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Cultural Competence Module 10
Regulatory Compliance around
Cultural and Linguistic Services in Healthcare

Rosanna Balistreri, B.A., M.A.
Cultural & Linguistic Subject Matter Expert & Consultant
REACH - reaching diversity
www.reach-diversity.com
Rosanna@reach-diversity.com

Rosanna Balistreri is a trilingual speaker of Spanish, Italian & English. She has dedicated her professional and academic background to foreign languages and applied linguistics and holds a B.A. in Applied Linguistics with a Certificate of Teaching English as a Second Language (TESL), an M.A. in Spanish Linguistics, and has undergone extensive training in Healthcare Interpreting, Cultural Diversity, and Leadership Skills.
Ms. Balistreri has served as President of the California Healthcare Interpreting Association (CHIA) for 2010 and 2011, and currently serves in several Advisory Boards as Cross-Cultural Communication & Language Access Expert. In 2007 she founded REACH - reaching diversity to provide Cultural & Linguistic Consulting Services and Solutions to the Health Care and Hospital sectors to enhance quality of care, increase patient safety and maximize customer satisfaction.

Module Estimated Time: 40-45 minutes

Statement of Purpose:

The purpose of this module is to provide a snapshot of the Regulatory and Compliance landscape around the provision of culturally and linguistically appropriate services in Healthcare. The module will introduce both national and CA State regulations, standards and guidance that governs the diversity needs of the population served by a healthcare agency.

Objectives:

Upon the completion of this module, the learner will:

1. Be able to identify National Regulations on Cultural & Linguistic Services in Healthcare
2. Be able to identify California State Regulations on Cultural & Linguistic Services in Healthcare
3. Be more aware of the general regulatory compliance landscape and its interpretations when implementing Cultural and Linguistic Appropriate Programs.

Terminology

Race
Ethnicity
Title VI
Kopp Act
OCR (Office for Civil Rights)
CLAS
Dymally-Alatorre
SB 853
Four Factor Analysis
Translation of vital documents
C & L (Cultural & Linguistic)
Office of Minority Rights
Interpreting Skills Test
Bilingual staff
Language of Preference
Language Access
Threshold language
Patient-Centered Communication
Language Proficiency Assessment
Code of Ethics
CHIA

1. **It is the Law! (Introductory Lecture)**
   Introduce the Regulatory landscape on C & L services

Time: 2 minutes

Materials: Laptop/Computer
LCD Projector/Screen
PowerPoint of Module 10

Slide 1

Although there are many ethical and clinical reasons for Medical Interpreting to exist when serving patients with Limited English Proficiency, Interpreting in the Medical and Social Service settings surges in the U.S. as a legal need fundamentally linked with the

protection of human rights to equal access, as well as a need to respond to legal claims on the basis of discrimination.

2. A Glimpse into the Regulatory World (Lecture)

Time: 15 minutes

Materials: Laptop/Computer
LCD Projector/Screen
PowerPoint of Module 10

Preparation: Before class, prepare laptop, screen and LCD projector. Have remote control at hand to advance PowerPoint Slides.

Slide 2

The legislative landscape around language access and the provision of medical interpreters is mainly due to Title VI of the 1964 Civil Rights Act which prohibits any recipient of federal money to discriminate against anyone on the basis of race, color and national origin. OCR of the Department of Health and Human Services has interpreted that language is strictly related with national origin; hence, language access has been interpreted as a legal obligation.

Slide 3

Before continuing our journey into the world of Regulatory Compliance, it may be helpful to define what Language Access, Provider and LEP means since most of the verbiage in these regulations make frequent use of these terms.

Language Access is the ability to receive a service and/or information in a meaningful way. In other words, for anyone to receive assistance during a service, it is important that the exchange of communication happens in a language that is understood to enable making informed decisions and asking questions to receive all necessary information

LEP stands for Limited English Proficiency. Any individual who speaks English "less than well" is legally considered an LEP person and has the legal right to receive interpreter services free of charge.

Slide 4

The term Healthcare Provider does not necessarily refer only to doctors. A Healthcare Provider is any individual who works in the healthcare sector that has direct communication and contact with a patient or the patient's family or caretaker and provides a service. This may be a nurse, a radiologic technician, a physical therapist or a person in Admitting.

