

Language Assistance and Public Benefits

Title VI and Food Stamp Act Obligations

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The HHS Guidance

- United States Department of Health and Human Services (HHS), like other federal agencies, published a final guidance to its funding recipients on meeting Title VI requirements. For access to other agencies' guidance, visit www.lep.gov.
- HHS Final Guidance (2003):
 - Sets forth how a HHS grantee, like a state Medicaid agency, determines the extent of its obligations to provide LEP services – a four factor test:
 - The number or proportion of LEP persons are served or are likely to be served by the grantee;
 - The frequency with which LEP persons come in contact with the grantee or programs it administers;
 - The nature of the program, or in other words, the impact it has on peoples' lives;
 - The resources available to the grantee – financial and otherwise.

HHS Guidance (cont.)

- Delineates the five elements of an effective LEP plan:
 1. Identifying LEP customers or participants, by determining languages spoken in the communities served and the frequency and nature of language service needs;
 2. Providing for the process and measures that should be taken in providing language access services;
 3. Training grantee staff on the plan, implementation, and compliance;
 4. Giving notice to LEP persons that language access services are available; and,
 5. Monitoring and updating the LEP plan.
- Best Practice:
 - OH Plan (Includes county template)
 - MN Plan

Common Features Across Programs

- State public benefits agencies must provide meaningful access to LEP individuals based on the HHS Guidance
- These state agencies provide:
 - medical assistance, (Medicaid / SCHIP)
 - economic assistance, (Food Stamps)
 - child and family services, (TANF)
 - and employment services (TANF)
- State programs subject to the HHS LEP Guidance have developed common LEP policies and models of best practices



Common Features of LEP Plans

- 1. Providing, Tracking, and Notice of Language Services for LEP Individuals**
- 2. Translation of documents, Oral Interpreters, and Fair Hearings**
- 3. Staff Training, Title VI Compliance and Coordination**

Assessing / Providing Services

- A method to determine the language needs of LEP individuals, I Speak Cards
- Noting the language need on the case file of the LEP applicant / recipient
- Assessing the language needs of LEP individuals at every interaction (in person, on the phone or by mail)

Tracking Language Needs

- Tracking language needs of LEP applicants / recipients for written and spoken communication with the office
- Using Census language / income data and school data to identify changes in LEP communities and language needs
- Working with community service organizations for LEP communities

Notice of Language Services

- Informing LEP communities about services through non-English media
- Language services posters in waiting rooms, intake areas, and other spaces where they are likely to be seen
- Telephone systems with messages in multiple languages or access to an interpreter

Translation of documents

- Written translations for more common languages
- Language block/ “babel notice” with sight translation for less common languages

Written translations

- HHS guidance safe harbor provision:
 - Vital documents
 - Into languages spoken by 5% or 1,000 households of *eligible population* in service area (not of current recipients)

Written translations

- What are vital documents under HHS guidance?
 - importance of the program, information, encounter, or service involved
 - the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

Written translations

- Some vital documents in all 4 programs:
 - ❑ Applications
 - ❑ Adverse action notices
 - ❑ Letters with date and times of meetings
 - ❑ Brochures explaining program rules and requirements
 - ❑ Notice of penalties
 - ❑ Assignments and repayment agreements
 - ❑ Verification checklists
 - ❑ Appeal forms
 - ❑ Notices of hearings
 - ❑ Notice of free language services
 - ❑ Outreach materials

Written translations

- Logistics of written translation
 - Competency of translators
 - Contracting with translation companies
 - Automating translated notices with language codes

Written translations

- Best practice (WA and MA):
 - Treating notice sent in wrong language (under state or local translation policy) as inadequate notice, requiring restoration of benefits and renoticing

Sight Translation

- For less common languages
 - Sight translation
 - Language blocks
 - “Babel” notices
 - Make sure that number people call is staffed with someone who can actually translate or can access interpreter/
Language line

Oral Interpretation

- Must provide oral interpretation to all LEP persons
- Can not rely on family or friends unless LEP individual insists after being informed of rights
 - Competence/accuracy
 - Confidentiality
 - Bias/ conflict of interest
- Do not use minors

Oral Interpretation

- Agency can choose type of interpreter based on prevalence of particular language and situation
 - Bilingual intake and case workers
 - Staff interpreters/ pooled interpreters
 - Contract interpreters
 - Telephonic interpretation/ phone banks

Oral Interpretation

- **Emergencies and walk-ins**
 - If no one on staff, using telephonic interpreters
- **Phone system**
 - answering machines
 - off-hours
 - voice mail system
- **Phone calls**
 - on-site staff or interpreters
 - Language line or phone bank

Oral Interpretation

- **Competency**
 - Do not need to be certified but helpful
 - Must be assessed for competency
 - Fluency in both languages
 - Mastery of relevant technical terms
 - Understanding of regionalisms
 - For interpreters: Understanding of methods of interpretation (consecutive, simultaneous)
 - For interpreters: Understanding role of interpreter, confidentiality, impartiality
 - Agency should have testing process (WA)

Hearings

- Must provide interpreter
- Guidance strongly encourages certified interpreters because accuracy so important
- Impartiality/ conflict of interest and due process
- Notification of right to interpreter for hearing (Babel notice format)
- Method of requesting interpreter that does not require an interpreter

Training Staff

- **An essential element of providing meaningful access to LEP individuals**
 - All staff should be aware of the LEP plan and how to access it or get more information on it.
 - Employees in contact with the public – front desk staff, receptionists, and case handlers – should have in-depth training on LEP policies and procedures and be able to follow them.
 - All management should know and understand LEP policies and procedures to that they can reinforce its importance and ensure compliance.

Coordination and Compliance

- **Self-monitoring and Agency Coordination of Services**
 - Grantees have a duty to monitor implementation and compliance of LEP plans
 - Some states' public benefits programs have created a Language Access Coordinator (LAC) or LAC office
 - Civil Rights Compliance Office

Coordination and Compliance

- **Wisconsin Model**
 - Monitors vendors and contractors for compliance with LEP plan pursuant to 28 C.F.R. § 42.410.
 - Contractors and recipients of State funds must provide Letters of Compliance
 - Coordinates LEP resources
 - Provides training to vendors, contractor, and staff

- **Best Practice: seek customer or recipient feedback about the quality and appropriateness of services provided**
 - Ex. GA's Interpreter Evaluation Form, available in Spanish

Enforcement

- Federal law requires state federal-funding recipients to publicize Title VI requirements and complaint procedures. 28 C.F.R. § 42.405.
- Benefits recipients and non-attorney advocates may also file complaints
- A federally funded state agency may receive complaints but the federal compliance office, the HHS Office of Civil Rights (OCR), must review all parts of the state investigation of the complaint, from procedure to disposition.
- HHS provides a Fact Sheet on how to file a discrimination complaint, as well as a Discrimination Complaint Form, available in Spanish and English

HHS Office of Civil Rights Intervention

- Investigates complaints
- Provides technical assistance / consultation
- Reviews state compliance offices
- Makes findings of discrimination
- Can enter into resolution agreements, also called “remedial plans”, with offending entities
- Follow-up on compliance with resolution agreements

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