Guidance Document for Compliance with "Good Faith Effort" (GFE)

Guidance Document for Compliance with "Good Faith Effort" (GFE) Requirements of Oregon House Bill 2359 and OAR 950-050-0160

Introduction

Oregon House Bill 2359 clarified requirements that health care providers, language service providers, and Coordinated Care Organizations (CCOs) must work with Health Care Interpreters (HCIs) from Oregon's central registry. The Oregon Administrative Rules (OARs) further outlined the requirements and exceptions for working with credentialed (qualified or certified) HCIs from the central registry.

One allowable exception for working with an HCI from the central registry is when there is no available HCI from the central registry for a specific interpreting session. In these circumstances, the interpreting appointment may be scheduled with an interpreter who is not on the central registry once a "good faith effort" (GFE) to schedule with an HCI from the central registry has been made and that effort is fully documented. While the OARs provide some detail around what constitutes a good faith effort, they also note that the Oregon Health Authority (OHA) may release additional guidance in the future. This document is intended to provide that additional guidance on demonstrating GFE for working with HCIs from the central registry.

Overview

The Oregon Council on Health Care Interpreters (OCHCI) is a 15-member council appointed by the Director of OHA to advise OHA on administrative rules and policy standards for the HCI Program. OCHCI members have been meeting over the past several months to discuss and develop additional guidance to clarify the good faith effort requirements outlined in the rule.

The OCHCI has prepared this document to provide guidance, primarily to the health care providers and the health systems where they work, on how to demonstrate compliance with HB 2359 requirements for working with HCIs in the central registry. These providers and health systems include most health care providers working in Oregon and are further described in OAR 950-050-0010(10). In addition, much of this guidance is also applicable to language service providers (OAR 950-050-0170), Coordinated Care Organizations (OAR 410-141-3590), and others who have responsibility for scheduling and assigning HCIs.

The focus of this document is on the good faith effort provisions outlined in OAR 950-050-0160(1)(b), which addresses the situation where a provider is unable to obtain an HCI from the central registry. Health care providers and health systems are required to make good faith efforts to work with HCIs from the central registry and create and maintain records of these efforts. The information outlined here covers the necessary steps for creating policies and procedures for assigning interpreters from the central registry, making efforts to reduce reliance on interpreters who are not on the central registry, and strategies for increasing the utilization rate of interpreters from the central registry. The OARs require:

950-050-0160

Health Care Provider Requirements

(1) Beginning July 1, 2022, for onsite interpreting and no later than July 1, 2023, for remote interpreting, health care providers shall work with qualified or certified health care interpreters from the Authority's health care interpreter central registry when arranging for or providing services to a person with LEP or who prefers to communicate in a language other than English or who communicates in signed language. Exceptions are allowed when the provider:

…

(b) Has made a good faith effort to obtain a health care interpreter from the central registry and has found that none are available to provide interpreting. In this circumstance, the health care provider may work with the non-registered interpreter for that visit or episode of care. For each visit or episode of care that a provider works with a non-registered interpreter, the provider shall create and maintain records of the good faith efforts made by the provider to work with an interpreter from the central registry. Evidence of good faith efforts shall be made available to the Authority and relevant provider licensing and certification boards upon request. The Authority may release additional guidance on good faith efforts in the future. At a minimum, providers shall develop and maintain policies, processes, and outcomes describing:

> (A) The steps the provider takes to work with an interpreter from the central registry for a health care appointment;
>
> (B) The efforts the provider makes to reduce reliance on interpreters who are not on the central registry; and
>
> (C) How the provider efforts are increasing the number of health care interpreting appointments scheduled with interpreters from the central registry;

Guidance

The OARs require health care systems to complete several steps prior to working with an interpreter who is not on the central registry. Those required steps are detailed in the OARs cited above. This guidance document follows that OAR framework and outlines how health care systems and others can meet the requirements to develop and maintain policies, processes, and outcomes for each of the subsections (1)(b)(A), (1)(b)(B), and (1)(b)(C) of OAR 950-050-0160.

