

Title VI of the Civil Rights Act of 1964

Limited English Proficiency (LEP)

What is Title VI

- Title VI is part of the Civil Rights Act of 1964, as amended, and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color or national origin under any program or activity that receives Federal financial assistance (for example funds from the U.S. Department of Health and Human Services, hereinafter, HHS)
- For our purposes, “national origin” equates to individuals who have a limited proficiency with the English language and their primary language is not English, hence the term “limited English proficiency” or LEP.

Other relevant laws...

- Executive Order 13166 was issued in 2000. The Executive Order entitled “Improving Access to Services for Persons with Limited English Proficiency (LEP)” says that people who are LEP should have meaningful access to federally conducted and federally funded programs and activities.
- The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those who are LEP, and develop and implement a system to provide those services so LEP persons can have meaningful access to them
- The Patient Protection and Affordable Care Act, Section 1557.
Nondiscrimination

To whom does Title VI apply?

- It applies to any organization, specifically to the North Carolina Department of Health and Human Services (DHHS) all county social services, health departments, and area mental health agencies or private faculties that receive Federal financial assistance, either directly or indirectly through a grant, contract or subcontract; is covered by Title VI.

Recipients of HHS assistance may include, for example:

- Hospital, nursing homes, home health agencies, and managed care organizations.
- Universities and other entities with health or social services research programs.
- State, county, and local health agencies
- State Medicaid agencies
- State, county and local welfare agencies.
- Head Start programs
- Public and private contractors, subcontractors and vendors.
- Physicians and other providers who receive Federal financial assistance from HHS either directly or indirectly, through a grant, contract or subcontract are covered. Especially clinics.
- Recipients of Medicare except those providers that receive only Medicare Part B payments.
- Coverage extends to a recipients entire program or activity to all parts of a recipient's operation.
- Common types of Federal financial assistance can be defined as, grants, contracts, and loans of federal property, use of equipment and donation of surplus property, training and any other agreement to provide assistance.

Compliance with language access requirement

- The key to ensuring meaningful access for LEP persons is effective ***communication***. An agency or provider can ensure effective communication by developing and implementing a comprehensive written language assistance program (hereinafter “translation”) that includes policies and procedures for identifying and assessing the language needs of its LEP applicants/clients and that provides for a range of oral language assistance (hereinafter “interpretation”), periodic training of staff, monitoring of the program and in certain circumstances, the translation of written materials.

Options for providing interpretation:

- Hiring bilingual staff with expertise in the specific area for patients and clients is the most desired option.
- Using other bilingual staff from within the agency or provider.
- Contracting with a live language interpreter service.
- Contracting with a telephone interpreter language line.
- Use family members or friends as interpreters. Never use children except in extreme emergency situations!
- Engaging community volunteers who are competent is an option but the least favored one.
- The patient or client may voluntarily provide their own interpreter but must be informed that an interpreter is available to them “free of charge” by the agency or provider. An agency or provider is not responsible for the cost of a client or patient provided interpreter but will still be responsible for the competency of the interpreter.

Translation of written documents

- The necessity to translate written documentation will vary depending on several factors including the size of the population(s) being served and the size of the agency or provider.
- All required state-generated documents are translated by DHHS or the respective state agency, if applicable.
- Even when the population does dictate translation of written documents, the provider must still provide oral interpretation of the written documents) to those who are not literate in their primary language.

Where does the money come from to satisfy the obligation?

- Private provider budgets.
- Local agency budgets for interpreters and written documents that are not state generated.
- Title VI has been referred to on several occasions as an “*unfunded mandate*”. This is incorrect. It is a civil right and therefore needs no funding.
- This is an obligation placed upon an agency or provider in exchange for Federal funding.

How do you determine the extent of your Title VI obligations (Four Factor Analysis)

- The number or proportion of LEP individuals served or encountered in the eligible service population.
- The frequency with which LEP individuals come in contact with your program, activity or service.
- The nature and importance of the program, activity, or service.
- Available resources and cost.

Factor One

- The number or proportion of LEP individuals served or encountered in the eligible service population.

Potential sources of data may include:

- encounter data
- Data from Census, school systems, community agencies and data from client files.

Factor One continued...

Also consider:

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

Factor Two

- The frequency with which LEP individuals come in contact with your program, activity or service.
 - How often is a particular language encountered?

Factor Three

- ***The 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?

Factor Four

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

Applying the Four Factors

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

Assistance

- Title VI enforcement is through the Office of the Secretary. Currently under development is a standard monitoring and reporting system for state-wide use. This applies only to the “State supervised, county administered” structure (i.e., local county health and social services departments)
- A standard complaint form for Spanish/English has been developed for “State supervised, county administered” agencies.
- A ***model local plan*** has been developed to assist the local agencies in developing a plan in full compliance with Title VI.
- A Title VI section is on the Division of Social Services web page. In the near future, a Civil Rights web page will have a link from the Departments main web page.

