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Connecting Language Access Rights and Reproductive Health Care:
Section 1557 Anti-discrimination Complaint Urges Action

More than 25 million people living in the United States—over 8% of the population—have limited English proficiency (LEP), meaning that they do not speak English "very well" (including some who may speak English well, but when navigating a traumatic situation, may struggle to find or understand words in English). In health care, language barriers put patients at risk by posing challenges to accessing care and communicating with providers, often leading to delayed care, medical errors, and difficulty understanding and following provider directions. Additionally, individuals with LEP disproportionately experience gaps in health insurance coverage, as they may not receive information in their preferred language that explains how to apply for and enroll in health insurance plans and programs.

These factors, combined with other compounding barriers such as explicit and implicit biases and the lack of culturally competent services, cause disparate health outcomes for individuals with LEP: Patients with LEP are more likely to experience medical errors, events that could or did result in harm, increased hospital length of stay, readmission, and dissatisfaction with care. These barriers can overlap with other disadvantageous social determinants of health, which exacerbate racial and ethnic disparities in health care.

Despite well-documented findings that the use of professional and qualified interpreters improves clinical outcomes, communication, utilization, and patient satisfaction, many health care providers and entities fail to provide language access services. A national study found that "fewer than one-third of outpatient physicians reported regularly using a trained professional interpreter when communicating with patients with LEP [and] 40% never used professional interpreters." About one-fourth of U.S. hospitals that serve populations with high or moderate need do not offer language services at all. This failure worsens health disparities for patients with LEP and violates federal law.

Federal law requires language services for patients with LEP

Title VI of the 1964 Civil Rights Act serves as the legal foundation for language access requirements. The Act states that "[n]o person in the United States 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." In *Lau v. Nichols*, the Supreme Court interpreted the provision's ban on

national origin discrimination to encompass discrimination on the basis of LEP. Since this decision, additional laws and regulations have advanced these nondiscrimination protections in health care.

Section 1557 of the Affordable Care Act was the first law to broadly apply pre-existing federal civil rights protections to a range of federal health programs and activities. Under the provision, health programs or facilities that receive federal funds are prohibited from discriminating on the basis of national origin, color, race, age, sex, or disability. These prohibited grounds for discrimination are specified by federal civil rights laws, including Title VI of the Civil Rights Act (national origin, color, race), the Age Discrimination Act (age), Title IX of the Education Amendments (sex), and Section 504 of the Rehabilitation Act (disability). While rules implementing Section 1557 have been fraught with legal challenges, rollbacks, and recent restorations and expansions, the provision squarely prohibits discrimination against people with LEP in health care.

The Biden Administration's recent final rule on Section 1557 restores and strengthens the law's standards for access to language assistance services for individuals with LEP. These changes, detailed in a previous edition of *Health Care in Motion*, include expanding anti-discrimination protections to a broader scope of covered heath care entities and reinforcing requirements that those entities provide meaningful access to their programs for each individual with LEP. Importantly, the rule requires that entities provide patients with notice of their health care civil rights and of the availability of language access services. These services may include oral interpretation, written translation, and provision of services directly in a non-English language. The rule also provides definitions for "qualified" interpreters, translators, and bilingual/multilingual staff. While Section 1557 and the rules implementing it have made important strides in setting the groundwork, there remains a need for compliance enforcement to ensure that individuals with LEP can access quality care. The United States Department of Health and Human Services' Office for Civil Rights (OCR) enforces Section 1557 and Title VI.

Individuals with LEP still face unlawful discrimination

In June of 2023, Cristina Nuñez suffered a prolonged, life-threatening medical emergency when an El Paso hospital system failed to offer her language access services during her 16-day stay. Over the course of more than two weeks, Ms. Nuñez, a monolingual Spanish speaker, experienced a rapid deterioration in her health due to the dangerous interaction between her pregnancy and her chronic conditions. (Ms. Nuñez is a named plaintiff in a lawsuit against the state of Texas regarding delays she faced in accessing abortion care despite suffering dangerous medical conditions.)

