

Local Government Law

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HEALTH AND SOCIAL SERVICES AGENCIES' LEGAL DUTIES TO CLIENTS WITH LIMITED ENGLISH PROFICIENCY: NEW FEDERAL GUIDANCE

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North Carolina is in the midst of a dramatic demographic change. In the past ten years, both the size and the diversity of the state's population increased markedly. Growing percentages of the state's newcomers are originally from countries other than the United States, including substantial numbers of people from Latin American countries and Southeast Asia.¹ One result of this demographic change is that North Carolina's local health and social services agencies are facing a new and increasing challenge: assessing and meeting the needs of large numbers of residents who qualify for the agencies' services but who may have trouble accessing those services because they do not speak English proficiently.²

Communicating with limited-English-proficient (LEP) clients requires health and social services agencies to grapple with a host of complex issues: maintaining confidentiality and good agency-client relationships while working through interpreters, navigating differing cultural expectations, assuring that language barriers do not compromise the availability or quality of services—and doing all this with limited financial and staff resources. Yet the agencies must tackle these issues and find workable solutions in order to fulfill their core

1. James H. Johnson, Karen D. Johnson-Webb, and Walter C. Farrell, Jr., *A Profile of Hispanic Newcomers to North Carolina*, Popular Government 65 (Fall 1999), at 2. Between 1990 and 1997, the state's Hispanic population increased by 94.7 percent, while the Asian/Pacific Islander population increased by 76.4 percent. *Id.* at 4, Table 1.

2. It is not known precisely how many limited-English-proficient persons currently reside in North Carolina; however, it has been estimated that there are between 250,000 and 300,000 Spanish speakers alone. Jane Perkins, *Overcoming Language Barriers to Health Care*, Popular Government 65 (Fall 1999), at 38, 38–39.

missions of protecting the public's health and general welfare and to ensure that they are in compliance with federal civil rights laws.

Title VI of the federal Civil Rights Act of 1964³ prohibits health and social services agencies that receive federal financial assistance from discriminating against any individual on the basis of race, color, or national origin. Policies and procedures that treat LEP persons and English speakers differently may have an adverse and disparate impact on certain national origin groups. Accordingly, Title VI and its implementing regulations have been interpreted to require agencies and organizations that receive federal financial assistance to offer free language assistance to LEP persons who seek their services or benefits.

The laws and regulations that require federally assisted health and social services agencies in North Carolina to provide free language assistance to LEP persons have been on the books for more than thirty years. However, it was not until the demographic changes described above that local government agencies in North Carolina began to see large numbers of LEP persons. Many local government officials and agency staff members may be entirely unaware that they have a legal duty to assist LEP persons, and even those who are aware of the duty may not know how to go about fulfilling it.

To assist agencies in this matter, the federal Department of Health and Human Services (HHS) issued a policy guidance document on August 30, 2000.⁴ The document, *Policy Guidance: Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency*, describes the policies and procedures health and social services agencies that receive financial assistance from HHS should have in place in order to ensure that LEP persons have meaningful access to their services.

This bulletin begins with a brief review of the legal basis for the requirement that health and social services agencies provide language assistance to LEP persons. It then summarizes the HHS policy guidance document (the HHS Guidance) and describes how HHS's Office for Civil Rights (OCR) will enforce compliance with the language assistance requirements. It concludes with two appendixes offering practical assistance: OCR's model plan for compliance with the

3. Civil Rights Act of 1964, Title VI, Section 601 (42 U.S.C. § 2001d).

4. Policy Guidance: Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency, 65 Fed. Reg. 52,762 (August 30, 2000) (hereinafter *HHS Guidance*).

language assistance requirements, and a list of resources for local agency personnel involved in developing and implementing language assistance policies.⁵

Background and Legal Basis for the HHS Guidance

Federal Civil Rights Law

Section 601 of Title VI of the Civil Rights Act of 1964 states:

