Notes for WCD Meeting 11/27/17  
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There are two main points of concern in the Worker’s Compensation Division’s (WCD) payment policies with regards to interpreters:

1. There is inconsistency between the WCD definition of an interpreter and the policy for choosing an interpreter that could result in unqualified or interested parties interpreting when doing so would be a violation of a Limited English Proficient patient or client’s (LEP’s) Title VI rights, as well as a violation of interpreting ethics, HIPAA, and – most likely - patient care best practices.

2. Interpreter payment policies: interpreters must be paid for all interpretation services rendered and an appropriate late cancellation and patient no-show policy must be established.

1. Section 436-009-0005 (“Definitions”), Subsection 23 defines an “Interpreter” as follows (all emphasis added post-policy):

   “‘Interpreter’ means a person who:

   (a) Provides oral or sign language translation; and

   (b) Owns, operates, or works for a business that receives income for providing oral or sign language translation. It does not include a medical provider, medical provider’s employee, or a family member or friend of the patient.”

However, Section 436-009-0110 (“Interpreters”), states:

(1) Choosing an interpreter:

“A patient may choose a person to communicate with a medical provider when the patient and the medical provider speak different languages, including sign language. The patient may choose a family member, a friend, an employee of the medical provider, or an interpreter. The medical provider may disapprove of the patient’s choice at any time the medical provider feels the interpreter services are not improving communication with the patient, or feels the interpretation is not complete or accurate.”

Notes: The use of unqualified ad hoc interpreters

- The description in section 436-009-0110 contradicts the WCD’s definition of an interpreter.

- The description in 436-009-0005 complies with Title VI, with Executive Order 13166 (President Clinton 8/11/2000), 2001 US Department of Health and Human Services national CLAS (Culturally and Linguistically Appropriate Services) standards, Section
1557 of the ACA and with OHA standards for medical interpretation. However, the description in 436-009-0110 exposes the WCD to complaints of Title VI violations on multiple grounds described as follows:

- **Liability:** The use of family members, friends or an employee of the medical provider represents an unacceptable risk of misinformation and/or partial exclusion of the patient in their healthcare encounter, which exposes the WCD to medical and legal liabilities, including a federal Title VI investigation into their interpreter use practices.

- **Limited competency:** An amateur, ad hoc interpreter’s level of fluency in two or more languages and their ability to interpret doctor/patient communication is not established. A trained, certified or qualified interpreter has a quantified high level of language proficiency in their working languages as well as a tested in-depth knowledge of medical terminology.

- **“Faking it” and other errors:** Untrained, ad hoc interpreters often fake or gloss over what they do not know, and often do not know that is unethical to do so. Even if they work in a healthcare setting, because they have picked up their medical terminology by rote rather than having been formally trained and tested on their knowledge, they may make mistakes in crucial terminology without realizing it. For example, “intoxicación” in Spanish does not mean “intoxicated” or “drunk,” but rather “poisoned.” The former is an actual, documented mistake that resulted in dire consequences for an LEP patient. Certified and qualified interpreters are trained in ethics and protocols, which include the obligation to interrupt and ask for clarification or to look up a word. A non-professional interpreter may not do so, either because he or she does not know to do so, or is embarrassed to do so.

- **Violation of the right to an impartial interpreter:** Friends and family (often the USA-raised children of foreign patients) are prone to editing -- and even omitting -- the information presented, be it to “protect” their loved one, soften bad news, to avoid embarrassment, or to make it easier (in their opinion) to understand.

- **HIPAA violations:** Family members and friends talk, and friends and family are under no obligation to maintain confidentiality. As a result, patient information is compromised.
The provision that the provider may disapprove of the patient’s choice does not address these liabilities. Only a very small percentage of providers are proficient enough in a foreign language and interpreting guidelines to make this determination, and will often allow an interaction to proceed unless a blatant, obvious miscommunication is detected. They may also be tempted to ignore the more subtle signs of poor interpreting, since rejecting an interpreter as incompetent after an appointment has already begun could represent a costly delay or result in the appointment having to be rescheduled altogether.

Even for non-diffuse languages, over-the-phone or video remote interpreting with a Certified or Qualified Interpreter should be scheduled before ever considering the “friends and family” alternative.

2. Section 436-009-0110, Subsection 2(b), Subsection 3 (“Billing and Payment Limitations”) and Subsection 7(a) regarding non-payment of interpreters:

2(b) Interpreters may only bill an insurer or, if provided by contract, a managed care organization (MCO), However, if the insurer denies the claim, interpreters may bill the patient.

7(a) When the medical exam or treatment is for an accepted claim or condition the insurer must pay for interpreter services and mileage if the roundtrip mileage is 15 or more miles.

Notes:

- The last sentence in 2(b) violates LEP patients’ Title VI right to access to a professional interpreter at no cost to themselves. 2(b) obligates interpreters to resort to trying to collect their fees from patients. Not only will the interpreter be denied payment because the patient is under no obligation to pay for an interpreter that a state agency must provide, this possibility nullifies one of the essential canons in both the Oregon and national interpreter codes of ethics and an essential right of an LEP patient: Impartiality.

- 7(a) also mentions, in passing, that insurers must pay interpreters for an accepted claim or condition.