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- All the Divisions are in the process of translating written documents (vital documents, critical forms, etc.) at present only into Spanish, which is the largest LEP population.
- Language preference has been added to the reporting system for all DHHS generated documents. A total of 25 language preferences have been listed in the race, ethnicity and language R/E/L project administered by the DHHS Division of Information Resource Management (DIRM).
- A “certification” process for interpreters is currently being considered.
- The department has contracted with Telelanguage, Inc. of Portland, Ore. to provide a department-wide language line at a low rate that is also available to the local agencies at the same low rate of \$.95/per minute. This is the current rate and a new RFP will be advertised in the Fall of 2013.

More...

- Also the department is also considering a sole source contract for translation of all vital documents for the department's divisions/institutions/schools.
- Assistance in the training of management teams in Title VI requirements.
- Assistance in developing partnerships with local advocates and legal services organizations.
- Assistance in developing standard contract language for independent contractors.

Discrimination?

- Differences in services from the “general or traditional” population. Difficult gage because of regions past racial discrimination.
- Differences in program benefits from the general or traditional population.
- Differences in treatment in obtaining services than the general or traditional population.
- Intentional lack of information/communication
- Barriers or delays in participation which differ from the general or traditional population.
- Lack of accommodations.

Is it necessary to have interpreters present at times?

When interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay of important rights, benefits, or services to the LEP person.

What happens when LEP individuals insist upon using their own interpreter and refuses the services of the “free of charge” interpreter?

- Explain to the LEP individual (through your interpreter) that they have a right to a “free of charge” interpreter provided by the agency or provider.
- Explain the complications of interpreting and if they refuse, they have a right to use their own (minus children). Be sure to document this action for liability and compliance purposes.
- Explain confidentiality rights (ex. HIPAA) and consequences of using an outside interpreter to the client.
- It is advisable to have your interpreter remain to monitor the client’s interpreter for mistakes and incorrect translations.
- The agency or provider still has the obligation and liability for correct translation.
- Discontinue if translations are incorrect which may result in agency or provider liability.

What is a vital document?

- Whether or not a document (or the information it contains or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.
- Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.
- Thus, vital documents could include, for instance, consent and complaint forms, intake forms with potential for important health consequences, written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings, notices advising LEP persons of free language assistance, written tests that do not assess English language competency, but test competency for a particular license, job or skill for which knowing English is not required, or applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Is there a “real” penalty for non-compliance with Title VI?

- Loss of federal funds
- Loss of future federal and state funding
- Subject to legal actions from the NCDHHS, legal services organizations and private individuals.
- Possible “Informed Consent” issues which could lead to medical malpractice charges for both the public and private sector.
- The U.S. Dept. of Justice and/or the HHS Office for Civil Rights have the authority to investigate claims of discrimination.

What is the benefit of compliance with Title VI

- In the private sector there can frequent to infrequent contact with an LEP person. That may range from a hospital stay of several days to one hour or less visit to a clinic for immunization. Some of the services are provided by local government agencies but services rendered in a hospital setting are provided by private sector providers who receive payment from Medicare or Medicaid, making that provider a recipient of federal funds. Hence, subject to Title VI.
- Language services increase access to healthcare for those who are LEP.

Continued benefits...

- Decreases in number of and severity of misdiagnoses or other medical errors which are extremely costly.
- Increased patient satisfaction.
- When an interpreter is present it may decrease the need to admit to an emergency room by proper diagnosis of the patient's condition.
- May decrease the length of stay in an emergency room.
- Increased awareness of preventive measures that decrease or eliminate a return to the hospital and especially the emergency room within 30 days of the initial visit.
- Informed consent and other legal documents such as healthcare powers of attorney and fiduciary power of attorney that eliminate conflict in the treatment of an LEP individual.

“State supervised and County administered” What does this really mean?

- DHHS has not provided a specific definition of the term nor is it defined in the general statutes of North Carolina.
- Essentially, it means that the state, in the instant case, NC DHHS provides funding, whether from the state budget or federal dollars (i.e. Medicaid) to the counties and in most cases it provides policy and guidance for the programs for which the money is provided.
- The counties have the obligation to follow state policy and in the absence of state policy the obligation to develop their own policy consistent with federal laws.
- The state has an obligation to monitor the counties to assure compliance with all laws, federal and/or state.
- The federal government has the same obligation to monitor the state for compliance with federal laws and in the instant case, discrimination laws.
- In terms of Federal financial assistance issued through DHHS, the term “State supervised, County administered is irrelevant in terms of compliance and enforcement. It is a term of fiction. It neither releases the state or county government agency from liability in discrimination cases.