Slide 5

A Healthcare Interpreter, on the other hand, is an individual who has proven proficiency in at least two languages and has been thoroughly trained for the profession of Healthcare Interpreting. During his/her training, a healthcare interpreter will learn Standards of Ethics,

Medical Vocabulary, U.S. Healthcare Climate and Interpreting Skills and protocols for positioning, intervening, managing flow of communication, and much more.

Slide 6

As a way to ensure compliance with Title VI, Executive Order (EO) 13166 requires Federal Agencies to:
1) Plan their own programs to meet Title VI standards
2) Issue LEP Guidance to their grantees

Slide 7

Pursuant to EO 13166, the Department of Health & Human Services has issued Guidance. The Guidance explains that the obligation to provide meaningful access starts with an individualized assessment using a **four factor analysis.** The 4 factors are:

1) The number or proportion of LEP persons eligible to be served or likely to be encountered

2) The Frequency with which LEP individuals come into contact with the program
3) The nature and importance of the program, activity or service to people's lives
4) The resources available to the participant and the cost of services.

Slide 8

The Office of Minority Rights issued the Culturally & Linguistically Appropriate Standards, also known by the acronym CLAS.

The CLAS standards are directed:
1) Primarily to health care organizations
2) Also to individual providers

The 14 standards are a mix of mandates, guidelines, and recommendations.

Key themes include:

Culturally Competent Care
Language Access Services
Organizational Supports for Cultural Competence

Slide 9

California has a state law that "looks like" Title VI, but is broader, in that:
1. It applies to "any program or activity that is conducted, operated or administered by the state or any state agency directly or receives any financial assistance from the state"
2. Individuals may sue in "disparate impact" cases, meaning, even when an agency didn't mean to hurt a group of people, but it did so in its normal practices

Slide 10

Dymally-Alatorre is a CA regulation that puts the obligation on all state agencies to hire bilingual staff based on threshold language needs and assess every two years bilingual resources and # of LEPS served by an agency.

For threshold language, "Threshold" is the minimum number of individuals (usually defined as patients, members, enrollees, or the service population) that identify a non-English language as their primary language. It only applies to translated documents, not to the availability of oral interpretation services. It does not apply to Oral Interpretation as this must be provided for ALL LEP persons.

Slide 11

Kopp Act addresses the need for acute care hospital to:

1. Develop and annually review policies and procedures regarding language assistance
2. Inform employees of available resources
3. Inform patients of free availability of interpreters 24 hrs a day and how to complain to state agencies
4. Record patient's primary language
5. Review patient materials to identify translation needs based on threshold language at 5% of the geographic area or actual patient population served

Slide 12

Managed Care health plans must:

1. Have interpreters available to all members 24 hrs per day
2. Have signs, forms, reminder letters, member guides translated in threshold languages
3. Assess language capability of contracted staff
4. Discourage use of anyone under 18 years of age, except in special emergency circumstance
5. Prepare annual reports on needs
6. Develop and implements a C & L Services Plan
    1. Monitor interpreter's performance against linguistic standards
    2. Coordinate Interpreters

Slide 13

SB-853 applies to commercial health plans and insurers.
This is a first regulation of this kind that became fully implemented on Jan 2009
It addresses:

- Need to assess language need and demographic profile for enrollees
- Provision of oral interpretation by individuals who meet fundamental proficiencies
- Provision of translated documents

It provides that reports of audits of Cultural and Linguistic programs and P & Ps be submitted periodically to the Department of Managed Care to demonstrate compliance.

Slide 14

As of June of 2012, the Joint Commission (JC) expects implementation to new Language Service Standards issued to improve Patient-Centered Communication

JC conducted the "Language Proficiency and Adverse Events in U.S. Hospitals: A Pilot Study" and concluded that:

- Language barriers appear to increase the risks to patient safety
- It is important for patients with language barriers to have ready access to competent language services
- Providers need to collect language data at the patient point of entry and document the language services provided during the patient–provider encounter.

Slide 15

Healthcare Reform proposes to meet the diverse needs of Californians by conducting Culturally and Linguistically Appropriate Outreach and Enrollment*, Ensuring Representation of Communities of Color at the Policy Table, Collecting and Analyzing Data on Race, Ethnicity, and Language, and by Building A Culturally Competent Workforce.

To achieve these proposals, Language Preference & Health Literacy will be two important elements that will need to be taken into account during this process; the need to eliminate language barriers and increase effective communication will be an imperative for these proposals.

