



Department of Health & Human Services
Office for Civil Rights

Briefing for Pennsylvania Department of Public Welfare
Bureau of Equal Opportunity
Revised Policy Guidance on Providing Services to Persons Who Are Limited English Proficient
October 30, 2003

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What Does the Revised Guidance Do?

- *Confirms commitment to Title VI Language Access*
- *Consistency and Uniformity*
- *Clarity in Application to HHS Context*

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In Pennsylvania



Almost 1.1 million Pennsylvanians speak a language other than English
 393,000 indicated they either do not speak English very well or not at all
 Latino Population has increased 70% in the last 10 years
 Asian Population has increased 65%

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Title VI of the Civil Rights Act

No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

- Section 601 of Title VI of the Civil Rights Act of 1964
 42 U.S.C. Section 2000d et. seq.

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HHS Title VI Regulation

Recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin...

- 45 C.F.R. Section 80.3 (b)(2) The HHS regulation implementing Title VI (Sec. 601 & 602).

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The Supreme Court Decision

Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination.

- Lau v Nichols, 1974

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Revised HHS LEP Policy Guidance

Copies are available on OCR's website
www.hhs.gov/ocr

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Who Is Covered?



All recipients of HHS Federal financial assistance, either directly or indirectly, through a grant, contract or subcontract.

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Common Types Of Federal Financial Assistance



- Loans
- Grants
- Grants or loans of federal property
- Use of equipment & donations of surplus property

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In Addition to DPW Programs

- Public and private contractors, subcontractors and vendors
- Physicians and other providers who receive Federal financial assistance from HHS

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Who Is A Limited English Proficient (LEP) Person?

An LEP individual is a person who does not speak English as their primary language and who has a limited ability to read, write, speak or understand English.



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What Must Recipients Do?

- Under Title VI and its implementing regulations, recipients must take reasonable steps to ensure meaningful access to their programs, activities and services for LEP persons.

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Using the Four-Factor Analysis to Determine the Recipient's Obligation

1. *Number or Proportion of LEP Persons Eligible to be Served or Likely to be Affected by the Program or Service*
2. *Frequency of Contact*
3. *Nature and Importance of the Program, Activity, or Service*
4. *Costs and Resources Available*

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Factor 1: Number or Proportion of LEP Persons ...

- How many LEP persons are eligible to be served, or likely to be affected, by a recipient program or activity?
 - Potential sources of data may include:
 - encounter data
 - Data from Census, school systems, state and local government
 - community organizations

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Factor 1: Number or Proportion of LEP Persons ...

Also consider:

- Does the program serve minors whose parents/guardians are LEP?
- Are there populations who may be underserved because of language barriers?

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Factor 2: Frequency With Which LEP Individuals Come in Contact With Program, Activity or Service

- How often is a particular language encountered?

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Factor 3: Nature and Importance of the Program, Activity, or Service

- How important is the recipient's activity, information, service, or program?
- What are the possible consequences if effective communication is not achieved?
- Could denial or delay of access to services or information have serious life-threatening implications?

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Factor 4: Costs and Resources Available to the Recipient

- What are the reasonable costs of providing language assistance services?
- What resources are available?

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Applying the Four Factors

- Will be based on what is both necessary and reasonable in light of the four-factor analysis

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Applying the 4- Factors: Examples

- Significant number: Philadelphia: may need immediately available oral interpreters (Bi lingual staff).
- Moderate population: Erie, PA may want to have interpreters under contract or use a telephone service
- A rural county: Clinton: with few LEP customers: may want to use a telephone service

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Applying the 4- Factors: Examples

- A Medicaid Managed care dental practice which encounters one LEP Hmong patient per month on a walk-in basis may want to use a telephone interpreter service.
- If the individual is coming only for dental cleaning, it might be appropriate to refer to another practice.

