

IDEAS IN ACTION

SEPTEMBER 2011



Alliance for a Just Society convenes community and racial justice organizations nationwide on critical public policy issues, providing research and policy analysis and fostering public conversation.

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LEFT IN THE DARK

A Federal Policy Proposal Means Millions of Non-English-Speakers Will Lose Out on the Right to Appeal a Denial of Coverage

Introduction

On March 23, 2010, President Barack Obama signed into law the Patient Protection and Affordable Care Act (ACA), historic legislation designed to make health care more accessible and to ensure that insurance companies are more responsive to people's needs.

But for ACA to work for everyone, it needs to take into account the needs of patients who aren't proficient at speaking English. Unfortunately, the Department of Health and Human Services (HHS) has proposed a rule that would give insurance companies a way to circumvent the language protections contained in the new federal law.

Closing the Door to Quality and Equitable Health Care

Nearly 20 percent of the U.S. population speaks a language other than English in their homes. Of those 55 million people, 24.5 million speak English less than very well.¹

Successful implementation of the new health reform law depends on careful attention to the needs of people of color, who disproportionately suffer from worse health outcomes than do whites on a range of indicators.²

On top of these challenges, many people of color face the language barrier. For people with limited English proficiency (LEP), lack of access to language services presents a critical barrier to quality health care. Serious medical error can result when doctors and patients cannot clearly communicate with each other. Competent language services, including interpretation and translation, help ensure that all patients receive the quality health care they need.

Families Left in the Dark Face Harrowing Scenario

The HHS proposed rules will have an impact on real people, such as in the following scenario:

A father who brought his family to America many years ago lives in Los Angeles. He receives coverage through his work and pays his health insurance premiums each month. He is stricken by a health ailment that prevents him from being able to work. His insurer denies coverage, claiming he had a preexisting condition.

This man, his family's sole earner, is now debilitated and faces the prospect of his family being thrown out of its home. He needs treatment, but cannot afford the expensive intervention. And because of his limited English proficiency, he will never learn that he has the right to appeal the insurer's denial of coverage, because Los Angeles does not meet the 10 percent threshold outlined in the HHS proposal.

However, the importance of language services is not limited to the doctor's office. In many cases, patients may be prevented from getting appointments, exams, tests, and follow-up care simply because they lack full information about their rights under their health insurance plans. For this reason, it is important that health insurance companies, and not just doctors, make language services available to patients.

Failure to provide competent language services has civil rights implications. Title VI of the 1964 Civil Rights Act requires all recipients of federal funding to make their services accessible to people with limited English proficiency.³ This standard should be considered to apply equally to insurance companies as to doctors and hospitals.

HHS Proposal: 10% Trigger for Translations

Among the measures in the ACA is greater oversight of health insurance companies and appeal protections for patients who have been denied care. The ACA provides a mechanism for customers of insurance companies to appeal a denial of coverage to a neutral third party. However, guidelines under consideration by HHS would effectively exclude very large LEP populations from this critical protection, impeding patients' ability to exercise their rights under federal law.

The ACA includes language requiring "linguistic and cultural sensitivity" at key points in the process. One of these provisions requires insurers to "provide notice to enrollees, in a culturally and linguistically appropriate manner, of available internal and external appeals processes."⁴

Rules being developed by HHS to implement these provisions will govern which language groups will be eligible for the required notices in their native languages. Under the standard currently being proposed, insurance companies would have to provide translated materials in the applicable language in counties where 10 percent of people are literate in the same non-English language.

Whether this threshold is met will be determined by American Community Survey data. According to the notice in which HHS explains the most recent version of the rule, this includes the percent of a county that both: 1) speaks a particular non-English language, and 2) speaks English less than "very well."

Proposed Threshold Leaves Major Population Centers in the Dark about Their Rights

As currently formulated, the rule developed by HHS would put critical health insurance information out of reach for millions. Twenty-seven states and the District of Columbia would be entirely excluded from the rule's effect.

There are 3,143 counties in the United States. According to the HHS notice, the 10 percent standard would be applied in only 255 counties (78 of which are in Puerto Rico) that meet this threshold. Overall, insurers would be required to translate appeal rights notices in just 8 percent of the counties in the United States. The list of the perverse outcomes that would be created by this policy is long and stark: ⁵

- In Northern California, Chinese-language speakers in San Francisco County would receive translated information about their rights to appeal insurance company decisions, but the 40,000 Spanish speakers residing in the same county would not. Nor would these services be accorded to the nearly 113,000 Spanish speakers in nearby Alameda County or the 61,000 in San Mateo County.
- In Southern California, Spanish speakers in Los Angeles County would receive translation under this rule, but the 490,000 Asian and Pacific Islander (API) language speakers in the county would not.
- In New York, Spanish speakers in Queens and Bronx counties would receive these services, but the 252,000 Spanish-speaking residents of Kings and Nassau counties would not, even though they live right next to one another.
- In Texas, more than 35,000 Spanish speakers in Fort Bend County would not be included, nor would 34,000 in Denton County.
- In New Mexico, the rule would require translation services in nine counties, but excludes the entire city of Albuquerque.
- In Illinois, the 66,000 Spanish speakers in Kane County would receive translation services, while the 461,000 in nearby Cook County (Chicago) would not.
- In New Jersey, the Spanish-speaking residents of Hudson, Passaic, and Union counties would be provided translation services. However, their 144,000 Spanish-speaking neighbors in Bergen, Essex, and Middlesex counties would not.

The exclusion would be acutely felt by speakers of API languages. For those who speak Chinese, just one county (San Francisco) would be covered by the proposed regulations. For those who speak Tagalog, just two counties, in Alaska, would be covered.

Twenty-Seven States and D.C. Would Be Excluded

The proposed policy would completely exclude the following states from complying with federal law:

Alabama
Connecticut
Delaware
Hawaii
Indiana
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
New Hampshire
North Dakota
Ohio
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Vermont
West Virginia
Wisconsin
Wyoming

Also:
District of Columbia

Conclusion & Recommendations

The grievance appeals rules are the first under the ACA to define a standard for language services. If the standard set is extended to other sections of the ACA as it is implemented, millions of health care consumers will not be able to access medical care and insurance programs in a meaningful way.

Everyone should have an opportunity to use the benefits covered in their health insurance plans. No one should be shut out of health care solely based on their language. Accordingly, as HHS implements the ACA, it should require that insurers provide:

- Written translation whenever 5 percent of county residents or 500 county residents, whichever is lower, are literate in the same non-English language;
- Oral interpretation as needed by each enrollee; and,
- Clear information about the availability of interpretation and translation at no cost.

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- 1 U.S. Census Bureau, "Language Use in the United States," April 2010, p. 2. viewed at: <http://www.census.gov/prod/2010pubs/acs-12.pdf>.
 - 2 "Health, United States, 2008 with Chartbook," National Center for Health Statistics.
 - 3 National Immigration Law Center, "Increasing Access to Services for Limited English Proficient Persons," Issue Brief, August 7, 2003, p. 2.
 - 4 Families USA, Comments on Interim Regulations, RIN 1210-AB45, September 21, p. 7, viewed at: <http://familiesusa2.org/assets/pdfs/health-reform/comments-on-regs/comments-on-appeals.pdf>.
 - 5 Data from American Community Survey, 2005-2009, Table B16004, "Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over." Figures are rounded.