

SPEAKING THE LANGUAGE



The Right to Interpretation & Translation Services for Children and Adolescents with Mental Health Needs in Maryland

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Executive Summary

Children and adolescents in immigrant families are experiencing a mental health crisis, reflected in high rates of depression, anxiety, and self-harm. Solving this crisis depends on greater access to quality mental health care.

Mental health care access depends on clinicians, patients, and family members speaking the same language. Without the capacity to communicate effectively—with clinicians or staff who are either bilingual or through an interpreter—children and adolescents suffering from mental illness are at risk.

This report is a product of a collaboration between the Public Justice Center, a civil rights and legal services organization, and Centro SOL clinicians at Johns Hopkins University. The report finds:

- » Federal law requires access to accurate, impartial, and effective language services for mental health care at no cost to children and adolescents in immigrant families. Federal law also requires that vital documents are translated so patients and their families can understand them.
- » Despite the law's requirements, children and adolescents in immigrant families in Maryland struggle to access mental health care and are not receiving legally required interpretation and translation services. For example, one 16-year-old struggling with a chronic eating disorder was refused care simply because her primary language is Spanish.
- » Mental health providers in Maryland report multiple challenges to offering translation and interpretation services, including a large volume of patients with limited English proficiency, poor guidance to providing these services, and lack of funding.

This report makes five recommendations to improve interpretation and translation services in Maryland:

1. The Maryland Department of Health should provide a guide to interpretation and translation services for mental health providers serving immigrant families.
2. All mental health providers should have a language access plan and policy.
3. The Maryland Department of Health should provide financial support for interpretation and translation services.
4. The State of Maryland should adopt a monitoring and enforcement policy for interpretation and translation.
5. The State of Maryland should provide public education on individuals' right to interpretation services.

Bridging this gap in care should be of highest priority for health providers and local and state policymakers.



Background

A mental health crisis is harming children and adolescents in immigrant families.

The stressors of the COVID-19 pandemic have heavily impacted children and adolescents, leading to an all-time high demand for mental health care.¹ The American Academy of Pediatrics and the American Academy of Child and Adolescent Psychiatry recognized these trends and declared a national emergency in child and adolescent mental health in 2021.² Untreated mental illness negatively impacts educational attainment and the development of social skills, and, in the worst case scenario, can lead to suicide.³

Access to quality mental health care is essential for children and adolescents in immigrant families, defined as those who themselves are immigrants or who have a parent who is an immigrant. In addition to the COVID-19 pandemic stressors, children and adolescents in immigrant families frequently experience other stressors, including acculturation, poverty, exposure to violence, and discrimination.^{4,5}

Interpretation and translation are essential to quality mental health care for children and adolescents in immigrant families.

Quality mental health care includes outpatient therapy, medication use, hospitalization, and rehabilitation services. Many immigrant families have limited English proficiency, defined as not having English as a primary language and “who have a limited ability to read, write, speak, or understand English.”⁶ For children and adolescents in these families, meaningful access to all of these forms of care depends on the ability to communicate across the language barrier with their clinicians.

1 Abramson, A. Children’s mental health is in crisis. *Monitor on Psychology*. 2022 Jan. [cited 2022 Sept.]; 53(1). <https://www.apa.org/monitor/2022/01/special-childrens-mental-health>

2 AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health. American Academy of Pediatrics. 2021 Oct. <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>

3 Whitney DG, Peterson MD. US National and State-Level Prevalence of Mental Health Disorders and Disparities of Mental Health Care Use in Children. *JAMA Pediatr*. 2019;173(4):389–391. doi:10.1001/jamapediatrics.2018.5399

4 Kroening ALH, Dawson-Hahn E. Health Considerations for Immigrant and Refugee Children. *Adv Pediatr*. 2019;66:87-110. doi:10.1016/j.yapd.2019.04.003

5 Kim SY, Schwartz SJ, Perreira KM, Juang LP. Culture’s Influence on Stressors, Parental Socialization, and Developmental Processes in the Mental Health of Children of Immigrants. *Annu Rev Clin Psychol*. 2018;14:343-370. doi:10.1146/annurev-clinpsy-050817-084925

