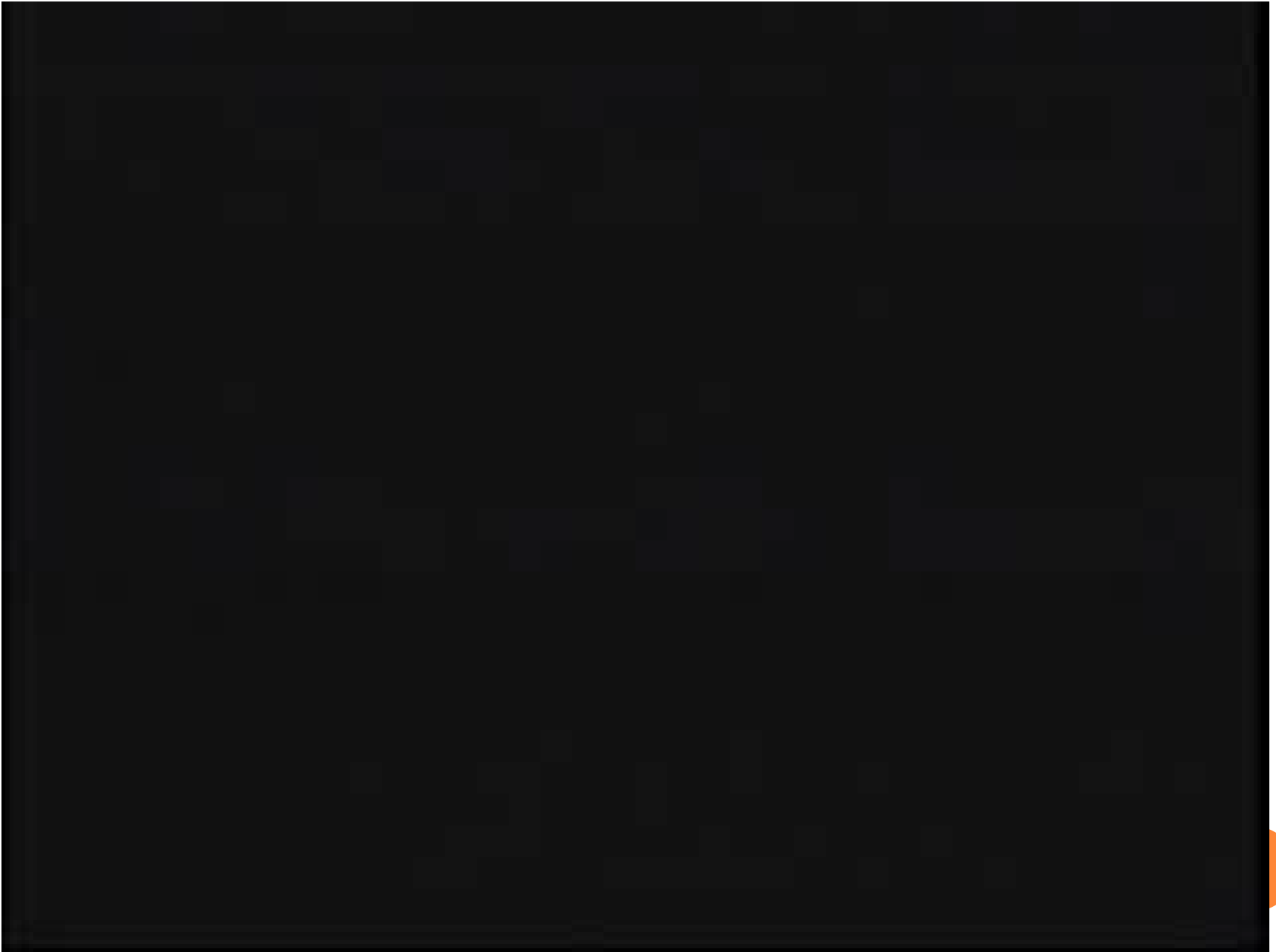


LEGAL IMPLICATIONS OF LANGUAGE SERVICES

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OBJECTIVES

- Title VI of the Civil Rights Act of 1964
- ADA requirements for language services
- The Joint Commission Standards
- Modalities for providing language support
- Medical malpractice issues