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Two Types of Language Assistance

- Oral Interpretation: either in person or via telephone interpretation service
- Written translation: can range from translation of entire document to translation of a short description of a document

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Selecting Language Assistance Services

There are two major considerations to be addressed in selecting services:

- Competency
- Timeliness

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Interpreter Competency

- The recipient should take reasonable steps to assess that the interpreter is able to:
- Demonstrate proficiency in both English and in the other language
 - Demonstrate knowledge of specialized terms or concepts appropriate to the need
 - Demonstrate an understanding of the need for confidentiality and impartiality
 - Understand the role of interpreter without deviating to other roles

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Timeliness

- **When language assistance is needed and is reasonable, it should be provided in a timely manner—e.g., at a time and place that avoids the effective denial or delay of the service, benefit, or right at issue.**

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Selecting Language Assistance Services

Options for Oral Language Services:

- Bilingual Staff
- Staff Interpreters
- Contractors
- Telephone Lines & Video Teleconferencing
- Community Volunteers

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Family Members or Friends as Interpreters

- **Meaningful access**
- **Respect for LEP persons choices**

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Use of Family Members or Friends

- When Title VI requires that language services be provided, recipients should:
 - Inform the LEP Person that interpreter can be provided at no cost
 - Not require LEP persons to provide own interpreter
 - Not plan to rely on family members or friends as interpreters
 - Evaluate whether, because of special concerns, interpreter should be provided in any case

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Use of Family Members or Friends: Special Concerns

Providers should respect LEP Persons' desire to use an interpreter of their own choosing instead of free language assistance expressly offered by the recipient, subject to:

- Issues of competence, appropriateness, conflicts of interests, and confidentiality
- Heightened caution when a LEP person asks a minor child to serve as an interpreter

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Written Translations

Vital written materials should be translated.

- **Whether a document is "vital" depends upon the importance of the program, information, encounter, or service involved and consequences to the LEP person if the information is not provided accurately or in a timely manner.**

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Vital Written Materials Could Include, for instance...

- Consent and complaint forms
- Intake forms with the potential for important consequences
- Written notices of eligibility criteria, right, denial, loss or decrease in benefits or services, actions affecting parental custody or child support
- Notice advising LEP persons of free language assistance
- Written competency tests for license, job or skills where English is not required
- Applications to participate in a program or activity or to receive benefits or services

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Non-vital Documents Could Include, for instance...

- Hospital menus
- Third party documents, forms or pamphlets by a recipient as a public service
- For a non-governmental recipient, government documents and forms
- Large Document such as enrollment handbooks (though vital information contained in large documents may need to be translated)
- General Information about the program intended for informational purposes only

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Written Translations: Into What Languages Should Documents be Translated?

- Distinction should be made between languages that are frequently-encountered and less commonly-encountered languages

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Translation Options That May Be Considered

- Use certified translators
- Use of independent translator to "check" the translation for extremely critical documents
- Use independent translator to translate "back" into English
- Understand the expected reading level of the audience's vocabulary and phraseology
- Use community organizations to consider whether a document is written at a good level

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The Technical Assistance Piece

A suggested approach

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Designing Effective Language Assistance Plans - Five Steps

1. Identifying LEP individuals
2. Identifying methods of language assistance
3. Training staff
4. Providing notice of language services
5. Monitoring and updating LEP Plan

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Step 1

Identifying LEP Individuals

- **Ways to identify LEP persons:**
 - Language identification cards
 - Encounter data
 - Posted notices

Resource:

- “I speak card,” Department of Commerce, Bureau of the Census:
<http://www.usdoj.gov/crt/cor/Pubs/ISpeakCards.pdf>

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Step 2

Language Assistance Measures

May include information on:

- Types of language assistance available
- How staff can obtain those services
- How to respond to LEP callers
- How to respond to written communication from LEP persons
- How to respond to LEP individuals who have in-person contact
- How to ensure competency of language assistance


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Step 3

Training Staff

May include training to ensure that staff:

- Know about LEP policies and procedures
- Can work effectively with in-person and telephone interpreters



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Step 4

Providing Notice to LEP Persons

Examples include:

- Post signs in intake areas
 - <http://www.ssa.gov/multilanguage/langlist1.html>
- Announce language services in outreach materials
- Use a telephone voicemail menu
- Provide notices on non-English radio and T.V. stations
- Work with community-based organizations & stakeholders

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Step 5

Monitoring and Updating the LEP Plan

Consider assessing changes in:

- Frequency of encounters with LEP language groups
- Current eligible LEP populations
- Availability of resources
- Whether existing assistance is meeting the needs of LEP persons

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