6 Office for Civil Rights. Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. U.S. Department of Health and Human Services. 2013 Jul 26. <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-vi/index.html>

Ideally, clinicians speak the language of their patients. However, there is a dearth of psychiatrists and other mental health clinicians who can provide mental health services in a language other than English.⁷ While professional associations and universities have launched initiatives to recruit bilingual and multilingual individuals to mental health careers, these efforts will take many years to come to fruition. Moreover, given the number of patients from immigrant families and the diversity of languages that they speak, it is not realistic to rely on the language skills of clinicians themselves.

When mental health clinicians do not speak the language of their patients, some turn to untrained, ad hoc interpreters, including family members who may have strong views about the child or adolescent's illness. These practices can result in inadequate and inferior mental health services for children and adolescents with limited English proficiency.⁸

Quality interpretation services make possible the effective diagnosis and treatment of all children and adolescents, as well as communications with their families.⁹ Without competent interpretation services, as well as the translation of key clinical information and instructions, there is a much greater risk of misunderstanding of diagnoses and instructions, poor adherence to medication, and lower rates of outpatient follow up.¹⁰

This project addresses access to interpretation and translation for children and adolescents in immigrant families in Maryland.

This project aims to assess (1) the rights of children and adolescents to interpretation and translation services in mental health care in Maryland; (2) gaps in access to these services; and (3) barriers reported by clinicians to providing these services. Based on this assessment, the report makes recommendations for policymakers and clinical programs.

About the Public Justice Center and Centro SOL

The Public Justice Center is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. The Public Justice Center's Health and Benefits Equity Project supports policies and practices that promote the overall health of Marylanders struggling to make ends meet, with the explicit goal of promoting strategies that work to eliminate racial and ethnic disparities in health outcomes.

Centro SOL, the Center for Salud/Health and Opportunity for Latinos, promotes equity in health and opportunity for Latinos by advancing clinical care, research, education, and advocacy at Johns Hopkins and in surrounding communities. Centro SOL continuously engages a wide network of Latinx community members, community service providers, and researchers who share its mission and collaborate to address health disparities experienced by Latinx immigrant families.

7 Hamp A, Stamm K, Lin L, Christidis P. 2015 APA Survey of Psychology Health Service Providers. Washington, D.C. American Psychological Association. 2016 Sept. Sponsored by American Psychological Association's Center for Workforce Studies. <https://www.apa.org/workforce/publications/15-health-service-providers?tab=1>

8 Flores G. The impact of medical interpreter services on the quality of health care: a systematic review. *Med Care Res Rev*. 2005;62(3):255-299. doi:10.1177/1077558705275416

9 Karliner LS, Pérez-Stable EJ, Gildengorin G. The language divide. The importance of training in the use of interpreters for outpatient practice. *J Gen Intern Med*. 2004;19(2):175-183. doi:10.1111/j.1525-1497.2004.30268.x

10 Betancourt JR, Tan-McGrory A, Kenst KS. Guide to Preventing Readmissions among Racially and Ethnically Diverse Medicare Beneficiaries. Boston, MA: Disparities Solutions Center, Mongan Institute for Health Policy at Massachusetts General Hospital.; 2015 Sept. Sponsored by Centers for Medicare & Medicaid Services Office of Minority Health. https://essentialhospitals.org/wp-content/uploads/2016/01/OMH_Readmissions_Guide.pdf



Findings

All mental health providers in Maryland who accept federal financial assistance for any of their programs or activities must provide interpretation and translation to all children and adolescents of immigrant families.

The legal requirement for mental health providers to provide interpretation and translation services derives from two major sources of federal law.