(A) Steps to Work with an Interpreter from the Central Registry

Establishing Policies and Processes. Health care systems should develop and maintain comprehensive language service policies and processes for scheduling and working with HCIs from the central registry. These policies must include clear steps to be followed for every health care appointment. Key components include:

1. Early Identification of Language Needs:

- Identify the patient's language needs at the earliest opportunity.
- Incorporate language preference questions into pre-appointment communications or intake forms.
- Ask patients their preferred language when they call to schedule an appointment.

2. Working with HCIs from the Central Registry:
    - Prioritize working with interpreters listed in the central registry and require the same of contracted vendors.
        - Language companies
            - Route calls to credentialed interpreters first.
            - Make appointments on portals visible to credentialed interpreters first or only visible to credentialed interpreters up to the day before the appointment. For same-day appointments, notify credentialed interpreters first.
            - To continue providing health care interpreting services to people in Oregon, require interpreters to obtain a state credential within a set period to continue to work with the company.

    - Clearly outline the process for requesting interpreters from the central registry and steps to follow when an interpreter from the central registry is not available.

3. Recordkeeping:
    - Maintain records of accessing interpreter information from the central registry for each appointment. Accessing or checking the central registry may be accomplished by making an inquiry at: https://hciregistry.dhsoha.state.or.us/Search or by downloading central registry data and incorporating it into another scheduling system on a regular basis – at least once a month, and utilizing that scheduling system to identify and assign interpreting appointments.
    - Document the date and time of the request, language required, responses received, and whether the interpreting appointment was assigned to an HCI from the central registry (include HCI's central registry number in these cases) or with an interpreter who is not listed in the central registry.

4. Follow-up Procedures:
    - Establish procedures for following up on requested HCI to ensure timely confirmation of interpreting appointments.
    - Document any difficulties encountered with assigning an interpreter from the central registry and the steps taken to resolve them.
    - Document any challenges encountered in complying with the requirements and proactively report these challenges to the appropriate regulatory body

(e.g., OHA's Health Licensing Office, Health Facility Licensing & Certification Program, Medicaid program, or other independent health licensing boards). This sharing of information can help foster a collaborative relationship with regulatory bodies and enhance systems improvement.

(B) Efforts to Reduce Reliance on Interpreters who are not on the Central Registry
Health care systems must actively work to minimize reliance on interpreters not listed in the central registry. Efforts should include integrating the following into the health care system's existing language access plan:

1. Training and Education:
    - Train staff on the importance of working with HCIs on the central registry.
    - Educate health care professionals about the potential risks of working with interpreters who are not included on the central registry.
    - Educate patients on benefits of working with trained interpreters; have patients sign waiver when declining interpreting services and suggest a trained interpreter sit in on encounters.
    - Educate patients on their language access rights.
    - Implement measures to encourage working with HCIs on the central registry such as incentives or recognition programs.
    - Acknowledge harms of past and present failure to provide consistent access to competent interpreters, and work to rebuild trust with patients who are speakers and signers of languages other than English, many of whom have had negative experiences in the past due to lack of access to interpreting services or low quality of interpreting services.

2. Incorporating Language Services into Care Delivery:
    - Integrate language services into standard care delivery processes.
    - Explore technologies that facilitate identifying and assigning HCIs from the central registry.
    - Include provisions in contracts with any contracted vendors responsible for assigning or providing interpreting to require working with HCIs from the central registry or document good faith efforts to do so.
    - Consider percentage of language service providers' workforce that are on the central registry when negotiating contracts.
    - Include language emphasizing the routing of calls and appointments to HCIs on the central registry BEFORE seeking interpreters who are not on the central registry.

3. Regular Audits and Assessments by the Health Care System and CCOs:
    - Conduct regular audits of interpreter utilization and the rates of assigned HCIs on the central registry versus those who are not.
        - CCOs and health systems: Compare internal audits with language company audits.