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.⁶

5. This bulletin does not address a collateral matter that some local government officials or agency staff may view as a threshold issue: which individuals within a LEP population may or must be served by the agency. Agency staff and officials may wonder whether LEP persons of a non-U.S. national origin are legally eligible to receive publicly funded benefits and services and may question whether language assistance is necessary for persons who are not U.S. citizens or who are undocumented immigrants. Federal law sets the parameters for noncitizens' eligibility for publicly funded benefits and services. Some benefits and services—including most public health department services and several significant social services programs—are available without regard to citizenship or immigration status, even to undocumented immigrants. Other benefits and services—including Temporary Assistance to Needy Families, Medicaid, and other financial assistance programs administered by social services agencies—are unavailable to many noncitizens, including significant numbers of non-citizens with legal immigration status. For a full discussion of these issues, see Jill D. Moore, *Immigrants' Access to Public Benefits: Who Remains Eligible for What?*, Popular Government, Vol. 65 (Fall 1999), at 22.

Even programs that are required to deny benefits to certain categories of immigrants must be prepared to communicate with LEP persons in accordance with the OCR guidance. At a minimum, the agency will have to determine what kind of assistance the LEP person is seeking and whether the person meets eligibility criteria for the assistance. If the person is eligible for benefits or services, language assistance will be required to ensure they are provided appropriately.

6. 42 U.S.C. § 2001d.

While this law by its terms prohibits only intentional discrimination, the regulations for implementing Title VI make clear that practices or policies that have a disparate impact based on race, color, or national origin are also prohibited. The regulations forbid entities that receive federal financial assistance from (1) using race, color, or national origin as a basis for denying services, financial aid, or other program benefits; (2) using race, color, or national origin as a basis for providing services, financial aid, or other program benefits to some differently than to others; and (3) using “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.⁷

Neither Title VI nor its implementing regulations expressly address language assistance. However, the U.S. Supreme Court has held that failure to provide language assistance to LEP persons violated the Title VI regulations when the failure had a disparate impact on a particular national origin group. In *Lau v. Nichols*,⁸ the Court held that a public school system’s failure to provide English language instruction to Chinese students who did not speak English discriminated on the basis of national origin, in violation of Title VI. The Court noted that the Chinese-speaking students received fewer of the school system’s benefits than English-speaking students, “which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the [Title VI] regulations.”⁹ More recently, the Eleventh Circuit Court of Appeals held that giving driver’s license tests only in English violates Title VI’s prohibition against national origin discrimination.¹⁰

7. 45 C.F.R. § 80.3(b).

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

9. *Id.* at 568. The Court noted that Section 602 of Title VI authorized the federal agency (then the Department of Health, Education and Welfare) to issue rules, regulations, and orders, and it based its holding in large part on the agency’s clarifying guidelines, which addressed the duty to provide language assistance to LEP students. *See id.* at 567–68.

10. *Sandoval v. Hagan*, 197 F.3d 484 (11th Cir. 1999), *rehearing denied*, 211 F.3d 133 (11th Cir. 2000), *cert. granted*, 121 S. Ct. 28, 147 L. Ed. 2d 1051 (September 26, 2000) (No. 99-1908). Certiorari was granted on the single issue of whether Title VI and its implementing regulations contain an implied private cause of action.

The Supreme Court and a number of lower federal courts also have acknowledged on many occasions that there is a link between primary language and national origin, and there is a considerable amount of dicta in the case law that suggests that discrimination on the basis of primary language may violate the Constitution’s Equal Protection Clause, as well as Title VI.¹¹

Over the past three decades, OCR has conducted thousands of investigations into allegations of non-compliance with Title VI that were based on a health or social service provider’s failure to accommodate LEP persons’ language needs. Many of these investigations have culminated in voluntary compliance agreements setting forth a specific plan for bringing the provider into compliance.¹² Over time, OCR formulated review criteria and compliance expectations from the types of issues uncovered by the investigations and the specific components of the compliance agreements. Those expectations and criteria were reflected in an internal guidance document OCR issued to its staff in January 1998.¹³ The HHS guidance document discussed in this bulletin is directed to recipients of HHS financial assistance and reflects and refines the principles set forth in the 1998 OCR internal guidance document.

