



Meeting the Needs of Patients with Limited English Proficiency Guidelines for Federally Funded Healthcare Providers

Who is a Limited English Proficient person?

Limited English Proficient (or “LEP”) persons are individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. These individuals may be eligible to receive language assistance from health centers and other agencies that receive financial assistance from the US Department of Health and Human Services (HHS).

What does the law require?

Recipients of Federal financial assistance must insure that persons who face challenges communicating in English receive meaningful access to their services. Community and migrant health centers that serve a population with a substantial proportion of LEP persons must develop a plan and, to the extent practicable, make arrangements for providing services to such populations in their language and in an appropriate cultural context.¹

Title VI of the Civil Rights Act of 1964 provides that no person 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.”² Following the passage of the Civil Rights Act, HHS issued regulations³ that

- Forbid recipients of federal financial assistance from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin
- Require recipients to take reasonable steps to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient (“LEP persons”)

¹ 42 C.F.R. §§ 51c.303(f), 56.303(f).

² 42 USC 2000(d)

³ 45 CFR 80.3(b)(2)

The Supreme Court interpreted the HHS regulations to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination.⁴ Executive Order 13166 required federal agencies develop and implement regulations to ensure LEP persons have meaningful access to the services provided by the agency.⁵

Who is covered?

These regulations apply to both federal agencies and recipients of federal financial assistance, such as state, county, and local health agencies, and community and migrant health centers. Federal financial assistance includes grants, use of equipment, donations of surplus property, and other assistance. The requirements apply to all parts of a recipient's operations, even if only one part of the recipient receives the federal assistance. In addition, sub-grantees of federal assistance are also covered by these laws.

HHS guidance on how to comply Title VI obligations

In addition to regulations, HHS has provided additional guidance on how federally-funded entities may best comply with their obligations under Title VI.⁶ These guidelines are intended to ensure access by LEP persons to critical services while not imposing undue burdens. According to the guidance, recipients of federal funding should assess the language services they need to offer by balancing four factors:

- (1) Demography
- (2) Frequency of contact
- (3) Importance
- (4) Resources

Demography

Recipients should assess the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of LEP persons served or encountered, the more likely language services are needed. Data on the populations a Health Center serves may be found at www.lep.gov.

It may be helpful to work with community-based organizations that are familiar with the language needs of populations in the service area.

Frequency of Contact

Recipients should assess the frequency with which LEP persons are encountered, and their respective language groups. The more frequent the contact with a

⁴ *Lau v. Nichols*, 414 U.S. 563, 568 (1974).

⁵ Exec. Order No. 13166, 65 FR 50121 (2000).

⁶ 68 Fed. Reg. 47311

particular language group, the more likely that enhanced language services are needed. A less intensified solution may be appropriate for serving individuals from language groups with minimal encounters. However, consider the fact that appropriate outreach to particular LEP language groups could increase the frequency of contact with those groups.

Importance

Recipients should assess the nature and importance of programs, activities or services to people's lives. The more important the program, activity, or service, the more likely language services are needed.

Examples of important activities include

- programs or activities that have serious consequences, either positive or negative, for a person who participates (including health, safety, economic, environmental, educational)
- those where delays in the provision of services or participation in programs and activities will have a great impact (including economic, educational, health, safety)

Resources

Recipients should identify the resources (both monetary and personnel) available to ensure the provision of language assistance to LEP persons. The level of resources available may impact the language assistance provided, and healthcare providers may consider the benefits that result from the costs: "reasonable costs" may become "unreasonable" where the costs substantially exceed the benefits. Costs can often be reduced by technological advances or the sharing of language assistance materials and services among other organizations.

Each health center must make an individual determination of what services to provide to LEP patients based on those four factors.

Providing Language Services

Healthcare providers have two main ways to provide language services

- (1) oral interpretation either in person or via telephone interpretation service
- (2) written translation

Competency to provide spoken interpretation or written translation does not necessarily require formal certification, but not all bilingual individuals have the skills needed to interpret or translate information into and out of English. The skill of written translation is different from that of oral interpretation: someone qualified as an interpreter may not be qualified as a translator, and vice versa.

Oral Interpreters

Options for providing oral interpretation include: hiring bilingual staff, hiring staff interpreters, contracting for interpreters, using telephone interpreter lines, and using community volunteers.

Oral Interpreters should

- Be proficient in and able to communicate information accurately in both English and in the other language
- Have knowledge in both languages of any specialized terms or concepts peculiar to the program or activity and of any particularized vocabulary and phraseology used by the LEP person
- Understand and follow confidentiality and impartiality rules
- Understand and adhere to their role as interpreters without deviating into other roles, such as counselor or legal advisor

Oral interpretation must be timely. That is, it should be provided at a time and place that does not cause a denial, delay or the imposition of an undue burden in the receipt of important services to the LEP person.

Written Translators

Some languages may not have a direct translation of some medical terms -- a translator should be able to provide an appropriate translation. Work with translators to create a glossary of such terms to ensure consistency.

When quality and accuracy of written translation is vital, such as with legal and other information with important consequences, ensure that the highest-quality work is performed.

Translators should

- Be competent, skills should be certified or verified by independent parties
- Should understand the expected reading level of the audience

LEP Resources

In determining what services your health center must provide and how best to provide them, the following resources may be useful:

LEP RESOURCES - <http://www.lep.gov/resources/resources.html>

This site provides information about LEP compliance, including a page with links to resources that can help in developing, updating, or assessing your health center's plan for LEP services. On the resources page, scroll down to the section titled "Health Care."

LANGUAGE ASSISTANCE SELF-ASSESSMENT AND PLANNING TOOL -

<http://www.lep.gov/selfassesstool.htm>

This self-assessment contains a series of questions that can be used to plan what services your health center should provide.

VIRGINIA DEPARTMENT OF HEALTH'S WEBSITE ON PROVIDING CULTURALLY AND LINGUISTICALLY APPROPRIATE HEALTH CARE -

<http://www.vdh.virginia.gov/ohpp/CLASact/default.aspx>

From the left navigation bar on the home page, go to Language Resources | Linguistically Appropriate Health Care for some useful tools to use in developing your LEP plan. Be sure to look at A Patient-Centered Guide to Implementing Language Access Services in Healthcare Organizations, which provides profiles of LEP patients' experiences with their health care providers and profiles of health care facilities who use a variety of methods to meet the language needs of their patients.

LEP INFORMATION FROM HHS -

<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/index.html>

The HHS site provides more information about LEP requirements and links to additional resources.