- CCOs: compare health system encounter tracking data (T1013 codes, encounter notes) with language access reports.

- Implement assessments to identify opportunities for improvement in reducing reliance on interpreters who are not on the central registry.

(C) Increasing Rate of Central Registry HCI Appointments

Health care systems should be actively working to increase their rate of health care interpreting appointments scheduled with HCIs from the central registry. The OCHCI has adopted the target from OHA's Metrics and Scoring Committee which identified that Oregon's benchmark goal should be that:

> 75% of all health care interpreting appointments are provided with HCIs from the central registry. The OCHCI recognizes that given the need to schedule emergency and on-demand interpreting sessions in some cases, a 100% rate is likely not possible. In addition, the OCHCI acknowledges that this percentage rate is likely significantly higher than the current rate for most health care systems. However, given the goal of assuring that all people have meaningful access to health care services in Oregon, the OCHCI believes the 75% rate is the appropriate aspirational goal.

The health care system must regularly monitor and assess the effectiveness of their improvement strategies to assure that the rate is increasing. To ensure ongoing, meaningful improvement, health care systems should set an annual improvement target for increasing their rate of working with HCIs from the central registry. Health care systems can identify their annual improvement target by comparing their baseline performance (typically the previous year's performance) with the state's aspirational goal and then calculating a 10 percent reduction between the baseline and the aspirational benchmark.

For example, suppose a health care system's baseline performance for working with HCIs from the central registry was 45%. The gap between that baseline and the benchmark is 30% [75% aspirational goal – 45% baseline = 30%]. To show meaningful progress towards the benchmark, the health care system should work towards reducing that gap by at least 10% over the course of the next year. That means that the improvement target would be a 3% increase [ten percent of 30% = 3%] and the health care system would need to raise their rate of working with HCIs from the central registry to 48% [45% baseline + 3% improvement = 48%]. Stated as a formula:

$$X = \frac{\text{Benchmark] – [Health care system baseline]}}{10}$$

$$\text{Improvement Target} = \text{[Health care system baseline] + [X]}$$

Improvement strategies may include:

1. Collaboration with the Oregon HCI Program and Oversight Entities:
    - Establish open communication channels with the program and oversight entities.
    - Collaborate on strategies to increase the availability of interpreters for commonly requested languages as well as languages of lesser diffusion.
        - Regular forums for discussion between patients who are speakers and signers of languages other than English, interpreters, CCOs, language companies, OHA, and health licensing boards to discuss best practices, challenges, and strategies, to ask each other questions, and to gain clarity on who is doing what to promote collaboration and avoid duplicating efforts.

    - CCOs: Inform patients who are speakers and signers of languages other than English and health care interpreters of contract negotiations between CCOs and language companies. Solicit their feedback and consider it when making contracting decisions. At a minimum, email all interpreters on the central registry to inform them when contract negotiations are set to begin and provide forums for interpreters to give feedback and ask questions. For example, respond to questions within 30 days.

2. Workforce Enhancements:
   The following suggestions are intended to positively impact the health care system's ability to hire and maintain a robust, qualified, stable, and content workforce. Adequate compensation and professional support not only attract top-tier talent during the recruitment phase but also serves as a cornerstone for retaining skilled professionals. A content and secure workforce is inherently more engaged, leading to increased productivity, creativity, and loyalty.

    - Engage in community outreach to promote the central registry and encourage interpreters to become credentialed and listed on the central registry.
    - Support costs of interpreter training and continuing education required to be included and maintained on the central registry.
    - Encourage interpreters with national certification to apply to become listed on the central registry. The OCHCI has developed a streamlined process for nationally credentialed interpreters to be included on the Oregon central registry.
    - CCOs: get workforce information from language companies in RFPs (e.g., number of interpreters for each language, fill rate for each language, etc.) Contract with enough language companies/interpreters to be able to

include language companies or interpreters specializing in languages with low historical CCO fill rates (in the case of interpreters their certified/qualified languages; in the case of language companies the languages they show high numbers of interpreters and high fill rates for).