11. *See, e.g., Hernandez v. New York*, 500 U.S. 352, 371–72, 111 S. Ct. 1859, 114 L. Ed. 2d 395 (1991) (plurality opinion) (“It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.”); *Sandoval*, 197 F.3d at 510 (stating that the Supreme Court, Congress, and federal agencies “have repeatedly instructed state entities for decades that a nexus exists between language and national origin”); *Yniguez v. Arizonans for Official Language*, 69 F.3d 920, 948 (9th Cir. 1995) (“Since language is a close and meaningful proxy for national origin, restrictions on the use of languages may mask discrimination against specific national origin groups.”), *vacated on other grounds*, 520 U.S. 43, 117 S. Ct. 1055, 137 L. Ed. 2d 170 (1997); *Odima v. Westin Tucson Hotel Co.*, 991 F.2d 595, 601 (9th Cir. 1993) (“accent and national origin are obviously inextricably intertwined”); *Garcia v. Gloor*, 618 F.2d 264, 270 (5th Cir. 1980) (“To a person who speaks only one tongue or to a person who has difficulty using another language than the one spoken in his home, language might well be an immutable characteristic like skin color, sex, or place of birth.”).

12. *HHS Guidance*, 65 Fed. Reg. at 52,764.

13. Office for Civil Rights, Title VI Prohibition Against National Origin Discrimination—Persons With Limited English Proficiency (Jan. 1998) (on file with author).

President's Executive Order and DOJ Guidance

With the release of its final policy guidance document (the HHS Guidance) on August 30, 2000, HHS became the first federal agency to comply with a presidential executive order that had been issued only days earlier. On August 11, 2000, President Clinton signed Executive Order 13,166,¹⁴ which directed each federal agency to develop and implement a system by which LEP persons can have meaningful access to services without unduly burdening the fundamental mission of the agency. The order specifically required federal agencies to develop Title VI guidance for recipients of the agencies' financial assistance and to submit their guidance documents to the U.S. Department of Justice (DOJ) for its approval. On August 16, 2000, DOJ published a general guidance document (the DOJ Guidance) intended to assist federal agencies in developing their specific guidance documents.¹⁵

The DOJ Guidance directed federal agencies to develop policies that require recipients of federal financial assistance to take "reasonable" steps to provide LEP persons with meaningful access to information and services. What is reasonable will vary depending upon a number of factors, including:

The number or proportion of LEP persons in the eligible service population. The DOJ Guidance cautions that this is simply a factor in determining whether the steps taken are reasonable; it is not intended to be a threshold for determining whether an agency or organization has a legal duty to LEP persons. Recipients of federal financial assistance that serve "a few or even one LEP person" are still subject to the requirement to take reasonable steps to provide meaningful access.

The frequency with which LEP individuals come in contact with the program. Entities that provide programs or activities that LEP persons must access regularly have a greater duty than entities whose contact with LEP persons is unpredictable or infrequent.

The importance of the service provided by the program. More affirmative steps will be required from agencies administering programs "where the denial or delay of access

may have life or death implications" than from less critical programs. For example, a federally assisted hospital will have obligations that are different from those of a federally assisted zoo. The fact that a program or activity is compulsory under state or local laws (e.g., a mandatory immunization program) will be strong evidence of a program's importance.

The resources available to the recipient of the federal financial assistance. Small entities with limited resources may not have to take the same steps as larger entities to provide LEP assistance. The DOJ Guidance cautions that claims of limited resources from large entities will need to be well substantiated.

The HHS Guidance incorporated these provisions of the DOJ Guidance and received DOJ approval prior to its publication on August 30, 2000.

