Oregon Association of Hospitals and Health Systems

March 2, 2021

Oregon State Legislature
House Committee on Health Care
900 Court Street NE
Salem, OR 97301

Re: House Bill 2359 – Health Care Interpreters

Chair Prusak and members of the House Committee on Health Care:

On behalf of Oregon's 62 community hospitals and the patients they serve, the Oregon Association of Hospitals and Health Systems (OAHHS) supports House Bill 2359. Specifically, OAHHS supports the creation of a robust interpreter registry and standardization of interpretation practices. However, we do have concerns around implementation of specific aspects of the bill as drafted and want to ensure that any subsequent rulemaking aligns with, and is not duplicative of, Federal law.

Health care interpreters are vital medical care team members as communication is essential to the provision of quality health care. For that reason, we support the maintenance of a robust health care interpreter registry to provide greater access to these services. As well, to help foster health equity, we support the Oregon Health Authority providing free or low-cost training to ensure the qualification of health care interpreters.

Under federal law, hospitals have a legal obligation to provide language access services to limited English proficient (LEP) and Deaf and hard of hearing (HOH) patients. Three federal laws (Title VI of the Civil Rights Act of 1964 (Title VI), the Americans with Disabilities Act (ADA) and the Affordable Care Act (ACA)) require that providers who receive federal funds provide oral interpreters and written translated materials to LEP and Deaf and HOH patients. Provisions of the ACA implemented in 2016 require that all covered health care programs and providers to take "reasonable steps to provide meaningful access to each individual with limited English proficiency eligible to be served or likely to be encountered in its health programs and activities."[1] Required language assistance services must be free to patients, accurate and timely, protect patient confidentiality, and be provided by qualified interpreters.

A qualified interpreter for an individual with LEP is one who "(1) adheres to generally accepted interpreter ethics principles, including client confidentiality; (2) has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language; and (3) is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology."[2] Federal regulations and guidance do not require interpreters to be licensed or certified.

Violations of federal language access laws (Title VI, the ADA and the ACA) are civil rights violations and are not typically covered by medical malpractice insurance. The requirement to provide meaningful access to LEP persons is enforced and implemented by the United States Department of Health & Human Services Office for Civil Rights through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance. Anyone who believes that they have been discriminated against because of race, color or

[1] 81 FR 31470
[2] 81 FR 31468

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national origin may file a complaint within 180 days of the date on which the discrimination took place. Under the ACA, LEP have legal standing to sue health care organizations who violate the law. Moreover, HHS has the authorize to pass down penalties include "suspension of, termination of, or refusal to grant or continue Federal financial assistance; referral to the Department of Justice with a recommendation to bring proceedings to enforce any rights of the United States; and any other means authorized by law."[3]

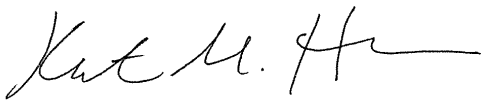
In addition to the risk of lawsuits and federal penalties, failing to provide high-quality language access services can negatively affect hospital accreditation or reaccreditation decisions from The Joint Commission.

Additionally, because federal regulations recognize bilingual and multilingual providers' language assistance as part of the individual provider's current assigned job responsibilities, we request additional, specific language in HB 2359 to clarify that health providers who are themselves qualified health care interpreters, or other on-site staff who have a demonstrated proficiency, are not required to be on the health care interpreter registry. Furthermore, we want to ensure that this bill does not in any way limit the use of interpretation services conducted through phone, computer, or other electronic means, which are vitally important to access of interpretation services especially in our rural and frontier facilities.

Regarding implementation of HB 2359, we have specific concerns regarding record keeping and verification. We feel that when maintaining records of patient encounters in which health care interpreter services are used, the details should be recorded separately from the patient's medical record to respect the privacy of the interpreter. Moreover, it should not be the responsibility of the health care provider to verify a health care interpreter's vaccination status each time an interpreter is utilized for an in-person patient encounter; given the development of a central registry, it would be appropriate for this information to be maintained there. Additionally, it is important to note that ORS 433.416 states that while "an employer of a health care worker at risk of contracting an infectious disease in the course of employment shall provide to the worker preventive immunization for infectious disease if such preventive immunization is available and is medically appropriate", "a worker shall not be required as a condition of work to be immunized, unless such immunization is otherwise required by federal or state law, rule or regulation." We feel that this statute should extend to health care interpreters.

Given the breadth and depth of current federal regulations governing language access services in hospitals, we want to ensure that HB 2359, and any subsequent rulemaking by the Oregon Health Authority, aligns with federal regulations, including relevant definitions. Additional policies and procedures created to hold health care providers accountable if they do not work with a qualified health care interpreter should not create duplicative regulatory burden. Given how essential health care interpreters are, we appreciate and support that HB 2359 will promote access to these services by fostering a robust health care interpreter registry as well as providing training to guarantee the qualification of health care interpreters.

Thank you,



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[3] http://www.hhs.gov/sites/default/files/2016-06-07-section-1557-final-rule-summary-508.pdf