- Publicize financial incentives for HCIs on the central registry
    - Provide a pay rate enhancement to interpreters on the central registry versus those who are not.
    - Pay a two-hour minimum for interpreting sessions.
    - Pay travel time and mileage for in-person interpreting sessions.
    - Pay an on-call rate for HCIs on the central registry who are actively waiting in a queue for remote interpreting calls.
    - CCOs:
        - Publicize incentives for credentialed interpreters being paid to language companies (2-hour minimums, travel pay, mileage reimbursement, etc.) so that interpreters contracted with the language companies can receive those when taking jobs with the contracted language companies, increasing the likelihood that they will accept jobs.
        - Correlate language company pay to interpreter pay. This connection can reward language companies that pay rates high enough to support credentialed interpreters.
        - Reimburse provider network for language companies without CCO contracts when the companies contracted with the CCO can't find an interpreter in the patient's preferred language.
        - Reimburse provider network for central registry interpreter services provided by language companies without CCO contracts when the language companies contracted with the CCO can't find an interpreter on the central registry.

3. Feedback Mechanisms:
    - Establish mechanisms for feedback from patients who are speakers and signers of languages other than English, health care systems, interpreters, and others to address any challenges or barriers to central registry utilization. Ensure that these feedback mechanisms are accessible to speakers and signers of languages other than English and respond to feedback in a timely manner. For example, within 30 days unless more time is necessary to investigate before taking action. In these cases, provide updates to the complainant every 30 days.
    - Engage in and respond to regular reviews and audits of health care providers and health care systems by oversight entities such as licensing boards, health plans, and OHA.

Conclusion

Demonstrating compliance with the good faith effort requirements of HB 2359 and OAR 950-050-0160 requires a systematic approach to language access in health care. By following the steps and recommendations outlined here, health care providers and health systems, language service providers, CCOs, and others can create an effective framework that ensures the availability of interpreters and continually increases the rate in which interpreting sessions are provided by credentialed HCIs from the central registry.

Finally, utilizing the guidance outlined in this document, health care providers and others can effectively demonstrate compliance with good faith effort requirements, fostering improved communication and patient care by working with credentialed interpreters from the central registry. Regular self-assessment and collaboration with regulatory bodies will ensure ongoing compliance and continuous enhancement of language access.

Thanks to the Oregon Council on Health Care Interpreters (OCHCI) for development, review, and approval of this guidance document. OCHCI members include:

Alina Stircu
Law Student, Lewis & Clark Law School, Health Care Interpreter

Amelia Pacheco
Indigenous Interpreter & Case Manager Collectivo de Interpretes Indigenas de Oregon - Pueblo Unido

Ana Catalina Jones*
Testing and Training Manager, Language Line Solutions

Felicity Ratway*
PhD Student OSU Public Health; Health Care Interpreter; HCI Instructor

Liban Satu
Founding Director of Risen Community Organization

Loie Feuerle*
Oregon Society of Translators and Interpreters, Curriculum Development Subject Matter Expert

Maria Michalczyk*
Oregon Healthcare Interpreters Association (OHCIA), President Emeritus; National Council on Interpreting in Heath Care, Board President, Registered Nurse

Michaelle Gearheart
Certification & Training Coordinator for Court Language Access Services for Oregon Judicial Department

Norma Ramirez
Director of Programs and Community Development, EUVALCREE

Sanjoy Dutt*
Health Care Interpreter

**Special thanks to these OCHCI members who made up the Good Faith Effort (GFE) workgroup and to David Simnitt, Principle with DS Consulting, who facilitated and coordinated the GFE workgroup. OHA and the HCI Program appreciate their extensive expertise and the many hours these members generously dedicated to developing this important GFE Guidance Document.*