Summary of the HHS Guidance

The HHS Guidance is not a federal regulation, but a practical guide designed to assist recipients of federal HHS financial assistance in meeting their obligations under Title VI and its implementing regulations. Moreover, the HHS Guidance does not create any new legal requirements or duties—rather, it describes and clarifies Title VI principles and OCR's long-standing approach to ensuring that health and social services providers do not deliberately or inadvertently discriminate against non-U.S. national origin groups through their language practices and policies. The document is intended to provide a "flexible road map" for providers to follow to ensure that LEP persons have meaningful access to their programs and activities. It acknowledges that different providers will have different needs and abilities depending upon the LEP populations they serve and reiterates the DOJ Guidance's statement of the factors that will be considered in determining whether a particular covered entity is in compliance with Title VI. The HHS Guidance includes concrete examples of policies and practices that OCR would find to be in violation of Title VI. It also provides examples of promising language assistance practices currently being used or developed by health and social service providers. Finally, the HHS Guidance offers a model plan for compliance (see Appendix A).

14. Exec. Order No. 13,166, 65 Fed. Reg. 50,119 (August 16, 2000).

15. Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency, 65 Fed. Reg. 50,123 (August 16, 2000).

Coverage¹⁶

The HHS Guidance applies to all entities that provide health or social services programs or activities and receive federal financial assistance through HHS. This includes state and local government agencies and private organizations that receive such assistance. The financial assistance may be direct (i.e., provided directly to the agency or organization by HHS) or indirect (i.e., provided to the agency or organization by another entity that was the direct recipient of the assistance). Examples of covered entities include, but are not limited to, hospitals, state and local public health agencies, state and local welfare agencies, private health care providers who accept Medicaid or State Children's Health Insurance Program (N.C. Health Choice) funds, and public and private contractors and subcontractors who receive federal financial assistance.

Federal financial assistance includes, but is not limited to, federal grants and loans, donations or grants of federal property, details of federal personnel, and any agreement, arrangement, or contract that has as one of its purposes the provision of assistance.

In most cases, *all* operations of an entity that receives HHS federal financial assistance—not just the programs or activities that use the federal financial assistance—are covered by the requirements of Title VI and thus by the HHS Guidance.¹⁷

16. The HHS Guidance uses the terms “covered entities” and “recipients” interchangeably to refer to the health and social services providers who are covered. Note that the term “recipient” in this context refers only to the agency or organization that receives the HHS financial assistance and provides health or social services. The term does not refer to the clients or beneficiaries of the covered entity's services. For clarity, this bulletin uses the term “covered entities.”

17. Title VI prohibits discrimination in “any program or activity” that receives federal financial assistance. 42 U.S.C. § 2001d. “Program or activity” was not defined in the Civil Rights Act of 1964. In 1984, the U.S. Supreme Court held that Title VI was violated only if the discrimination occurred in the particular program or activity that received federal funds. Congress subsequently passed the Civil Rights Restoration Act of 1997, P.L. 100-259 (codified in part as 42 U.S.C. § 2001d-4a). Those amendments defined “program or activity” as “all” of the operations of an entity receiving federal funds. 42 U.S.C. § 2001d-4a.

Basic Requirement: Meaningful Access

To comply with Title VI, agencies and organizations that receive federal financial assistance through HHS must ensure that LEP persons who are eligible for programs or services have “meaningful access” to those programs or services. Covered entities must ensure that LEP persons are given adequate information, are able to understand the services and benefits available, are able to receive benefits and services for which they are eligible, and can effectively communicate the relevant circumstances of their situations to the service provider.

Covered entities must not charge LEP persons for the language assistance they provide. The HHS Guidance states that meaningful access to benefits and services cannot be ensured unless language assistance is provided at no cost to the LEP person, and that the provision of free language assistance is *the most important step* in meeting the obligations to LEP persons under Title VI.

