

**State of Hawai'i's
Language Access Law
HRS §§ 371-31 to 371-37:**

**Creating a
Language Access Plan**

Workshop presented by:

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Note: Today's workshop and written materials are intended only as a guide to Hawai'i's current language access law and are not intended to replace any rule or statute or substitute for legal counsel.

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HRS §§ 371-31 to 371-37:**

Creating a Language Access Plan

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Glossary of Acronyms

The following are acronyms that will be used throughout the presentation:

- * OLA Office of Language Access
- * LEP Limited English Proficient
- * LA Plan Language Access Plan
(or referred to in HRS § 371-34(a) as a "Plan for Language Access")

Objectives of the Workshop

- Understand the purposes for the State of Hawai'i's Language Access Law.
- Become familiar with the requirements of the Language Access Law.
- Discover what is needed in your "Plan for Language Access."
- Begin the dialogue. Be able to ask questions regarding your roles and responsibilities under the law.

Hawai'i's Language Access Law: Where can you find the actual law?

- Act 290, Relating to Language Access, Session House Laws 2006, (HB HB1, SD2, CD1) - *available* at <http://hawaii.gov/labor/ola/law.shtml>
- Codified in the Hawai'i Revised Statutes, Title 21. Labor and Industrial Relations, Chapter 371, Sections 371-31 to 371-37 (HRS §§ 371-31 to 371-37) - copy of the act attached as Appendix A of this handout.
 - * Purpose - § 371-31
 - * Definitions - § 371-32
 - * Oral and written language services - § 371-33
 - * Additional obligations - § 371-34
 - * Public meetings and public hearings - §371-35
 - * Executive director of the office of language access; duties - § 371-36
 - * Language access advisory council - §371-37
- OLA's website: <http://www.hawaii.gov/labor/ola>

Purpose:

Why does Hawai'i have a Language Access Law?

- State of Hawai'i understands that language is a barrier to:
 - * Accessing important services, programs and activities,
 - * Understanding and exercising important rights,
 - * Complying with applicable responsibilities, or
 - * Understanding other information provided by the State or State funded programs or activities. (HRS § 371-31)
- Hawai'i ranks fourth in the nation with 17.9% of the population being foreign born, according to the 2000 Census. (Note: Immigration & migration patterns have since changed)
- Hawaiian is an official language of the State of Hawai'i.
- Comply with Federal law, regulation, and guidance.
 - * Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
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. (Pub. L. 88-352, 78 Stat. 252.)
 - * President John F. Kennedy said on June 19, 1963:
Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.
 - * Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency
Ensures that, consistent with Title VI, persons with limited English proficiency have meaningful access to federally conducted and federally funded programs and activities.
 - * Federal Guidelines:
 - Department of Justice's Policy Guidance Document, "Enforcement of the Title VI of the Civil Rights Act of 1964 – National Origin Discrimination Against Persons with Limited English Proficiency"
 - Recipients of federal funding can find more guidance and info at: <http://lep.gov/>
- Customer Service

Applicability of Hawai'i's Language Access Law

Who must comply with Hawai'i's law?

- The “State” is defined as the:
 - * executive,
 - * legislative,
 - * and judicial branches of the state government,
 - * Including departments, offices, commissions, boards, or other agencies within the executive, legislative or judicial branches.
 - “Covered Entities” is defined as:
 - * a person or organization receiving state financial assistance that is rendering services to the public on behalf of the State.
 - * State funding includes:
 - ◆ grants,
 - ◆ purchase-of-service contracts,
 - ◆ or any other arrangement by which the State provides or makes available assistance in the form of funds to the person or organization for the purpose of rendering services on behalf of the State.
 - * State funding does not include:
 - ◆ procurement contracts,
 - ◆ state insurance or guaranty contracts,
 - ◆ licenses,
 - ◆ tax credits,
 - ◆ or loan guarantees to private businesses that do not render services on behalf of the State.
- Q:** If only one or two of the programs in my agency receive funding from the State, do I still have to comply with the law?

A: Even if only one of the programs in your agency or department receive funding from the State, you will still need to comply and establish a plan for the entire agency/department.

Who does Hawai'i's law protect?

- “Limited English Proficient” persons:
 - * do not speak English as their primary language
 - * and self-identifies as having a limited ability to do all, one, or some of the following: read, write, speak, or understand English.

Requirements of the Law & Elements of the Language Access Plan

The State and covered entities are required to:

1. Establish a plan for language access (HRS § 371-33(a), and
 2. Take reasonable steps to ensure meaningful access to services, programs, and activities to LEP persons (HRS § 371-33(a).
- “**Meaningful Access**” means LEP persons are informed of, participate in, & benefit from the services, programs & activities offered by the State & covered entities.

Goal of the Language Access Plan

- Your LA Plan will inform OLA, and your employees, how you are complying or how you plan to comply with the law.

Getting Started

- Establish a committee or work group that includes: Administration, Support Staff, Beneficiaries, Members of Community Organizations, and other stakeholders.
- Visit OLA's website: www.hawaii.gov/labor/ola
- Call us for assistance: 586-8730

Elements of a Language Access Plan

- The initial LEP Plan can include a needs assessment to determine what services, programs and activities are being accessed and are not accessible to LEP persons.
- Elements of the Language Access Plan are:
 1. Guidelines or factors for determining meaningful access;
Procedure & Plan for:
 2. Provision and Notice of Oral Language Services,
 3. Written Translation of Vital Documents,
 4. Notice for Oral Interpretation of Documents;
 5. Data collection and reporting system;
 6. Evaluation Process;
 7. Training for Staff;
 8. LEP Plan Coordinator or Contact;
 9. Hiring Bilingual Personnel (applies to State only).

