



United States Department of  
**Health & Human Services**

*Office of the Secretary*  
**Office for Civil Rights (OCR)**



**Community Forum on Language Access: A Joint Outreach Project of the Office of Language Access, State of Hawai'i and the Office for Civil Rights of the U.S. Department of Health and Human Services, Region IX, in collaboration with the County of Hawai'i**

# Office for Civil Rights

- ▣ **Part of the U.S. Department of Health and Human Services**
- ▣ **Federal agency**
- ▣ **Headquarters and 10 regional offices**
- ▣ **Region IX: Arizona, California, Hawaii, Nevada and U.S. Pacific Territories including American Samoa, Commonwealth of the Northern Mariana Islands and Guam**

# Mission of the Office for Civil Rights

**Promote and ensure that people have equal access to and opportunity to participate in and receive services in all health and human services programs without facing unlawful discrimination.**

# What Does OCR Do?

- **Investigate Complaints**
- **Conduct Compliance Reviews**
- **Outreach**
- **Technical Assistance**

# OCR Enforces:

- **Title VI of the Civil Rights Act of 1964**
- **Section 504 of the Rehabilitation Act of 1973**
- **Age Discrimination Act of 1975**
- **Title II of the Americans with Disabilities Act of 1990**
- **HIPAA Privacy and Security Rules**
- **Breach Notification Rule**
- **HITECH Omnibus Rule**
- **Section 1557 of the Affordable Care Act- RFI out now!**
- **Several Other Civil Rights Laws**

# Topics

- **Title VI**
- **Who must comply?**
- **LEP defined**
- **What must HHS fund recipients do?**
- **Written Translations of Vital Documents**
- **Safe Harbors**
- **Case Examples and Discussion**

# 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



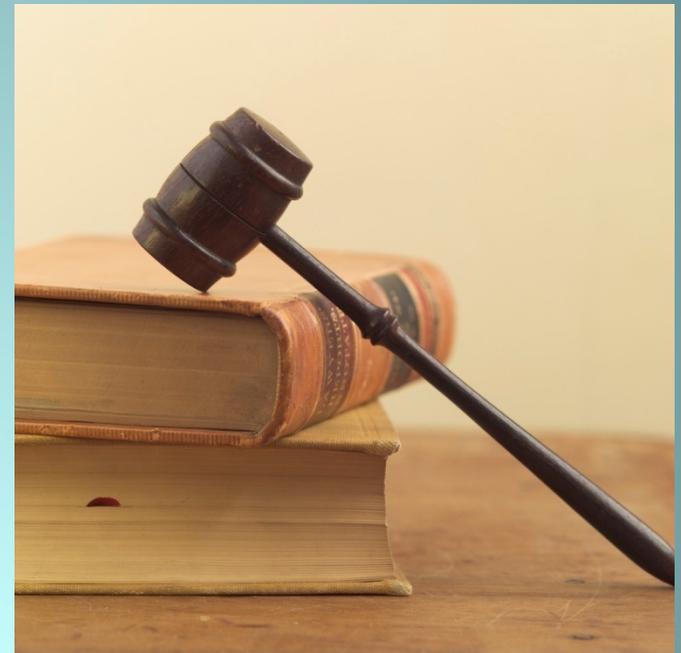
*Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination.*

- Lau v Nichols, 1974

# HHS LEP Policy Guidance

**Published in the  
Federal Register on  
August 8, 2003**

**Copies are available  
on OCR's website  
[www.hhs.gov/ocr](http://www.hhs.gov/ocr)**



# Who Is Covered by HHS?

**All recipients of HHS Federal financial assistance, either directly or indirectly, including 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
- Training
- Details of Federal personnel
- Any other agreement or contract to provide assistance

# Examples of Common *Recipients*

- ▣ Hospitals, nursing homes, home health agencies, managed care organizations
- ▣ State, county and local welfare agencies
- ▣ Universities and other health or social service research programs
- ▣ Programs for families, youth and children

# More Examples of *Recipients*

- **Head Start programs**
- **Physicians and other providers who receive Federal financial assistance from HHS**





# 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.**

## Recipient Responsibilities under Title VI

- **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.**

# Using the Four-Factor Analysis to Determine the Recipient's Obligation

- 1. Number or Proportion of LEP Persons Eligible to be Served or Likely to be Affected by the Program or Service***
- 2. Frequency of Contact***
- 3. Nature and Importance of the Program, Activity, or Service***
- 4. Costs and Resources Available***

# Ways to Provide Cost-Effective Language Services

- **Information sharing.**
- **Training bilingual staff.**
- **Telephone & video conference services.**
- **Pooling resources, standardizing documents.**
- **Using sufficiently qualified translators and interpreters to avoid errors / unnecessary costs.**
- **Centralizing services.**
- **Formalized use of qualified volunteers.**

# Two Types of Language Assistance

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

# Written Translations

**Vital written materials should be translated.**

- **Whether a document is “vital” 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 important consequences**
- Written notices of eligibility criteria, right, denial, loss or decrease in benefits or services, actions affecting parental custody or child support**
- 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**

# “Safe Harbors for Written Translations”

**(A) All vital documents are translated for each LEP group of 5% or 1000 (whichever is less) of the eligible population**

**OR**

**(B) If there are fewer than 50 persons in a language group that reaches the 5% in (A), a recipient can instead provide written notice in the primary language of the right to receive oral interpretation of those written materials, free of cost**

# Translator Competence

- For legal documents, competence may require certified translators
- Competence can be ensured by having a second, independent translator “check” the work of the primary translator
- Competence can also be ensured through “back translation” (i.e., translation back into English)
- Translators should understand audience reading level, vocabulary and phraseology
- Quality and Accuracy are important

# HHS Commitment

- ▣ Increase access to services and programs
- ▣ Eliminate racial and ethnic health disparities and close the health care gap



# More Information

**U.S. Department of Health and Human Services**

**Office for Civil Rights- Region IX**

**San Francisco, CA, 94103**

**Toll Free: (800) 368-1019**

**Fax: (415) 437-8329**

**Website: [www.hhs.gov/ocr](http://www.hhs.gov/ocr)**

**[www.lep.gov](http://www.lep.gov)**

**OCR also has a CR and a HIPAA listserve that you can sign up for and get news from OCR**