



State of Wisconsin
Department of Health Services

Complying With
Title VI Of The Civil Rights Act Of 1964
and
The Limited English Proficiency (LEP)
Requirement

For Assisted Living Facilities and Nursing Homes

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Civil Rights Compliance Officer

Objectives

- What Assisted Living Facilities, Facilities Serving People with Intellectual Disabilities, Nursing Homes Need to do to Comply LEP Requirement.
- Finding Resources.
- Technical Assistance.

Outline

- What are Civil Rights.
- What is Discrimination.
- Title VI of the Civil Rights Act of 1964.
- Disparate Treatment and Disparate Impact Discrimination.
- What are the Limited English Proficiency (LEP) Requirements Under Title VI.

What is are Civil Rights?



Charles Hamilton Houston

- A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury
- Examples of civil rights:
 - ▶ Freedom of speech, press, assembly
 - ▶ Right to vote
 - ▶ Freedom from involuntary servitude (human trafficking)
 - ▶ Right to equality in public places

“Charles Hamilton Houston is the Moses of the journey that led to Brown and beyond.” Thurgood Marshall

Discrimination

- When the civil rights of an individual are denied or interfered with because of their membership in a particular group or class:

- ▶ Race
- ▶ Sex
- ▶ Religion
- ▶ Age



PIONEER OF
CIVIL RIGHTS



“THE only thing that bothered me was that we waited so long to make this protest.”

- Inducted: 1995 -

Rosa Parks

- ▶ Previous condition of servitude
- ▶ Physical limitation
- ▶ National origin
- ▶ sexual preference

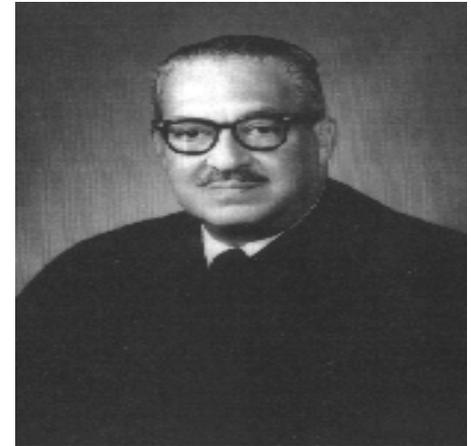
Title VI of the Civil Rights Act of 1964

...prohibits discrimination on the basis of “**race, color, or national origin**.... Under any program or activity receiving federal assistance”

42 U.S.C.: 2000d



Thurgood Marshall



Supreme Court Justice
Thurgood Marshall

Purpose of Title VI

- To ensure public funds are not spent in a way that encourages, subsidizes, or results in racial discrimination
- Title VI bars intentional discrimination



President Lyndon B. Johnson signing the Civil Rights Act on July 2, 1964

Title VI

- Authorizes and directs federal agencies to enact “rules, regulations, or orders of general applicability” to achieve the statute’s objectives 42 U.S.C. 2000d.
- Federal agency regulations prohibit:
 - “Using **criteria** or **methods** of administration that have the effect of discriminating against protected groups based on race, color or national origin.”

Intentional Discrimination

Disparate Treatment



Martin Luther King Jr., Dr. Spock and Reverend Rice

- A claim which alleges that similarly situated persons are treated differently because of their:
 - ▶ Race
 - ▶ Color or
 - ▶ National origin
- Retaliation is always investigated

Unintentional Discrimination

Disparate Impact

- Neutral policies or practices which disproportionately exclude or adversely affect protected classes;
 - Limited English Proficiency (LEP) complaints are generally investigated using this legal theory.
 - Investigations focus on the consequences and do not require proof of discriminatory intent.

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.

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).

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

ILLITERATE?

WRITE FOR FREE HELP.

ILLITERACY FOUNDATION
806 MAIN STREET

CASTAR



What does Title VI Require?

- Executive Order 13166, Sign by President William J. Clinton, 8/11/2000.
- Confirms commitment to Title VI Language Access.
- Consistency and Uniformity.
- Provide Clarity how it Apply to HHS Funded Programs, Services and Activities.

Application to HHS Programs & Activities

- What is Federal Financial Assistance
- Who is a Covered Entity.
- Understanding & Applying the 4 Factors Analysis.
- What Language Assistance must be provided.
- Friends and Family Members as Interpreters

Application to HHS Funded Programs

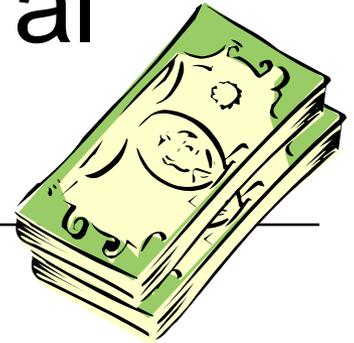
- Translation of Documents
- Technical Assistance to Encourage Voluntary Compliance

Who Is Covered?