Two models of care that receive rewards based on quality of care and cost control are Patient-Centered Medical Homes and Accountable Care Organizations. Whereas the coordination of care in the first one is Primary physician focused, the second model presents collaboration between multiple specialists and doctors for the coordination of the care of a patient.

3. Build an ideal P & P (in groups of 4 students)
Students will use the Regulatory Cheat Sheet to create a Policy & Procedure draft of a Cultural & Linguistic Department at a local Hospital

Time: 15 minutes

Materials: Handout for Module 10
Flip Chart Paper with adhesive back or Tape
4 or 5 Sharpie Markers of different colors

Preparation: Before class, stick 4 or 5 blank flip chart sheets onto walls of classroom. Write on them "P & P on C & L Services" as a header using a different color.

Before activity-
1) Divide class into groups of 4 or 5 students
2) Give a handout for Module 10 to all students
3) Explain that the activity will be to analyze the handout, and then draft on scratch paper a Policy & Procedure based on some of the regulatory climate that governs healthcare agencies and hospitals in particular

4) Ask to transfer main section and points of the draft to the flipchart page

During Activity – Each group will work on drafting a P & P using the Handout to guide what decisions they might make based on the regulations that exist nationally & statewide in CA.

4. **Our Ideal P & P is… (Whole Class Discussion)**
   Instructor will invite two groups to present how they have organized their P & P and what elements they have decided to include in order to comply with the regulatory landscape.

Time: 5 minutes

Materials: None

Ask students to present their P & P and elicit a whole class discussion based on feedback provided by students.

5. **Final Thoughts on Regulatory Compliance on C & L Services (Closing Lecture)**

Time: 3-5 minutes

Materials: Laptop/Computer
LCD Projector/Screen
PowerPoint of Module 10

Close this lesson with these points:

All recipients of federal funds (hospitals, clinics, HCMO, state agencies, social services, community organizations, etc.) should find the best way to be in full regulatory compliance:

This can be done by:
1) Providing prompt, competent and cost-effective interpreting and translation solutions via:
- On-site interpreters
- Video interpreters
- Telephonic interpreters
-Written translation of vital documents

2) By implementing recruiting efforts for a workforce that reflects the diversity of the population served
3) By recruiting bilingual staff whose bilingual skills have been thoroughly screened
4) By offering workshops and training regarding cultural diversity issues in healthcare
5) By translating all vital documents in threshold languages
6) By documenting use of bilingual staff or interpreter use in communicating with LEP patients

Module 10 Handout
A Snapshot of the Language Access Regulatory Landscape

Regulation/Guidance	Key Obligations	Recipients/Conclusions
Title VI of 1964 Civil Rights Act	• Protects persons from discrimination based on their race, color, or national origin • In "Policy Guidance on the Prohibition Against National Origin Discrimination As it Affects Persons with Limited English Proficiency," the OCR explains that national origin discrimination includes practices that result in denying a service or other benefit provided as a part of health or social services	• Any agency that receives Federal money in the form of grant, loans, etc. • Healthcare organizations must ensure that people who speak limited English receive help from competent and trained interpreters to receive care that is equal to that received by English-speaking patients
Executive Order 13166	• Requires Federal agencies to examine the services they provide, identify any need for services to those with Limited English Proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them • The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries • Agencies must plan for their own Language Access programs to meet Title VI standards • Agencies must issue LEP guidance to their grantees	All Federal Agencies
Health and Human Services (HHS) Office for Civil Rights (OCR) LEP Guidance	Recommends individualized assessment using the Four Factor Analysis: 1) *the number or proportion of LEP persons* eligible to be served or likely to be encountered by the program or grantee 2) *the frequency* with which LEP individuals come into contact with the program 3) *the nature and importance of the program, activity or service* provided by the recipient to its beneficiaries 4) *the resources available* to the grantee/recipient and the costs of interpretation/translation services. • Discourages use of family and friends as interpreters	*State, county, and local health and welfare agencies, including managed care organizations, mental health centers, hospitals and clinics, nursing homes, and senior citizen centers*
Office of Minority Health (OMH) Culturally and Linguistically Appropriate Standards	14 standards organized by themes: *Culturally Competent Care (Standards 1-3)Recommended* *Language Access Services (Standards 4-7) Mandated* *Organizational Supports for Cultural Competence (Standards 8-14)Recommended* • *Must offer and provide language assistance services, including bilingual staff*	Healthcare Organizations and Individual Providers