The type of language assistance that must be provided to ensure meaningful access will vary. In its investigations and compliance reviews, OCR will determine on a case-by-case basis whether the assistance provided is adequate, considering the following factors:

- The size of the entity providing the service
- The size of the eligible LEP population served by the entity
- The nature of the program or services provided
- The objectives of the program or service
- The resources available to the entity
- The frequency with which particular languages are encountered
- The frequency with which LEP persons come into contact with the program or service

OCR's Four Keys to Compliance

In the course of its investigations over the years, OCR has identified four elements that are usually present in language assistance programs that comply with Title VI. The HHS Guidance identifies these elements as the “four keys to compliance,” and states that OCR will consider an entity to be in compliance with language assistance requirements when the entity incorporates and implements all the elements. The elements are: (1) assessment of the language needs of the population to be served, (2) development of a comprehensive written policy on language access, (3) training of staff, and (4) vigilant monitoring of the language

assistance program to ensure that LEP persons have meaningful access to the entity’s benefits and services. OCR will review the totality of the circumstances and will not find a program noncompliant if implementation of the elements would be so financially burdensome as to defeat the legitimate objectives of the entity’s program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to the entity’s programs and services. Each of the elements is described in more detail below.

Assessment

Covered entities should thoroughly assess the language needs of the population they serve. Entities should:

- Identify the non-English languages that are likely to be encountered and estimate the number of LEP persons that are eligible for services¹⁸
- Identify the language needs of each LEP client and record this information in the client’s file
- Identify the points of contact in the entity’s programs or activities where language assistance is likely to be needed
- Identify the resources that will be needed to provide effective language assistance
- Identify the location and availability of those resources
- Identify the arrangements that must be made to access the resources in a timely fashion

Written Policy

Covered entities should have a comprehensive written language assistance plan with policies that address all of the following:

- The assessment of language needs described above
- Responding to the need for oral language assistance
- Giving notice to LEP clients—in a language they can understand—of the right to free language assistance
- Providing for the periodic training of staff
- Providing for monitoring of the language assistance program

18. The HHS Guidance suggests the following methods for completing this step: reviewing census data, reviewing utilization data from client files, and obtaining information from schools and community agencies and organizations.

Providing for the translation of written materials in certain circumstances

The HHS Guidance provides additional information on oral interpretation, written translation, and notice requirements. Those issues are discussed in more detail below.

Staff Training

Covered entities should take steps to ensure that employees understand the language assistance policies and are able to carry them out. They should disseminate language assistance policies to all employees and provide periodic employee training. An effective training program will ensure that all employees are knowledgeable and aware of language assistance policies and procedures and that training in the policies is a part of new employee orientation.¹⁹ It is especially critical to ensure that employees in client contact positions are properly trained. The training program should address working effectively with in-person and telephone interpreters and the dynamics of interpretation.

Monitoring

Covered entities should conduct regular evaluations of the language assistance program to ensure that LEP persons are provided with meaningful access to the program. The HHS Guidance recommends seeking the input of clients and advocates in this evaluation process. At least annually, covered entities should:

- Assess the current LEP makeup of the service area and the current communication needs of LEP clients
- Determine whether existing assistance is meeting needs
- Determine whether staff is knowledgeable about language assistance policies and procedures and their implementation
- Determine whether sources of and arrangements for language assistance are still current and viable

Oral Interpretation

The HHS Guidance states that an effective language program will include procedures for obtaining

19. The HHS Guidance recognizes that high turnover is common for some agencies or staff positions and notes that entities may find it useful to maintain a training registry, with employees’ names and the dates of their training.

and providing trained and competent interpretation in a timely manner. Covered entities can provide this interpretation in a number of ways, depending upon their individual needs and circumstances.

Entities may choose to hire bilingual staff. Note, however, that this option may be insufficient to meet the needs in areas where there are a variety of LEP language groups. Also, the HHS Guidance cautions that bilingual staff must be trained and must demonstrate competence as interpreters before being used as such.

Entities may hire staff interpreters. OCR considers this a particularly appropriate option when there is a frequent or regular need for interpretation in a particular language. Entities may contract with an outside interpreter service. OCR considers this an appropriate option for entities that have an infrequent need for interpreting services, have less-common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as-needed basis. Volunteer community interpreters may be available. OCR emphasizes the importance of having formal arrangements with voluntary organizations and of ensuring that volunteers are competent and understand their obligation to maintain client confidentiality.