- Interpreter impartiality is not a lofty ideal. The above sections give interpreters a vested interest in the outcome of the case. If insurance companies are only required to pay
interpreters for an accepted claim that means that interpreters are working on a contingency basis. **Interpreters hired by a state agency must not have a stake in the outcome.** In fact, the fact that interpreters are paid by the insurance companies creates an a priori conflict of interest. A strong case for the worker means the interpreter gets paid. Court interpreters interpreting for Workers’ Compensation hearings are paid by the Worker’s Compensation Board directly. The judge's decision has no bearing on payment for the interpreter's service. Medical Workers’ Compensation interpreters should be no less impartial.

3(a) *When an appointment was not required by the insurer or director, interpreters may not bill any amount for interpreter services or mileage if:*

(A) The patient fails to attend the appointment; or (B) The provider cancels or reschedules the appointment.

**Notes:**

- For all the reasons just mentioned there should be no hierarchy of interpreter assignments based on the kind of appointment or the outcome of the case. The law requires that the Workers’ Compensation Board provide a professional, impartial interpreter for all LEP appointments. Interpreters provide a service which is indispensable to the Workers’ Compensation claim process. When an interpreter has accepted an appointment offered by the Workers’ Compensation Board and either provided the service or remained available even though the assignment didn’t take place due to a no-show or late cancellation, the Workers’ Compensation board should pay the interpreter.

- This policy should be revised to mirror the Oregon Workers’ Compensation Board contract already in place for Certified Court Interpreters. That contract states that a) *interpreters are compensated for a one hour minimum at their contracted rate should a patient no-show or b) should the patient or provider cancel or reschedule the appointment within 24 hours of the scheduled appointment.* No mention is made of the outcome of the case; Interpreters are paid regardless of the outcome of the LEP patient's claim.

**Additional Notes:**

- The April 1, 2015 publication of the Oregon Medical Fee and Payment Rules Oregon Administrative Rules, Chapter 436, Division 009 should be updated to reflect the current payment policies and whatever additional updates this proposal may generate. As the
contract stands the following inconsistencies should be corrected:

- **2(a):** *Interpreters must charge the usual fee they charge to the general public for the same service* - should be deleted since the table in Subsection 6(b) precisely sets forth interpreter compensation by category. This language may be deemed appropriate for the final category in the table which is the only one where the compensation amount isn't specified: *An interpreter who is the only person in Oregon able to interpret a specific language.*

- **5(a):** Provides the interpreter billing codes and should be updated to add the new separate billing code for Oregon Certified Health Care Interpreters of spoken languages, D0006.

- **6(b):** The payment table should be amended to add the new billing code D0006 for Certified Interpreters to reflect the new 2017 distinction between certified and non-certified non-American Sign Language interpreters. The $60.00/hour rate for interpreter services of an hour or less should specify that this rate is for non-certified interpreters and the rate of $70.00/hour for Certified Interpreters (OCHCI) should be added to the table.

- And **6(b):** the left column no-show payment category should be updated to read: *An examination which is cancelled within 24 hours of the appointment, or where the patient fails to attend.* The right column no-show payment amount should read “A two-hour minimum for ASL interpreters (D0005) and Certified non-ASL interpreters (D0006) and a one-hour minimum for non-certified non-ASL interpreters(D0004). We have taken this proposed no-show/late cancellation payment policy directly from the Workers’ Compensation Board contract for Certified Court Interpreters.
Civil Rights Requirements- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI")

Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal funds or other Federal financial assistance. Programs that receive Federal funds cannot distinguish among individuals on the basis of race, color or national origin, either directly or indirectly, in the types, quantity, quality or timeliness of program services, aids or benefits that they provide or the manner in which they provide them. This prohibition applies to intentional discrimination as well as to procedures, criteria or methods of administration that appear neutral but have a discriminatory effect on individuals because of their race, color, or national origin. Policies and practices that have such an effect must be eliminated unless a recipient can show that they were necessary to achieve a legitimate nondiscriminatory objective. Even if there is such a reason the practice cannot continue if there are alternatives that would achieve the same objectives but that would exclude fewer minorities. Persons with limited English proficiency must be afforded a meaningful opportunity to participate in programs that receive Federal funds. Policies and practices may not deny or have the effect of denying persons with limited English proficiency equal access to Federally-funded programs for which such persons qualify.

Set forth below are examples of conduct that may violate Title VI:

- A welfare benefit provider restricts training and/or work assignments based on its clients' race or national origin by assigning minority clients to jobs that pay less or have fewer opportunities for permanent employment than work assignments given to nonminority clients.

- A predominantly minority community is provided lower benefits, fewer services, or is subject to harsher rules than a predominantly nonminority community.

- A local welfare office makes assumptions regarding a person's citizenship, immigration status and eligibility for benefits, based on the person's surname, accent or ability to speak English, and asks only those persons who look or sound foreign about their citizenship and immigration status.

- In determining eligibility of Asian applicants for TANF benefits, a local agency requires substantially more and different documentary proof of citizenship and immigration status than it does in determining the eligibility of non-Asians.

- A local welfare office located in a neighborhood with a number of immigrant groups provides no language assistance to TANF applicants or participants who are limited English proficient (LEP), but advises them to bring friends or relatives, as interpreters, to their appointments.
• A training program charges an LEP class member for interpreter services that are needed for the class member to benefit from the training program.

• A local welfare office which regularly serves LEP persons only makes interpreters available for persons applying for benefits three hours a week.

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