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

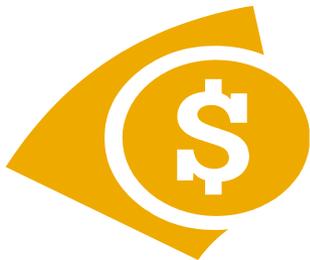
Common Types Of Federal Financial Assistance



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

Common Types Of Federal Financial Assistance Cont.

- **Training**
- **Details of Federal personnel**
- **Any other agreement or contract to provide assistance such as Medicaid.**



Examples of Common *Recipients*



-
- **Hospitals,
Nursing Homes,
Home Health
Agencies, CBRFs**
 - **Managed Care
Organizations**
 - **State, County,
and Local Health
Agencies.**
 - **State, County,
and Human
Service
Agencies
Medicaid
Agencies**
 - **Public & Private
Contractors and
Vendors**
 - **Universities,**



More Examples of *Recipients*

- **Programs for Families, Youth and Children.**
- **Head Start programs.**
- **Physicians and other Providers who receive Federal financial assistance from HHS through DHS and or their subcontractors.**

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.



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.**

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

- How many LEP persons are eligible to be served, or encountered in the eligible population, by a recipient program or activity?**

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 under-served because of language barriers ?**

Potential LEP Data Sources

- **Providers own encounter data.**
- **Census (ACS), School District(s), State and Local Governments.**
- **Community Organizations.**
- **LEP Community Social Groups**

American Community Survey Data Set 2006 - 2010

- Census, 2006-2010 American Community Survey, Table B16001.
- The ACS is the new source for LEP Data.
- LEP Language Groups Uncounted for in the ACS.

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

- How often is a particular language encountered?**

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 and accurate communication is not achieved?**
- Could denial or delay of access to services or information have serious life-threatening implications?**

Factor 4: Costs and Resources Available to the Recipient

- 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

Two Types of Language Assistance

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

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

- 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.

Written Translations

Vital written materials should be translated.

- **Whether a document is “vital” or not 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.**

Vital Written Materials Could Include, for instance...

- Consent and complaint forms.
- Intake forms with the potential for negative consequences.
- Written notices of eligibility criteria, right, denial, loss or decrease in benefits or services, actions affecting parental custody or child support.

Vital Written Materials Could Include, for Instance Cont....

- 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

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

- Hospital or nursing home menus.
- Third party documents, forms or pamphlets by a recipient as a public service.
- For a non-governmental recipient, government documents and forms.

Written Translations: Into What Languages Should Documents be Translated?

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

Translation Options That May Be Considered

- Use competent trained translators.
- Use of independent translator to “check” the translation for extremely critical documents.
- Use independent translator to translate “back” into English.

Translation Options That May Be Considered Cont.

- 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.

Written Translations

“Safe Harbor”

- Meeting the “Safe Harbor” outlined in the Guidance will be seen as strong evidence of compliance.
- Recipients not meeting the safe harbor criteria does not mean the entity is non-compliant.
- LEP Complaints are evaluated on a case by case basis in light of the four factor analysis.

“Safe Harbors”

- Recipients should provide written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.

“Safe Harbors”

- If there are fewer than 50 persons in a language group that reaches the five percent trigger as state in the previous slide, the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

LEP Groups In Wisconsin



- Spanish or Spanish Creole 61,949
- Hmong 10,273
- German 3,145
- Chinese 2,553
- Russian 1,338
- Laotian 1,272
- Korean 1,111
- Other Indo-European languages 1,056

- Other West Germanic languages 984
- French (incl. Patois, Cajun) 869
- Other and unspecified languages 757
- Arabic 738
- Serbo-Croatian 703
- Vietnamese 664
- African languages 623
- Urdu 506
- Italian 501
- Other Slavic languages 428

- Other Indic languages 419
- Other Native North American languages 387
- Other Asian languages 370
- Tagalog 348
- Other Pacific Island languages 293
- Thai 272
- Greek 222
- Japanese 204

- Scandinavian languages 161
- Gujarati 126
- Hungarian 112
- Mon-Khmer, Cambodian 106
- Persian 90
- Armenian 72
- Hindi 61
- Portuguese or Portuguese Creole 28

Written Translations: What Languages Should Vital Documents be Translated?

- The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated.

Ways to Provide Cost-Effective Language Services

- Information sharing among providers.
- Hiring and training bilingual staff.
- Telephone & video conference services.
- Pooling resources, standardizing documents among providers.

