

## **Pediatricians and the Law: What does law require of physicians caring for patients with limited English proficiency?**

May 18, 2016

Steven A. Bondi, J.D., M.D., FAAP

**Article type:** [Pediatricians and the Law](#)

**Topics:** [Administration/Practice Management](#)

---

Following are answers to pediatricians' questions regarding what is required under the law when caring for families with limited English proficiency.

### **Q: A non-English-speaking family has set up a new patient visit next month. Am I required to provide an interpreter?**

A: Effective communication is important for every physician-patient encounter. The lack of appropriate interpreter services has been associated with inappropriate testing, missed diagnosis, increased use of emergency services and poor patient compliance.

Failure to provide appropriate interpreter services can be considered discrimination under the Civil Rights Act of 1964. The law applies to all entities receiving federal money, including physicians receiving payments from Medicare or Medicaid. Whether you are "required" to provide an interpreter depends on many factors.

### **Q: How do I know when I need to provide an interpreter?**

A: The U.S. Department of Health and Human Services, Office for Civil Rights has guidelines for ensuring individuals with limited English proficiency (LEP) have *meaningful access* to critical services such as health care. Interpretation and translation often are required to ensure meaningful access. LEP refers to someone whose primary language is not English and has difficulty communicating effectively in English.

### **Q: Do I have to provide an interpreter for any language at any time?**

A: You must take *reasonable steps* to ensure meaningful access. The Office for Civil Rights looks to four factors, which must be balanced to determine if reasonable steps have been taken:

1. You must examine your community. What is the number or proportion of individuals with LEP who could present to your practice?
2. How often are individuals with LEP seen in your office?

3. How important is the service to the individual?
4. What resources are available to the provider, and how much do they cost?

What is reasonable depends on the needs of your patients and your community. A practice in an area with a high percentage of LEP native-Spanish speakers is more likely to need in-house Spanish interpretation services than a pediatrician in an area with few LEP families.

**Q: Must I hire an interpreter every time a family with LEP visits?**

A: There are a variety of options. In areas with a high LEP population — especially for a single language — an on-staff interpreter may be optimal. In other situations, the use of a language line would be appropriate. Local organizations also may be able to help with interpretation for medical visits.

It is essential that any interpreter (including yourself) is competent. Reliance on an incompetent interpreter could result in incorrect or incomplete information and place you at risk. The National Council on Interpreting in Health Care (<http://www.ncihc.org>) has established voluntary baseline standards for health care interpreters.

**Q: Is providing effective spoken communication enough?**

A: Important documents, such as consent forms, also should be translated. Many of the AAP patient education handouts are offered in Spanish.

**Q: Can I use family members as interpreters?**

A: This is not a good idea due to concerns about confidentiality, accurate interpretation of medical concepts and the withholding of information. The practice is not prohibited, however. A child always would be a poor choice for an interpreter. An adult family member should be used only in extraordinary circumstances, only when requested by the patient or parent, and only after the family has been informed that a translator can be provided at no cost.

**Q: Sometimes interpreters cost more than I am paid for the visit. Can I bill the patient for the cost of the interpreter? Am I required to furnish an interpreter if it costs me money?**

A: You cannot bill the patient for the cost of the interpreter. Medicaid programs in 13 states will reimburse for language services, and some private insurance may cover the costs. If the interpreter is necessary to provide meaningful access, you are required to provide one, even if it costs you money. Check into community resources for medical interpretation. Also, consult your tax adviser to see if tax credits are available for providing interpreters.

**Q: A pediatrician in another practice and several of his staff are native Mandarin speakers. May I send my Mandarin-speaking LEP families to him?**

A: Yes, if it is in the best interest of the patient and acceptable to the family and the receiving physician. However, you may not refuse patients to avoid providing appropriate accommodations.

**Q: What else should I know?**

A: The Office for Civil Rights recommends practices have a written language policy. Guidance is available at <http://1.usa.gov/1QwTzLb>. Make sure to document your use of an interpreter in the medical record. Finally, state or local law may impose greater requirements than federal law, so it is important to be familiar with the laws in your community.

*Dr. Bondi is a member of the AAP Committee on Medical Liability and Risk Management.*

**Recent Pediatricians and the Law articles**

- ["Practice conflicts can affect patient care, increase medical liability risks"](#)
- ["Committee responds to AAP members' medical liability questions"](#)
- ["Variety of insurance policies help protect your career, practice, patient data"](#)

Copyright © 2016 American Academy of Pediatrics