Title VI of The Civil Rights Act. This landmark federal law, passed in 1964, prohibits discrimination by federal financial assistance recipients against protected classes of persons. Specifically, “no 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.”¹¹ National origin discrimination includes discrimination based on limited English proficiency. Title VI defines federal financial assistance broadly, including grants and loans of funds to a recipient, and property.¹² Even if only part of the recipient’s programs or activities receives federal funding, Title VI extends to all of the recipient’s programs and activities.¹³

¹¹ 42 U.S.C. § 2000d et seq., 45 C.F.R. § 80.1 et seq.

¹² 45 C.F.R. § 80.3.

¹³ *Id.*

Section 1557 of The Affordable Care Act. This federal statute, which went into effect in 2010 when the Affordable Care Act became law, extends the protections provided to individuals under Title VI and other federal civil rights laws to health-related programs, activities, and entities created under Title I of the Affordable Care Act.¹⁴ Like Title VI, Section 1557 prohibits health programs or activities, including mental health providers, receiving federal financial assistance from discriminating on the basis of race, color, sex, age, disability, or national origin.¹⁵

Under these laws, clinicians participating in the Maryland Children's Health Program or Medical Assistance (Medicaid) or receiving other forms of federal financial assistance must provide meaningful access to their programs and activities to children and adolescents regardless of their, or their family's, preferred language or proficiency in English.

In the case of mental health care services for children and adolescents in immigrant families, these laws generally require language access for both the children and adolescents and the parents or legal guardians, even if the parents or legal guardians are not U.S. citizens. Interpreters allow clinicians to explain the clinical situation and potential treatment options to parents or legal guardians and understand their decisions for further care. Without interpreters to permit such conversations, the providers may be discriminating against the children and adolescents on the basis of their national origin.

The law requires that interpretation and translation for children and adolescents of immigrant families be accurate, impartial, and effective – and free of charge.

The legal requirements for interpretation and translation go beyond finding anyone who can provide the bare minimum of language assistance for children, adolescents, and their families. Section 1557 of the Affordable Care Act outlines additional requirements for interpreters and translators. These include that the personnel:

- » Adhere to interpreter or translator ethics;
- » Have proficiency in speaking and understanding spoken English;
- » Have proficiency in speaking and understanding the spoken language in need of interpretation;
- » Protect the privacy of the individual with limited English proficiency; and
- » Be accurate, impartial, and effective.¹⁶

These requirements mean that, in general, mental health providers cannot rely on parents or legal guardians to be the interpreter for their own children in need of mental health services.

Interpretation and translation services must also be free to families. Section 1557 expressly prohibits health care providers from passing the costs of interpretation and translation on to the patient.¹⁷ Health care providers may utilize bilingual or multilingual staff to communicate directly with the individual with limited English proficiency, but the staff person must be qualified to do so.¹⁸

The law provides for limited exceptions from this standard for interpreter services. While clinicians may not require an individual with limited English proficiency to provide their own interpreter, clinicians may rely on interpretation from an accompanying adult, including an adult family member, if there is an emergency “involving imminent threat to the safety or welfare of an individual or the public, where there is no qualified interpreter for the individual

¹⁴ 42 U.S.C. § 18116 et seq.; 45 C.F.R. § 92.1 et seq.

¹⁵ *Id.*

¹⁶ 45 C.F.R. § 92.101(b)(3)(i-ii).

¹⁷ *Id.* at § 92.101(b)(2).

¹⁸ *Id.* at § 92.101(b)(2)(i).

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with limited English proficiency immediately available.”¹⁹ Alternatively, clinicians may rely on an accompanying adult when the individual with limited English proficiency explicitly requests the individual to interpret or facilitate communication, the adult agrees to do so, and reliance on the adult for interpretation or facilitation is appropriate under the circumstances.²⁰

In more narrow circumstances, a health care provider may rely on an accompanying minor child to interpret or facilitate communication. Specifically, there must be “an emergency involving imminent threat to the safety or welfare of an individual or the public, where there is no qualified interpreter for the individual with limited English proficiency immediately available.”²¹

Mental health providers must ensure that vital documents are accessible to individuals with limited English proficiency in their preferred language.