Entities may also arrange or contract for the use of a telephone language interpreter service. OCR recognizes that this is a useful option, either to supplement other arrangements, or when a covered entity encounters a language it cannot otherwise accommodate. It cautions, however, that these services do not always have readily available interpreters who are familiar with terminology peculiar to health or social services programs. The HHS Guidance notes that this should not be the only language assistance offered “except where other language assistance options are unavailable (e.g., in a rural clinic visited by an LEP patient who speaks a language that is not usually encountered in the area).”²⁰

Friends or family members may be used as interpreters, but only in limited circumstances. First, the entity must inform the LEP person that alternative language assistance is available at no cost. If, after being so informed, the LEP person declines the language assistance and asks to use the family member or friend

20. *HHS Guidance*, 65 Fed. Reg. at 52,767.

instead, the entity may use that person, *provided* that doing so does not compromise the effectiveness of the service or violate the LEP person’s confidentiality. Refusals of language assistance should be documented in the client’s file. Entities should never encourage or require LEP persons to use friends or family members as interpreters.

The HHS Guidance cautions covered entities against using minor children as interpreters, but it does not prohibit the practice outright. Nevertheless, the use of minor children for interpretation is a risky practice that should be avoided for two reasons. First, it may prevent the agency from obtaining full and accurate information. For example, when children interpret for their parents, the parents may be reluctant to reveal personal information that is relevant to their health care (e.g., information about use of birth control) or to their eligibility for services (e.g., financial information). Second, it is unlikely that a minor child will understand the ethics of interpretation—including the duty to maintain confidentiality—or the specialized terminology used by the agency in the provision of its services. Therefore, agencies should avoid the use of minor children as interpreters in all but extreme or emergency circumstances in which immediate interpretation is essential and there are no other options available.

The HHS Guidance refers repeatedly to “competent” interpretation and offers some help in assessing interpreter competence. It notes that formal certification as an interpreter is helpful but will not be required by OCR. However, it also notes that “competency requires more than self-identification as bilingual.”²¹ A competent interpreter will have demonstrated proficiency in both languages, training in the skills and ethics of interpreting, knowledge of specialized terms or concepts in each language, sensitivity to the LEP person’s culture, and a demonstrated ability to convey information accurately. Agencies that need assistance in locating or evaluating interpreters may wish to contact the North Carolina Bilingual Resource Group or the Carolina Association for Translators and Interpreters (see Appendix B for contact information).

Written Translation of Documents

Written materials that are routinely provided in English to clients and the public must also be available in languages other than English that are regularly

21. *Id.* at 52,769.

encountered by the covered entity.²² It is particularly important that “vital” documents be translated. Vital documents include, but are not limited to, applications; consent forms; letters containing important information regarding participation in a program; notices pertaining to the reduction, denial, or termination of services or benefits, or the right to appeal such actions; and notices advising LEP persons of the availability of free language assistance.

The extent of a covered entity’s duty to provide translated written documents will vary. In its investigations and compliance reviews, OCR will assess each situation individually, taking into account the nature and length of the document and the other factors it has identified as relevant to a determination of whether an entity is meeting its duty (see the list in the section entitled Basic Requirement: Meaningful Access, above).

The HHS Guidance also includes “safe harbor” provisions for covered entities. OCR will consider a covered entity to be in compliance with the obligation to provide written materials in non-English languages if all of the following conditions are met.

The entity provides translated written materials, including vital documents, for each eligible LEP language group that constitutes 10 percent or 3,000 (whichever is less) of the population of persons eligible to be served or likely to be directly affected by the entity’s programs.

