



## **Title VI – A Primer for Health Care Providers**

Following are excerpts from a Policy Guidance publication entitled *Title VI Prohibition Against National Origin Discrimination As It Affects Persons With Limited English Proficiency (LEP)*, issued by the Office of Civil Rights of the Department of Health and Human Services. No information has been added. Recipients or covered entities are responsible for contacting the Office of Civil Rights if they have questions or concerns about Title VI compliance. Contact Voices For Health to schedule compliance consultation.

**Basic Statute:** Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 200d et. seq. 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.”

Title VI regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect.

**Who is Covered:** All entities that receive Federal financial assistance from Health and Human Services (HHS), either directly or indirectly, through a grant, contract or subcontract. Covered entities include (1) any state or local agency, private institution or organization, or any public or private individual that (2) operates, proves or engages in health, or social service programs and activities and that (3) receives federal financial assistance from HHS directly or through another recipient/covered entity.

“Covered entities” include but are not limited to hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs, state, county and local health agencies, state Medicaid agencies, state, county and local welfare agencies, programs for families, youth and children, Head Start programs, public and private contractors, subcontractors and vendors, physicians, and other providers who receive Federal financial assistance from HHS.

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

**“Limited English Proficient”:** Or “LEP” is an individual who cannot speak, read, write or understand the English language at a level that permits him/her to interact effectively with health care providers and social service agencies.

**Basic Requirements:** In order to ensure compliance with Title VI, recipient/covered entities must take steps to ensure that LEP persons who are eligible for their programs or services have meaningful access to the health and social service benefits that they provide. The most important step in meeting this obligation is for recipients to provide the language assistance necessary to ensure such access, at no cost to the LEP person.

The key to providing meaningful access for LEP persons is to ensure that the recipient/covered entity and LEP person can communicate effectively. The steps taken by a covered entity must ensure that the LEP person is given adequate information, is able to understand the services and benefits available, and is able to receive those for which he or she is eligible. The covered entity must also ensure that the LEP person can effectively communicate the relevant circumstances of his or her situation to the service provider.

Although there is flexibility to fulfilling requirements, OCR has found that effective programs have the following four elements: 1) Assessment of the service population’s language needs, 2) Development of a comprehensive written policy on language access, 3) Staff training, and 4) Program monitoring.

OCR will review the totality of the circumstances in each case, so failure to implement one or more of the previously mentioned elements does not necessarily mean noncompliance with Title VI. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient/covered entity’s program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services, OCR will not find the recipient/covered entity in noncompliance.

**Fulfilling Requirements:** Policies and procedures to assure appropriate language access include 1) Oral language interpretation, 2) Translation of written materials, 3) Providing notice to LEP persons of the right to language assistance free of charge, 4) Staff training, 5) Program monitoring.

Oral Language Interpretation: Options include 1) Hiring bilingual staff who are trained and who demonstrate competence as interpreters, 2) Hire staff interpreters who are competent and readily available, 3) Contract with interpreters who are competent and readily available, 4) Utilize volunteers who are competent as interpreters, are readily available and maintain client confidentiality, or 5) Utilize a telephone interpretation service as necessary.

Use of Family or Friends as Interpreters: A recipient/covered entity may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations.

If an LEP person declines the right to free interpreter services, the recipient/covered entity may use the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The recipient/covered entity should document the offer and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the recipient/covered entity should suggest that a trained interpreter sit in on the encounter to ensure accurate interpretation.

Competence of Interpreters: A recipient/covered entity must ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter. On the other hand, competency requires more than self-identification as bilingual. The competency requirement contemplates demonstrated proficiency in both English and the other language, orientation and training that includes the skills and ethics of interpreting, fundamental knowledge in both languages of any specialized terms or concepts, sensitivity to the LEP person's culture and a demonstrated ability to convey information accurately in both languages.

Translation of Written Materials: It is important to ensure that the person translating materials is well qualified. OCR will consider a recipient/covered entity to be in compliance with its Title VI obligation to provide written materials in non-English languages if:

- A) Translated written materials, including vital documents, are provided for each eligible LEP language group that constitutes 10% or 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected by the recipient/covered entity's program.
- B) For LEP groups that do not fall into paragraph (A), but constitute 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected, the recipient/covered entity ensures that, at a minimum, vital documents are translated into the appropriate non-English languages of such LEP persons. Translation of other documents, if needed, can be provided orally; and
- C) Notwithstanding paragraphs (A) and (B), a recipient with fewer than 100 persons in a language group eligible to be served or likely to be directly affected by the recipient/covered entity's program, does not translate written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral translation of written materials.

Providing Notice to LEP Persons: Methods include but are not limited to 1) Use of language identification cards, 2) Posting signs at points of entry, informing LEP persons of the right to free language assistance programs, 3) Translation of application forms and instructional, informational and other written materials into non-English languages by competent translators, 4) Uniform procedures for timely and effective telephone communication between staff and LEP persons, 5) Inclusion of statements about available services and the right to free language assistance services in appropriate non-English languages in materials routinely disseminated to the public.

Staff Training: Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, are trained to work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between clients, providers and interpreters.

Monitoring: Is it crucial for a recipient/covered entity to monitor its language assistance program at least annually to assess the current LEP makeup of its service area, the current communication needs of LEP applicants and clients, whether existing assistance is meeting the needs of such persons, whether staff is knowledgeable about policies and procedures and how to implement them, and whether sources of and arrangements for assistance are still current and viable.

OCR Review: OCR will assess compliance on a case by case basis and will take into account the size of the recipient/covered entity, the size of the eligible LEP population it serves, the nature of the program or service, the objectives of the program, the total resources available to the recipient/covered entity, the frequency with which languages are encountered and the frequency with which LEP persons come into contact with the program.

OCR Guidance: OCR will provide technical assistance to any physician seeking to ensure that s/he operates an effective language assistance program.

*Go to the "Links" page at [www.voicesforhealth.com](http://www.voicesforhealth.com) to access the full OCR Title VI Guidance Summary.*