In addition to the obligation to provide interpretation, federal law requires that vital written documents be translated so that they are accessible to communities with limited English proficiency. “Whether or not a document (or the information it solicits) is ‘vital’ may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the limited English proficient person if the information in question is not provided accurately or in a timely manner.”²² Ensuring that children and adolescents with limited English proficiency, as well as their parents or legal guardians, are aware of their rights and the services and programs available to them is an important aspect of providing “meaningful access.” In the context of mental health treatment, vital documents can include:

- » Intake and consent forms;
- » Discharge instructions; and
- » Notices of rights and the provider’s complaint process.

Though Section 1557 requires health care providers to provide language assistance services, the law protects the autonomy of individuals with limited English proficiency by ensuring the right to decline such services.²³ However, even if the individual declines language assistance services in an encounter, this does not mean that they have waived their right to receive such services in a future encounter if offered by the health care provider or requested by the individual.

Case examples raise serious questions of legal compliance with language access requirements in Maryland.

Centro SOL clinicians report routine difficulties finding mental health providers for their patients, with numerous instances of clinicians in Maryland refusing to provide appointments for children and adolescents in families who speak Spanish, even when they have or are eligible for Medicaid coverage. The following are three illustrative cases.

Case 1: No interpretation, no care for adolescent

J is a 16-year-old female suffering from anorexia nervosa. J’s pediatrician recognized the signs and symptoms of this condition and connected her to a therapist for mental health care. The therapist determined from his clinical assessment that given the severity of J’s anorexia nervosa, she would benefit from a special type of behavioral therapy. The specialist, however, refused to provide the recommended care because her primary language is Spanish.

¹⁹ *Id.* at § 92.101(4)(ii)(A).

²⁰ *Id.* at § 92.101(4)(ii)(B).

²¹ *Id.* at § 92.101(4)(iii).

²² Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 47,311 (August 8, 2003).

²³ 45 C.F.R. § 92.101(c).



Case 2: No interpretation for parent, no care for child

A 15-year-old female, C, came to her pediatrician's office for concerns about poor sleep and poor appetite. C was recognized to be suffering from depression. The pediatrician consulted with the practice's social worker, and they determined that C was not at imminent risk of harm but did need mental health care. The social worker discussed this plan with C and her parent and offered to help connect C to therapy. While C is a native English speaker, her mother's native language is Spanish, and she has limited English proficiency.

The social worker completed a referral for mental health therapy for C for a local for-profit agency, noting the requirement for interpretation in the absence of a staff member who spoke the mother's language. The social worker followed up with the mother two weeks later, only to learn that the mother had not received a call from the mental health agency.

When the social worker reached out to the agency to inquire, she received the following reply, "Unfortunately, we do not have the capacity at this time for a bilingual client. I do apologize for the inconvenience it may have caused."

Case 3: No interpretation, no care for students

A new bilingual school-based social worker met with several agencies contracted to provide mental health care for a Maryland county's public school students. The agencies were happy to meet her as she could provide bilingual services. She learned that the agencies were not using interpreters to provide care to students with limited English proficiency prior to her arrival. Rather, students with limited English proficiency were placed on unattended wait lists because of their language.

Clinicians cite multiple barriers to providing interpretation and translation services to children and adolescents in immigrant families.

On September 28, 2022, the Public Justice Center and Centro SOL conducted a listening session with approximately 25 mental health providers and organizations providing mental health in Maryland on the use of language assistance services, including the use of language lines when there are no bilingual clinicians and on-site interpretation is not possible. Key concerns raised included the following:

- » *Increase in volume of patients with limited English proficiency.* Participants reported not having enough bilingual providers to meet this demand, leading to an increased need for interpretation services.
- » *A lack of effective guidance or resources to support interpretation.* One provider stated that the State Health Department provided a list with 300 interpretation and translation services, but the list does not explain which languages are covered by each service. Also, the list was last updated in 2010.
- » *Long waits for language lines.* One provider stated that for a two-minute conversation to make an appointment, it is easier to try to get by without an interpreter or use an ad hoc interpreter given the time it takes to set up the interpretation services and reach the interpreter.
- » *No source of funding for language lines.* Providers highlighted that Medicaid does not reimburse interpretation or translation services for mental health services. The high cost of these services can exceed the reimbursement for the clinical encounter.