The entity translates vital documents for LEP language groups that do not meet the above threshold but constitute 5 percent or 1,000 (whichever is less) of the population of persons eligible to be served or likely to be

22. Recall that both state and local health and social services agencies are covered entities under the HHS Guidance. Questions may arise about whether the state or the local agencies should be responsible for providing translated documents. The best practice is probably for the agency that issues the documents to take responsibility for those documents—that is, to assess the need for translations into other languages and to provide written translations for frequently encountered languages. For example, if a state agency provides the application form for local agencies to use for a particular service, the state agency should also provide a version of the application form in any language (such as Spanish) that is frequently encountered by significant numbers of local agencies. Local agencies may still need to translate the forms for LEP groups that are present in significant numbers at the local level but not the state level.

directly affected by the entity’s programs. Translation of nonvital documents may be provided orally to these groups.

The entity provides competent oral translation of written documents for LEP groups of less than 100 persons, and provides written notice in the primary language of the LEP group of the right to receive such translation.²³

The HHS Guidance cautions that the safe harbor provisions are not to be viewed as requirements. Depending upon the circumstances, OCR may find a covered entity to be in compliance with Title VI even if it fails to fall within the safe harbor provisions.

The HHS Guidance states that persons engaged to translate documents must be well qualified, but it does not offer much information about how an entity can evaluate a translator’s qualifications. It warns, however, that verbatim translations may not accurately or appropriately convey the substance of written materials, and it recommends that community-based organizations of LEP persons be engaged to review translated materials to ensure that they are accurate and understandable.²⁴

Notice to LEP Persons of Right to Free Language Assistance

Covered entities must give notice to LEP persons of their right to free language assistance. The notice must be given in a language that the LEP person can understand. The HHS Guidance offers the following suggested methods for giving notice:

Distributing “I speak” cards—written cards that allow LEP clients to identify the language they speak

Posting and maintaining signs in regularly encountered languages that inform LEP clients of their right to free language assistance and

23. The safe harbor provisions do not address written translation of documents for LEP population groups that number more than 100 but less than 1,000. At a minimum, groups falling in this range should receive oral interpretation of written documents.

24. The N.C. Bilingual Resource Group has published a manual for state and local agencies on translating documents into Spanish. The manual includes a very helpful discussion of how to assess the quality of translators and translated documents. Suzanna Acuirre Young, *Developing, Translating, and Reviewing Spanish Materials*, available at <http://www.dhhs.state.nc.us/dph/formsmanuals.htm>.

invite them to identify themselves as persons in need of such services

Translating application forms and instructional or informational materials into other languages, supplementing this as needed with assistance from an interpreter to explain the contents of the documents

Developing uniform procedures for employees to promptly obtain interpretation assistance for telephone contacts

Including statements, in appropriate non-English languages, about the services available and the right to free language assistance in outreach materials and other information that is routinely distributed to the public

Enforcement of Compliance with Title VI

OCR is legally obliged to investigate complaints, reports, or other information alleging or indicating a covered entity's possible noncompliance with Title VI—including the entity's failure to provide language assistance to LEP persons. In addition, OCR is authorized to conduct compliance reviews of covered entities.²⁵ The HHS Guidance states that OCR will conduct compliance reviews with a focus on language assistance policies. It will target for review principally larger entities such as hospitals, state agencies, and social service organizations that have a significant number of LEP persons likely to be affected by the entity's practices.

If OCR finds an entity to be noncompliant, it will send a letter of findings setting out areas of non-compliance and steps that must be taken to correct the

noncompliance. Federal regulations require OCR to attempt first to secure voluntary compliance through informal means.²⁶ If voluntary compliance cannot be secured, OCR may secure compliance by terminating federal financial assistance,²⁷ referring the matter to the U.S. Department of Justice for injunctive relief or other enforcement proceedings, or by any other means authorized by federal or state law.²⁸

Conclusion

The primary purpose of this bulletin is to make local government officials and employees aware of their legal duties to the LEP persons they serve and to highlight the critical elements of the policies and procedures needed to fulfill those duties. Readers may have further questions or desire additional details about specific practices. The HHS Guidance contains examples of prohibited practices and promising practices, and an appendix to the HHS Guidance includes additional information in question-and-answer format. Those who are involved in developing policies for local government agencies are strongly encouraged to read the HHS Guidance in its entirety.²⁹

Current demographic trends make clear that local health and social services agencies can expect to serve increasing numbers of LEP persons. Most local agencies have already begun developing strategies to address language assistance needs. Existing policies and procedures should be reviewed—and new ones developed, if necessary—with careful attention to the HHS Guidance.