OCR promotes and ensures compliance with the civil rights laws

“The Office for Civil Rights (OCR) is responsible for enforcing civil rights laws that apply to recipients of Federal financial assistance from the U.S. Department of Health and Human Services. These laws prohibit discrimination on the basis of race, color, national origin, disability, age, or sex. OCR also enforces Title II of the Americans with Disabilities Act as it applies to state and local government health and social services agencies.” [from the OCR website]

Methods of compliance

- Investigate complaints filed by individuals alleging that they have or someone else has been discriminated against on a prohibited basis.
- Conduct compliance reviews of covered entities that OCR believes may not be in compliance with the law.
- Provide technical assistance to covered entities to help them understand how they can voluntarily comply with the law.
- Conduct outreach nationwide to help individuals and covered entities understand rights and obligations under the laws that OCR enforces

Resolution of matters

- A complaint violation may result in loss of federal financial assistance. It may come in the form of a penalty or loss of total funding.
- A periodic compliance review which is conducted from time to time and not as a result of a complaint may result in a violation or a voluntary compliance agreement (VCA).
- A compliance review may identify concerns that were not raised in the original complaint. For instance an ADA issue instead of a Title VI.
- Investigations occur whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with the law.
- OCR will make an attempt to resolve by informal means and if not, by formal means (VCA, violation, etc.).

Complaints filed within the local county agencies

- Within each county language access policy there should be a section entitled “Applicant/Recipient Complaints of Discriminatory Treatment” on one similar.
- The applicant/recipient has 180 days to file their complaint at the local, state and federal level.
- The referenced section defines the complaint process and states that the county agency will notify the department of all complaints filed [date of filing, actions taken and resolution]. This information should be provided within 30 days of resolution.
- An investigation will be conducted by the county agency upon receipt of a complaint, not to exceed 30 day, absent a 15-day extension for extenuating circumstances.
- If the investigation indicates a failure to comply with the Act (Title VI), the agency will inform the applicant/recipient that the resolution will be resolved by informal means whenever possible within 60 days upon receipt of the original complaint.
- If the matter cannot be resolved by informal means, then the applicant/recipient will be informed of their right to appeal to the compliance attorney within the DHHS Office of the Secretary.

Complaints filed within the private sector

- NC DHHS has jurisdiction over agencies and providers that receive Federal financial assistance and filed by the recipients of that assistance. For example the LEP individual could be a recipient of Medicaid and seeking a service paid for my Medicaid.
- An individual alleging Title VI discrimination but not a recipient of Medicaid must file with the U.S. Justice Department or HHS but not the NC DHHS.
- Note that all programs or services of the agency or provider are subject to Title VI but if there is a violation, only the program/service receiving the Federal assistance is subject to losing funds and not all programs.

Example of a notice letter to a provider

Re: Title VI of the Civil Rights Act of 1964

Dear Sir/Ms./Mrs.

Title VI of the Civil Rights Act of 1964 is a Federal law that protects persons from unlawful discrimination based on race, color, or national origin in programs and activities that receive Federal financial assistance. Recipients of Federal financial assistance are covered by Title VI and its implementing regulations. This means such recipients may not utilize criteria or methods of administration that have the effect of delaying or denying services to persons on the basis of their race, color, or national origin.

Medicaid and CHIP are considered Federal financial assistance. Medicare Part A is also considered Federal financial assistance. However, the receipt of Medicare Part B is not considered Federal financial assistance. Medicare Part C and Part D are considered Federal financial assistance.

Under Title VI and its implementing regulations, recipients of Federal financial assistance must take reasonable steps to ensure meaningful access to their programs, services and activities by eligible limited English proficient (LEP) persons. In order to comply with these Federal requirements, Medicaid and CHIP providers, Medicare Part A providers, and organizations offering Medicare Part C and Part D Medicare Advantage Plans and Prescription Drug Plans may need to provide language assistance services, such as interpreters and translated documents. Also, for markets with a significant non-English speaking population, Medicare regulations for the Medicare Advantage Program and Voluntary Medicare Prescription Drug Benefit program require recipients to provide materials in the language of these individuals.

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This notice pertains to persons with Limited English Proficiency (LEP). This means persons who are unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language. A person with Limited English Proficiency may have difficulty speaking or reading English. An LEP person will benefit from an interpreter who will translate to and from the person's primary language. An LEP person may also need documents written in English translated into his or her primary language so that person can understand important documents related to health and human services.

If you have a patient who is a recipient of Medicaid, CHIP, Medicare Parts A, C and D who is LEP, you are obligated to provide effective communication, free of charge to the patient when providing services. Methods of effective communication may include an interpreter, competent staff who speaks the primary language of the recipient or a language line. The patient may bring their own interpreter but you must offer interpretation services "free of charge" and not require the LEP patient to bring an interpreter. Children are not acceptable interpreters and should never be used except in the case of certain emergencies.

Failure to provide effective communication services may result in a charge of discrimination which may lead to a loss of Federal financial assistance.

If you have questions concerning Title VI please feel free to contact:

OCR Regional Offices contact information

- **Region IV - Atlanta (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)**
Vacant, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Sam Nunn Atlanta Federal Center, Suite 16T70
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NCDHHS Title VI contact information

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* E-mail response within 24 hours, telephone response average between 2-3 days