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- » *A history of trauma may affect patient preferences in interpreter services.* Youth have expressed feeling uncomfortable using an interpreter on the phone due to traumatic experiences in the past.
- » *Prior authorization required to see a patient with limited English proficiency.* One clinician reported that their agency required approval for interpretation prior to allowing the mental health provider to complete the intake appointment with a patient, unnecessarily delaying the child's necessary mental health care.

Participants in this conversation stated that additional support from the State of Maryland and other local policymakers could help alleviate these barriers. The types of support suggested include:

- » *Financial resources to build and maintain capacity.* Organizations stated that funding would help them provide routine access to language assistance services as required by law.
- » *Training for all mental health staff.* Administrative and direct care staff should understand the language and cultural diversity of the populations they serve, as well as their legal obligations with regard to interpreting services.
- » *Clarity on available resources.* Organizations can benefit from information about how to find quality interpreters and language lines for their patients.
- » *Building community partnerships.* Mental health providers can benefit from partnerships with allies in communities with limited English proficiency and with community-based, immigrant-serving organizations for purposes of collective problem-solving and mutual learning.
- » *Increasing diversity within a network of providers.* A registry of psychologists, licensed social workers, and psychiatrists who are certified to provide mental health care in languages other than English would be helpful for the referral process for patients with limited English proficiency. While there are relatively few mental health providers who speak languages other than English, it is critical to invite and include them in professional organizations as they represent a subset of providers in exceedingly high demand and also have additional insight into the obstacles and facilitators of care for patients and parents who speak languages other than English.



Recommendations

Despite legal requirements that clinicians provide interpretation and translation when needed, children and adolescents in immigrant families in Maryland are at high risk for not receiving accessible mental health care.

To address this situation, the Public Justice Center and Centro SOL are making five recommendations.

Recommendation 1: The Maryland Department of Health should provide a guide to interpretation and translation services for mental health providers serving immigrant families in Maryland.

The Maryland Department of Health should provide a guide to language assistance services that makes clear the provider's legal requirements, the interpretation and translation standards, and the available resources for providers to use. The list of resources should be updated regularly and include information on the types of services each interpretation and translation service offers. The guide should include the procedures for connecting to an interpreter or requesting document translation.

The guide should include links to a repository of commonly used forms in the ten most common languages spoken in Maryland. Examples of documents for the repository are an intake form suitable for use across mental health agencies, consent for treatment, consent for release of information, an after-visit summary template, information about the ten most common mental health topics, a standard safety plan for suicidal patients, and information on current suicide hotlines and their use.

Recommendation 2: All mental health providers should have a language access plan and policy.

Mental health providers may encounter patients in need of services at any time. Without having an awareness of the potential languages that the provider may encounter and the level of language assistance services that may be needed, providers risk not complying with federal language access laws. Providers should conduct an individualized assessment balancing the following four factors described in Section 1557 to determine the level of language assistance they should provide to comply with their obligations:

1. The number or proportion of individuals with limited English proficiency eligible to be served or likely to be encountered in the eligible service population;
2. The frequency with which individuals with limited English proficiency come in contact with the entity's health program, activity, or service;
3. The nature and importance of the entity's health program, activity or service; and
4. The resources available to the entity and costs.²⁴

For example, a provider that only occasionally hears from a patient who does not speak English may use a language line. However, a provider that has a steady stream of Spanish-speaking families should hire a trained interpreter or bilingual staff.

Additionally, mental health providers should have a comprehensive policy that informs both administrative and direct care staff on how to ensure that language assistance services for patients and parents or legal guardians coordinating their child's care are provided without delay. Such policies should:

- » Provide training for staff about legal requirements;
- » Explain how to reach and use an interpreter and translator effectively;

²⁴ 45 C.F.R. § 92.101(b)(1)(i-iv).