25. 45 C.F.R. § 80.7.

26. 45 C.F.R. § 80.7(d).

27. Before federal financial assistance is terminated, the covered entity must be given notice of the noncompliance and an opportunity for a hearing. 45 C.F.R. § 80.8(c).

28. 45 C.F.R. § 80.8(a).

29. The HHS Guidance is available in the Federal Register, Vol. 65, No. 169, pages 52,762–52,774, or on the Internet at <http://www.hhs.gov/ocr/lep/guide.html>.

Appendix A

OCR's Model Plan for Compliance

[Reprinted from Policy Guidance: Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency, 65 Fed. Reg. 52,762 (August 30, 2000).]

The following is an example of a model language assistance program that is potentially useful for all recipient/covered entities, but is particularly appropriate for entities such as hospitals or social service agencies that serve a significant and diverse LEP population. This model plan incorporates a variety of options and methods for providing meaningful access to LEP beneficiaries:

- A formal written language assistance program;
- Identification and assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program through a review of census and client utilization data and data from school systems and community agencies and organizations;
- Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance;
- Use of "I speak" cards by intake workers and other patient contact personnel so that patients can identify their primary languages;
- Requiring intake workers to note the language of the LEP person in his/her record so that all staff can identify the language assistance needs of the client;
- Employment of a sufficient number of staff, bilingual in appropriate languages, in patient and client contact positions such as intake workers, caseworkers, nurses, doctors. These persons must be trained and competent as interpreters;
- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages, in a timely manner;
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line;
- Translation of application forms, instructional, informational and other key documents into appropriate non-English languages. Provision of oral interpreter assistance with documents, for those persons whose language does not exist in written form;
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls from LEP persons;
- Notice to and training of all staff, particularly patient and client contact staff, with respect to the recipient/covered entity's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
- Insertion of notices, in appropriate languages, about the right of LEP applicants and clients to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff;
- Notice to the public regarding the language assistance policies and procedures, and notice to and consultation with community organizations that represent LEP language groups, regarding problems and solutions, including standards and procedures for using their members as interpreters;
- Adoption of a procedure for the resolution of complaints regarding the provision of language assistance, and for notifying clients of their right to and how to file a complaint under Title VI with HHS;
- Appointment of a senior level employee to coordinate the language assistance program, and ensure that there is regular monitoring of the program.

Appendix B Resources for Assistance

FEDERAL AGENCY

United States Department of Health and Human Services

Office for Civil Rights

Regional Office, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Atlanta Federal Center, Suite 3B70

61 Forsyth Street, S.W.

Atlanta, GA 30303-8909

404-562-7886

<http://www.hhs.gov/ocr/lep/>

STATE AGENCIES

North Carolina Department of Health and Human Services

- Office of Minority Health, 919-715-0992
- Bilingual Resource Group, 919-715-3119
- Hispanic Ombudsman, Office of Citizen Services, 1-800-662-7030 or 919-733-4261
- N.C. Migrant Health Program, medical interpreter service for health care providers serving migrant farm workers and their families, 1-800-255-8755

North Carolina Bilingual Materials Database

Direct requests for specific topics and languages to Suzanna Young, Refugee Health Program, fax: 919-715-3144, or e-mail: suzanna.young@ncmail.net.

North Carolina AHEC Latino Health Information and Latino Cultural Resources Website

<http://www.hfcc.arealahec.dst.nc.us/>

OTHER RESOURCES

Carolina Association for Translators and Interpreters

Telephone: 919-577-0840

E-mail: C.A.T.I.@pobox.com

AT&T Language Line (demonstration and information about AT&T's telephone translation service)

1-800-821-0301

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