STATUTES & REGULATIONS

- Federal
 - Title VI of the Civil Rights Act of 1964
 - CLAS Standards
 - Americans with Disabilities Act (ADA)
- The Joint Commission
- Arizona



STATISTICS FROM THE JOINT COMMISSION

- 50 million people (1 in 5) speak a language other than English in the home
- 23 million are considered Limited English Proficient (LEP)
- 176 Languages spoken in the United States
- Patients who are LEP are almost twice as likely to suffer adverse events in U.S. hospitals resulting in temporary harm or death



MEANINGFUL ACCESS TO LANGUAGE SERVICES

Title VI of the Civil Rights Act of 1964

“Health care organizations that receive Federal financial assistance have an obligation to help people who are unable to speak, read, write, or understand English well. These patients are called Limited English Proficient (LEP.)”

<http://www.lep.gov/>



TITLE VI ALSO SAYS:

- “No person in the United States shall, on the grounds 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.” 42 U.S.C. § 2000d
- “National origin” includes individuals with Limited English Proficiency (LEP)



FOUR FACTOR ANALYSIS – TITLE VI

- The number and proportion of eligible LEP constituents
- The frequency of LEP individuals' contact with the program
- The nature and importance of the program
- The resources available



HOW IS IT DETERMINED THAT A PATIENT IS LEP?

- What is the patient's preferred language?
- Does the patient have difficulty understanding, speaking, reading, writing English.
- This also applies to family members who are involved in the patient's care.



CLAS STANDARDS

- From Department of Health and Human Services Office of Minority Health
- National Standards on Culturally and Linguistically Appropriate Services
- Fourteen Standards
- Four are mandates for all recipients of Federal funds



SUMMARY OF FOUR MANDATORY STANDARDS

- Provide language services at no cost, at all points of contact, in a timely manner during all hours of operation
- Provide verbal and written notices informing patients of their right to receive language services
- Assure competence of language services, family & friends should not be used to interpret
- Signage and patient-related materials in languages of commonly encountered patients



IMPACT OF THE AFFORDABLE CARE ACT

- Obama administration is giving more attention to potential National Origin Discrimination.
- CLAS standards to be updated



MEDICAL INTERPRETERS:

- Professional interpreters are subject to specific codes of conduct and should be well-trained in the skills, ethics, and subject-matter language.
- Code of Ethics established by the National Council on Interpreting in Health Care
- National Standards for Healthcare Interpreter Training Programs

ROLE OF THE MEDICAL INTERPRETER

- Conduit
- Clarifier
- Cultural Broker
- Advocate



INTERPRETER CERTIFICATION

- Certification Commission for Healthcare Interpreters
- Both written and oral testing
- Two levels
 - Certified Healthcare Interpreter (CHI)
 - Association Healthcare Interpreter (AHI)



TRANSLATION

- Title VI requires translation of vital documents
 - Documents with legal or other information upon which reliance has important consequences.
- An interpreter does not a translator make



CLINICAL RISK OF NOT PROVIDING LANGUAGE SERVICES

Other risks include:

- Incorrect diagnosis when the history and symptoms are conveyed to the clinician incorrectly
- Patient making the wrong decision when the risks and benefits are misunderstood
- Unnecessary return visit to the emergency department when the patient does not understand the discharge instructions
- Potential HIPAA violation when a family member is used to interpret



THE AMERICANS WITH DISABILITIES ACT OF 1990 (ADA):

- “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by such entity.”