Recommendations

- » Notify staff of the provider's language access complaint process for patients; and
- » Provide staff with necessary information to utilize contracted language services.

Mental health providers should also designate a staff person to coordinate requests for interpretation and translation, update the language access plan as needed to comply with federal and state laws, and respond to patients' complaints regarding language access issues in a timely manner.

Upcoming Changes to Section 1557. On July 26, 2022, the U.S. Department of Health & Human Services issued a proposed rule for Section 1557. The Department has expressed intentions to restore certain protections for patients with limited English proficiency and obligations for providers that were rescinded under the previous Administration and revise its interpretation of "federal financial assistance" to include Medicare Part B payments. As of the writing of this publication, the Department has not issued a final rule. However, we encourage health care providers to follow updates on changes to Section 1557 to ensure that they are in compliance with applicable federal law.

Recommendation 3: The Maryland Department of Health should provide financial support for interpretation and translation services.

The Maryland Department of Health provides no financial support to cover interpretation and translation services, rendering these federal laws unfunded mandates. Mental health organizations report that the lack of funding makes it challenging to comply with the non-discrimination stipulations in Title VI and Section 1557. Provision of services should not wait, but it is appropriate for these expenditures to be covered. Health care providers should incorporate the cost of language assistance services into their annual budget and health plans, such as Medicaid, should reimburse providers for these costs.

Recommendation 4: The State of Maryland should adopt a monitoring and enforcement policy for interpretation and translation.

The State of Maryland should provide accountability to ensure all patients with limited English proficiency receive adequate mental health care in the language they prefer. It is appropriate to develop a mechanism to monitor that interpretation and translation service requirements are met in mental health organizations. This monitoring system should include a process for patients to file formal complaints with the state. Although patients can file a complaint with the U.S. Department of Health and Human Services regarding denials of language assistance services, federal investigations can take months, sometimes years, to conclude and reach a resolution. This can leave children and adolescents with limited English proficiency who need mental health care without timely access to treatment and at risk for going into crisis.

The State of Maryland should develop a systematic approach to investigate and intervene in the case there are violations to these policies. Further, mental health authorities should report data on patient languages and the use of interpreter services to assess needs and draw comparisons between regions within the State of Maryland.

Recommendation 5: The State of Maryland should provide public education on the right to interpretation and translation services.

Individuals with limited English proficiency may not know they have the right to language assistance services when accessing health care. The State of Maryland should raise awareness among individuals with limited English proficiency about their right to use interpretation and translation services in health care settings. Individuals should also be encouraged to report violations of this policy to the State of Maryland and to the Public Justice Center. Emphasis should be placed on ensuring individuals who file a formal complaint with the State are protected from legal and health care access repercussions.

Conclusion

Access to mental health care depends on clinicians, patients, and family members speaking the same language. For children and adolescents in immigrant families, interpretation and translation are essential for receiving quality mental health care. Despite the legal right to these services, there are major gaps in Maryland. Addressing these gaps in services should be a high priority for health providers and state and local policymakers.

Language Access Resources

LEP.gov

A federal government website designed to provide resources and guidance on complying with federal language access laws. This website also provides updates on initiatives taken across federal agencies related to language access.

<http://www.LEP.gov>

U.S. Department of Health and Human Services, Section 1557 of the Patient Protection and Affordable Care Act Resources.

This website compiles important information on Section 1557, including the current implementing regulations, notifications of interpretation of Section 1557, and Notices of Proposed Rulemaking.

<https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>

Centers for Medicare & Medicaid Services, Guide to Developing A Language Access Plan (July 2022).

A guide from the Centers for Medicare & Medicaid Services, funded by the U.S. Department of Health and Human Services, that educates providers on how to assess their programs and activities to develop a language access plan, ensuring that individuals with limited English proficiency have meaningful access.

<https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Language-Access-Plan.pdf>

Support for people denied access to mental health care.

Please contact the Public Justice Center at (410) 625-9409 to refer an individual for intake who has been denied language assistance services and is seeking legal assistance.

About This Report

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