Despite Section 1557 requirements[1] that covered entities take reasonable steps to ensure meaningful access to health care programs by individuals with LEP, the Hospitals of Providence (in El Paso, Texas – a city where 64.2% of residents speak Spanish at home) failed to provide her with reliable language access services at any point from admittance to discharge. The complete absence of Spanish language services increased her confusion, isolation, and fear about her own morbidity and mortality. Ms. Nuñez was able to connect with a volunteer through a national helpline who interpreted when possible, but assistance was intermittent and necessarily insufficient to replace a hospital-provided interpreter. Had Ms. Nuñez been given access to consistent and

[1] Although the Biden Administration's newly expanded Section 1557 protections had not yet taken effect, protections promulgated by the Trump Administration nonetheless prohibited the type of discrimination Ms. Nuñez faced.

comprehensive language interpretation and translation services, her health care experience and, possibly, her health outcomes, could have been drastically different.

Ensuring language access is vital to achieving access to reproductive health care

Denials of language access services for pregnant individuals can function as nearly insurmountable barricades to accessing and receiving necessary reproductive health care. Ms. Nuñez's experience speaks not only to the dire consequences that can result from a health care entity's failure to provide access to language services, but also to the crucial role that language access plays in achieving reproductive justice. Reproductive justice—a framework developed in the 1990s by Black women—goes beyond the right to access reproductive health services like abortion. Rather, the framework stresses economic, racial, environmental, and social justice as critical to reproductive freedom and access to care. Here, in failing to understand and accommodate the whole of Ms. Nuñez—a pregnant woman with LEP who needed language access services to communicate with her health care team—the Hospitals of Providence denied Ms. Nuñez access to full reproductive care and autonomy.

The overturning of *Roe v. Wade* and resulting state abortion bans have exacerbated these violations of reproductive justice. While the Biden Administration has made headway in protecting access to reproductive health care and promoting language access in health care, the intersectional nature of the two means that people with LEP who can and do become pregnant—like Ms. Nuñez—face compounding barriers to accessing reproductive care.

Even in states where abortion remains legal, inadequate language access and other barriers restrict patients' abilities to access reproductive health care. Discrimination based on an individual's gender, race, immigration status, and/or socioeconomic class may systematically prevent a person from accessing reproductive health care. And, in states like Texas, where abortion is almost completely illegal, language barriers are likely to entirely prevent individuals with LEP from effectively communicating with their doctors in life-threatening situations. Because delayed access to care can be fatal, failing to remedy these inequities leaves patients' lives hanging in the balance.

In every case, an individual who is unable to meaningfully communicate their needs or understand information from their health care provider will not be able to receive the care they need with autonomy and dignity. Therefore, ensuring language access is a pre-requisite to achieving reproductive justice.

What's Next

Title VI and Section 1557 guarantee patients with LEP the right to receive safe, dignified, high-quality health care. Yesterday, CHLPI, along with national reproductive justice organization If/When/How: Lawyers for Reproductive Justice and SGB Law on behalf of Cristina Nuñez, filed a complaint with OCR to vindicate that right. (Spanish translation available here.) This complaint highlights the intersectional nature of language access and reproductive justice. OCR has an opportunity and a duty to recognize the interconnectedness of these issues. Remedying the harm in Ms. Nuñez's case will be a crucial first step.

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Health Care in Motion is written by Carmel Shachar, Health Law and Policy Clinic Faculty Director; Kevin Costello, Litigation Director; Elizabeth Kaplan, Director of Health Care Access; Maryanne Tomazic, Clinical Instructor; Rachel Landauer, Clinical Instructor; John Card, Staff Attorney; Anu Dairkee, Clinical Fellow; and Zeinab Bakhiet, Clinical Fellow. This issue was written with the assistance of Julia Lynch, a student in the Health Law & Policy Clinic, supervised by Erika Hanson, Clinical Instructor. The OCR complaint was written with the assistance of Katherine Fleming and Ellie Samuels, former students in the Health Law & Policy Clinic, supervised by Maryanne Tomazic.

*For further questions or inquiries please contact us at **chlpi@law.harvard.edu**.*