Ways to Provide Cost-Effective Language Services Cont.

- Using sufficiently qualified translators and interpreters to avoid errors / unnecessary costs.
- Centralizing services.
- Formalized use of qualified volunteers.
- Consider implications of HIPPA Regulations when using translators in health care issues (paid and volunteers).

Interpreter Competency

Recipients 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 (medical or legal terminology) appropriate to the need.**

Interpreter Competency Cont.

- **Demonstrate an understanding of the need for confidentiality and impartiality.**
- **Understand the role of interpreter without deviating to other roles.**

Cultural Competency

- Interpreter should have a well based knowledge of customer/ patient attitudes values and beliefs.
- Understanding of the socioeconomic status and education of the customers.
- Behavioral understanding related to authority, physical contact, communication styles, gender, sexuality and family.

Cultural Competency Cont.

- Religious beliefs.
- Political & human rights experience in their country.
- How immigration/legal issues may affect individual's willingness/ comfort or fear to provide information.

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.**

Selecting Language Assistance Services

Options for Oral Language Services:

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

Family Members or Friends as Interpreters

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

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.

Use of Family Members or Friends Cont.

- Evaluate whether, because of special concerns, interpreter should be provided in any case.
- Do not plan to rely on family members or friends as interpreters.
- Evaluate your exposure to violation of HIPAA regulations if you're a health care provider.

Use of Members or Friends: Special Concerns

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

- Issues of competence, appropriateness, conflicts of interests, and confidentiality.

Use of Family Members or Friends: Special Concerns Cont.

- Heightened caution when an LEP person asks a minor child to serve as an interpreter.
- Under no circumstances are minor children allowed to interpret in a medical, legal or critical situations.
- Minor children often do not have a strong command of English and/or other language.

Using Minor Children

- Covered entity/provider should assess their risk and liability.
- Develop clear written policies that describe under what critical situations are children allowed to interpret, for what programs and/or activities.

Using Minor Children Cont.

- Make the policies and procedures part of your entity's LEP plan.
- Train staff on proper use and under what limited circumstance a minor child will be used.

Language Assistance Measures



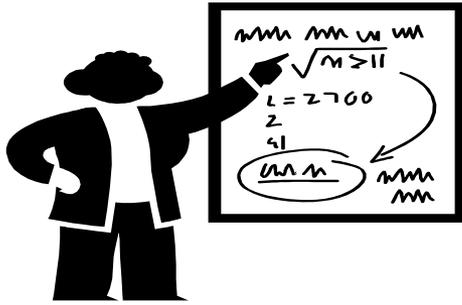
May include information on:

- Types of language assistance available.
- How staff can obtain those services.
- How to respond to LEP callers.

Language Assistance Measures Cont.



-
- 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.



Training Staff



May include training to ensure that staff:

- Know about LEP policies and methods in place to language assistance to LEP groups
- How to work effectively with in-person and telephone interpreters

Providing Notice to LEP Persons

Examples include:



- Post signs in intake areas and by all reception areas
 - http://www.fns.usda.gov/snap/outreach/Translations/I_speak.pdf
- Announce language services in outreach materials

Providing Notice to LEP Persons cont.

- Use a multilingual telephone voicemail menu or voice activated response system.
- Provide notices on non-English radio and T.V. stations.
- Work with community-based organizations & other stakeholders.

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.

LEP Data Resources

- Language Spoken at Home by Ability to Speak English for Populations 5 Years old and older - Universe: Population 5 years old and older comes from the U.S. Department of Commerce, Bureau of Census, 2006-2010 American Community Survey, Table B16001.
- <http://www.dhs.wisconsin.gov/civilrights/LEPresources.HTM>

LEP Data Resources

- <http://dcf.wisconsin.gov/refugee/statistics.htm>
- <http://dpi.wi.gov/ell/lepdatacoll.html>

Civil Rights & LEP Resources

- www.hhs.gov/ocr
- <http://www.lep.gov/>
- <http://www.dhs.wisconsin.gov/civilrights/LEPresources.HTM>
- <http://www.dhs.wisconsin.gov/civilrights/Index.HTM>
- [Civil Rights Compliance Training - Part 1](#)
- [Civil Rights Compliance Training - Part 2](#)

Civil Rights LEP Resources

- <http://vendornet.state.wi.us/vendornet/asp/ContractDetail.asp?SystemContractNumber=2601>
- http://www.fns.usda.gov/snap/outreach/Translations/I_speak.pdf
- <http://www.ncihc.org/>
- <http://www.dhs.wisconsin.gov/civilrights/docs/ispeakstatement.pdf>

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