42 U.S.C. § 12132

- Sign language interpreter services shall be offered to patients, legally authorized representative(s), and family members



AMERICAN SIGN LANGUAGE

- Not English on the fingers
- Registry of Interpreters for the Deaf (RID)
 - Established National Interpreter Certification (NIC)
 - Work with the National Association of the Deaf (NAD)
 - Established Code of Ethics



ARIZONA COMMISSION FOR THE DEAF AND HARD-OF-HEARING

- Established by A.R.S. § Title 36 Chapter 17.1
- Regulations: Title 9 Health Services, Chapter 26
- Licensure required – Three Levels
 - Legal
 - Generalist
 - Provisional



THE JOINT COMMISSION STANDARDS

- RI.01.01.01 – The hospital prohibits discrimination based on age, race, ethnicity, religion, culture, language, physical or mental disability . . .
- RI.01.01.03 – The hospital provides language interpreting and translation services.
- PC.02.01.21 – The hospital identifies the patient's oral and written communication needs, including the patient's preferred language for discussing health care.



THE JOINT COMMISSION STANDARDS

- HR.01.02.01 - The hospital defines staff qualifications for those who provide interpretation and translation.
- RC.02.01.01 – The medical record contains the patient's communication needs, including preferred language for discussing health care.



NATIONAL PATIENT SAFETY GOAL #13

- Encourage patient's active involvement in their own care as a patient safety strategy.



A WORD IS WORTH MILLIONS OF DOLLARS!

An **18-year-old man** was rushed in to an emergency department, accompanied by his mother and girlfriend. The young man was unconscious, and the only clue to his condition was the use of the Spanish word "*intoxicado*" by his mother and girlfriend.



A WORD IS WORTH MILLIONS OF DOLLARS!

As no one in the ED spoke Spanish, hospital staff interpreted the word to mean that the boy was intoxicated or, more specifically, suffering from a drug overdose.



A WORD IS WORTH MILLIONS OF DOLLARS!

What the women had intended to convey, was that the boy was *nauseated, not intoxicated*. Nearly three days after his admission, all the while being treated for a drug overdose, the doctors ordered a routine neurological test including a CT scan.



A WORD IS WORTH MILLIONS OF DOLLARS!

The test showed two *blood clots* in his brain, the result of a ruptured aneurysm that had been defective since birth. Finally receiving appropriate treatment for his condition, the boy regained consciousness, but was left with *quadriplegia*.



A WORD IS WORTH MILLIONS OF DOLLARS!

He ultimately **sued** the hospital, the **paramedics**, the **ED**, and **attending physicians** for medical malpractice, and his settlement topped

\$71 million



WHAT DOES “INTOXICADO” MEAN?

Suffering from **food poisoning**



EXCUSES FOR NOT USING A QUALIFIED INTERPRETER

- Ad hoc interpreters “good enough”
- Professional interpreters slow things down
- Patients didn’t ask for an interpreter
- I might violate HIPAA
- Clinician language skills are “good enough”
- Insurance does not pay for an interpreter
- “This is America, we speak English.”



LANGUAGE SERVICES MODALITIES

- Bedside Interpreters
- Video Remote Interpreting (VRI)
- Over-the-Phone Interpreting (OPI)
- Translation services



MEDICAL MALPRACTICE

- Standard of Care: adequate steps to be certain that the clinician fully understands the patient's complaints and the patient understands the clinician's instructions.
- Potential Issues:
 - Decreased access
 - Delay in care
 - Misdiagnosis
 - Lack of informed consent
 - More complications



WHAT TO LOOK FOR?

- Documentation of the use of an interpreter
- Should include:
 - What language
 - Modality
 - Interpreter name/number
 - What was discussed



BEST PRACTICES LEARNED IN PROPERLY UTILIZING LANGUAGE SERVICES

- Qualified interpreters being used more frequently through OPI, VRI and trained staff
- Decreased expenses
- Improved satisfaction among patients, staff and physicians
- Reduced risk of miscommunication with patients and family
- Meeting Federal and Joint Commission requirements



QUESTIONS?