(CLAS)	*and interpreter services, at no cost* • 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. • *Must assure the competence of language assistance* • *Must make available easily understood patient-related materials* • *Must post signage*	
Federal Managed Care Contracts 42 Code of Federal Regulations Part 438.109(c), 67 Federal Register 40989 (2002)	• Oral interpretation for all • Written translation for "prevalent" languages	All managed care plans that contract with managed care contracts
Federal Medicaid/SCHIP Managed Care Contracts	• Oral interpretation for all • Written translation for "prevalent" languages	All managed care plans that contract with Medicaid or SCHIP
Emergency Medical Treatment and Active Labor Act	Requires hospitals that participate in the Medicare program that have Emergency Departments to treat all patients	Hospitals with Emergency Departments
The Hill-Burton Act	In return for giving funds for re-construction and modernization of facilities, recipients agreed to comply with a "community service obligation." The Office of Civil Rights has consistently interpreted this as an obligation to provide language assistance to those in need of such services.	Hospitals and Health Centers

California Regulatory Landscape

State Title VI Look-Alike CA GOVT. CODE §§ 11135,1113922 C.C.R. §§ 982100 et seq.	• Individuals have the right to sue in discrimination cases based on race, national origin, ethnic group identification or color. • Unlike in Title VI, individuals may sue in "disparate impact" cases. This means that even when an agency didn't mean to hurt a group of people, it did so in its normal practices. In this case, an individual may sue that agency.	Applies to "any program or activity that is conducted, operated or administered by the state or any state agency directly or receives any financial assistance from the state."
Dymally-Alatorre	Threshold LEP groups that equal 5% or more of the population served by a local office of	All state and local agencies

	the state agency (e.g., county health department) Agencies have to: • Employ enough bilingual employees • Conduct surveys of local offices every 2 years, collecting by language group: - the number of bilingual employees. - the number and percentage of non-English speaking people served by each office.	
Kopp Act of 1983	Threshold LEP groups that equal 5% or more of: - the population of the geographic area served by the hospital OR - the actual patient population of the hospital. Hospitals must: • Develop and annually review its language assistance policies. • Make sure interpreters are available on a 24-hour basis. • Develop and post notices to patients about 1) the availability of interpreters, and 2) how to complain to state authorities. • Tell its employees of the hospital's requirement to provide an interpreter when a patient requests one. • Identify and record each patient's primary language in his/her records. • Consider creating community advisory groups. • Review all patient materials	All general acute care hospitals
Medi-Cal Managed Care Contracts	Thresholds - 3,000 beneficiaries in a county - 1,000 in a single zip code - 1,500 in two contiguous zip codes Managed Care Plans must: • Ensure interpreters are available to all LEP members on a 24-hour basis. • Translate signs and written materials, including the Member Services Guide, form letters and reminder letters. • Assess and report on the language capabilities of its contracted staff. • lnform its members that language assistance is available. • Maintain its community links by forming community advisory committees. • Develop and implement: - A Cultural and Linguistic Services Plan. - Linguistic standards to monitor performance of its interpreters. - The coordination of its interpreter services.	All managed care plans that contract with Medi-Cal
Healthy Families	• Provide 24-hour access to interpreters for all LEP persons.	Managed Care plans

Managed Care Contracts	• Ensure that providers who list bilingual capabilities are bilingually proficient. • Assess cultural and linguistic group needs. • Annually report on cultural and linguistic services. • Ensure that people under age 18 are not used as interpreters, except in extraordinary circumstances, like emergency care.	
SB 853 (Escutia)	Health plans must: - Assess the language needs and demographic profile (race/ethnicity) of their enrollee population one year after initial implementation, and every 3 years afterwards. - Provide oral interpretation services for all members and enrollees. - Translate specific vital documents in threshold languages - Report to DMHC on their policies and procedures designed to improve culturally-appropriate care. - Submit to a DMHC audit of compliance to regulations	All health plans regulated by the Department of Managed Health Care (DMHC) All insurance companies that are regulated by the California Department of Insurance (CDI).
SB 472 (Corbett): Prescription Drug Labels	- Labels will be in at least 10 point font, and if requested by patient, 12 point font. - By October 2011, the Board of Pharmacy will publish on its website a list of standardized directions translated in five languages - Pharmacy shall have policies to help LEP patients to understand the directions on the labels. Policies shall include: - How pharmacy will identify patients' language - How pharmacy will provide interpreter services, if interpretive services in the language is available	Pharmacies