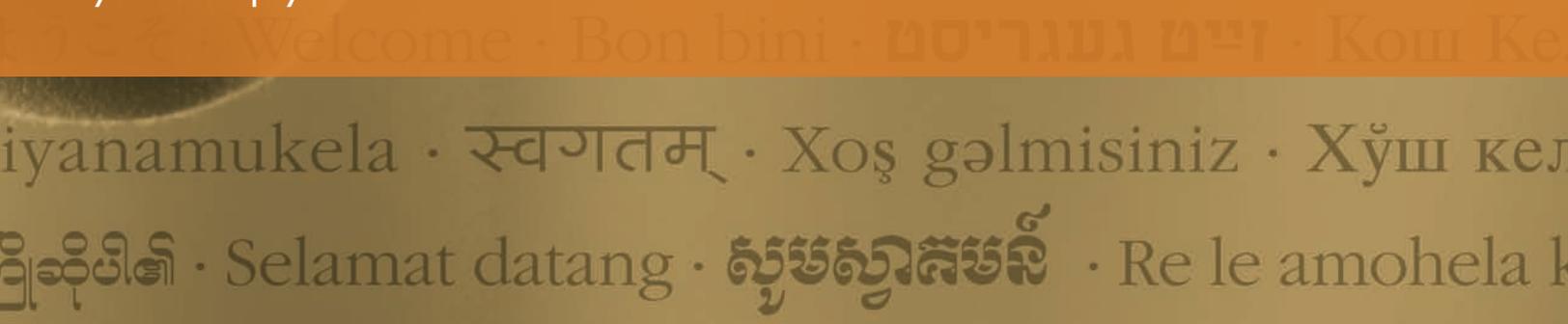




# Language Line Services

How working with employee interpreters helps you comply with HIPAA.



## How working with employee interpreters helps you comply with HIPAA.

Healthcare providers routinely need the services of an interpreter to assist in communicating with limited-English-speaking patients. That interpreter is sometimes one of the healthcare staffers, and occasionally it's a family member. More often, though, the interpreter is provided by an outside service.

Some interpretation agencies use employee interpreters, but many retain independent contractors. And while this distinction may seem to be of no consequence to healthcare providers, it is. Working with contract interpreters greatly impacts a healthcare provider's ability to comply with the Health Insurance Portability and Accountability Act (HIPAA).

HIPAA requires health plans, healthcare clearinghouses, and healthcare providers to protect patient privacy, including conversations about treatment and care. Interpreters have direct access to such information while performing their duties, but HIPAA privacy rules do not apply directly to interpretation services and their interpreters. So, unless healthcare providers can assure the integrity of their interpreters, they put themselves at risk.

### HEALTHCARE PROVIDERS MUST SAFEGUARD PRIVACY THROUGH WRITTEN AGREEMENTS.

Federal law dictates that healthcare providers must enter into written contracts—known as “business associate agreements”—with interpretation services. Such agreements must restrict the use or disclosure of private health information by interpreters. They must also require interpretation services to employ appropriate safeguards to protect patient information.

Interpreters, for example, are bound by business associate agreements to maintain the privacy and confidentiality of private health information through their relationship with the interpretation agency.

### AGENCIES WITH EMPLOYEE INTERPRETERS PROVIDE BETTER SAFEGUARDS.

Business associate agreements are far easier to enforce when interpretation agencies employ their interpreters, rather than retain them as contractors. Agencies can control the means and manner by which employees execute their duties as interpreters. However, they can assert only limited control over contract interpreters.

When working with services that hire their interpreters as employees, healthcare providers can include the following terms in their business associate agreements:

- that agencies train interpreters about HIPAA requirements (including what information can and cannot be disclosed)
- that agencies require interpreters to sign confidentiality agreements
- that agencies monitor interpreters for HIPAA compliance
- that agencies take disciplinary action against interpreters if they disclose private health information
- that agencies report possible HIPAA violations by interpreters to the healthcare providers

- that agencies require interpreters to read a privacy notice to each patient in the patient's native language

When agencies use contract interpreters, they may not be able to enforce the terms above. For example, agencies can't train or monitor contract interpreters without risking liability for misclassifying them as contractors. They risk the same liability if they require them to sign confidentiality agreements. With such limited control, it's difficult for agencies to retain contract interpreters and still enforce the safeguards necessary to comply with HIPAA.

#### **THOSE WHO FAIL TO PROTECT PRIVATE HEALTH INFORMATION CAN FACE SEVERE PENALTIES.**

When a healthcare provider learns of a breach or violation of the business associate agreement, it must rectify the problem, terminate the relationship, or report the problem to the Department of Health and Human Services. If the healthcare provider takes no action after learning of the violation, it may be subject to a civil penalty of \$100 per violation with a limit of \$25,000 per calendar year for violations of identical requirements. The penalty can be as high as \$250,000 and/or imprisonment for 10 years if the offense involves intent to sell, transfer, or use the information for commercial advantage, personal gain, or malicious harm.

The risk of being assessed such penalties is reduced when a healthcare provider has entered into an adequate business associate agreement. Business associate agreements serve as a means for health-

care providers to insulate themselves from liability for the actions of the agency and its interpreters. As long as the agreement includes assurances that the agency and its interpreters will comply with HIPAA, healthcare providers minimize the risk of being held liable for the actions of interpreters.

#### **IN-HOUSE INTERPRETERS ALSO PRESENT PROBLEMS.**

Healthcare providers also have the option of hiring qualified interpreters into their own workforce or using volunteer interpreters coordinated through their own volunteer program. Since these individuals are employees of the healthcare provider, they are directly subject to HIPAA rules. Thus, the healthcare provider is responsible for training these individuals to comply with HIPAA. It is also legally and financially liable for the actions of these individuals if they fail to comply with HIPAA.

#### **AN EMPLOYEE-BASED INTERPRETATION SERVICE MAKES A BIG DIFFERENCE.**

Healthcare providers can benefit in several ways simply by contracting with an agency staffed by employee interpreters. Providers can avoid the cost of training their own interpreters. They can use enforceable business associate agreements to shield themselves from legal and financial liabilities. As a result, they can focus on the care and treatment of patients, confident that they are HIPAA compliant when they use the services of interpreters.

This is just a brief overview of how interpretation services impact HIPAA compliance. For more information on this topic,

call 1-800-752-6096, or email [info@languageline.com](mailto:info@languageline.com), and ask for the white paper entitled "Are You Speaking My Language?: A Guide for Understanding and Complying With the New California Health Care Plan Requirements for Language Interpretation and Translation."





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