1. Guidelines & Factors For Determining Reasonable Steps to Providing Meaningful Access

- Hawai'i's Language Access Law provides guidelines in the statute (the four-factor test below) that helps you determine what services, programs and activities should be considered for oral and written language services. This four-factor test can be found in HRS § 371-33(a)(1)-(4).
- "This is a fact-dependent, balancing test and is your starting point in determining what are reasonable steps you should take to provide meaningful access.
- Under the statute you consider the totality of the circumstances, including the following four factors:
 - * The number or proportion of LEP persons served or encountered in the eligible service population;
 - * The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
 - * The nature and importance of the services, programs, or activities; and
 - * The resources available to the State or covered entity and costs
- May also provide additional factors to consider that do not conflict with the ones in the statute.

Sample language:

Guidelines for Providing Language Services

HRS Section 371-33(a) requires that agencies take reasonable steps to provide meaningful access to programs and services for LEP persons. Our agency will conduct an individualized assessment by examining the totality of the circumstances & balancing the following four factors:

1. The number or proportion of LEP persons served or encountered in the eligible service population;
2. The frequency with which LEP persons come in contact with the agency;
3. The nature and importance of the program, activity, or service provided; and
4. The resources available to the program and the costs of providing interpretation/translation services.

How do I use the guidelines?

(Note: The following section provides you with information on how to use the guidelines when implementing your Language Access Plan. See pg. 5 for sample language).

“Reasonable Steps Test”

- Look at all of the circumstances surrounding the provision of the service, program, activity, or information being accessed along with the four-factors.
 - * If you look at all the factors and find the provision of language services to be reasonable, then you must provide the language service as required by the law either through oral interpretation or written translation of a document.
 - * The four factors and facts to consider are described in greater detail below.

- The number or proportion of LEP persons served or encountered in the eligible service population.
 - * The greater the number or proportion of LEP individuals from an LEP group, the more likely language services are needed and are reasonable.
 - * Look at past experiences and determine how many LEP persons are served and determine the breadth and scope.
 - * What is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers? Greater number or proportion excluded, the more likely language services are needed.
 - * Include minority LEP persons who are eligible for services but are not served because of existing language barriers.
 - * Data Collection tools (see next section: Data Collection)
 - * Other Sources to obtain numbers (census, community based orgs)

- The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
 - * Determine points of contact, points of entry, positions of public contact that LEP persons do or would access. Also what information is accessed?
 - * Greater the frequency the greater the duty to provide language services.
 - * How often does the LEP group come into contact with that particular service, program, or activity?
 - * Frequency of various languages?

How do I use the guidelines?

“Reasonable Steps Test” (continued)

- Look at all of the circumstances surrounding the provision of the services, programs and activities, and also ask the following questions:
- The number or proportion of LEP persons served or encountered in the eligible service population (see previous page for detailed explanation)
- The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- The nature and importance of the services, programs, or activities;
 - * Greater:
 - the importance of the service, program or activity, or information; OR
 - possible consequence of contact to the LEP person, the more likely language services are needed.
 - * Does a denial or delay in provision of language services have implications for the LEP persons?
 - * If you have made the service, program or activity compulsory, it is strong evidence of that service, program or activity's importance.
- The resources available to the State or covered entity and costs.
 - * Recipient's level of resources & costs impacts the nature of steps it should take to provide language access.
 - * Smaller agencies with limited budgets are not expected to provide same level of language services as larger agencies.
 - * Cost analysis - the provision of language services may cease to be reasonable only where the costs imposed substantially exceeds the benefits.
 - * **NOTE:** Should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Resource limitations should be well-substantiated.
- Determining whether the provision of the language service is reasonable, by using the four-factor analysis described above, is the first step.
- After determining whether the provision of language service is reasonable, you must determine the method of provision of the language service (oral or written) to ensure “meaningful access” (defined in HRS 371 § 371-32).

Language Services for Providing Meaningful Access

- Interpreter: listens to a communication in one language and orally converts to another language while retaining the same meaning.
- Translator: replaces written text from one language into an equivalent written text in another language.
- Notice of Language Service can be provided through signage (sample will be provided at workshop); attaching written notices of the availability of translation on documents; working with community-base organizations; conducting outreach.
- Bilingual Employees: have the ability to use two languages. A bilingual person can learn to become a translator or an interpreter but is not automatically so qualified by virtue of his or her language abilities. Formal certification or education not necessary but should be: proficient in English and other language; have knowledge of specialized terms used; understand confidentiality and other ethical issues; and understands role as interpreter (knows he/she is not a counselor providing advice or opinions).
- Informal Interpreters: An LEP person may elect to use his/her own interpreter. An informal interpreter is considered the LEP person's spouse, sibling, children, parent, other relative, or friend. Although LEP persons are free to use an informal interpreter, note that:
 - * The use of minors to provide language services are discouraged.
 - * There may be situations that call for quick, informal interpretation whereby the gravity of harm that may be caused by the use of an informal interpreter of the LEP person's choosing (i.e. breach of confidentiality, privacy, inaccurate translation) is less than and disproportionate to the delays and costs of obtaining a formal interpreter. However, the use of informal interpreters should be prohibited even if the LEP person has chosen that option where there is a question of ethics. These situations include: the explanation of denials, benefits, or responsibilities; situations when cultural considerations may prevent accurate translation or hinder the LEP person from being forthcoming because of the consequences surrounding disclosure of information to the interpreter who is a family member, friend, minor, or their child; and where the informal interpreter is would not be capable of providing an accurate translation.
 - * It is suggested that when there is a question of ethics, agencies should obtain a formal interpreter to ensure accurate interpretation or translation of the informal interpreter.

2. Oral Language Services

- Include a procedure for providing interpretation services.
 - * Employees can be used to assess initial needs of LEP customer and then call in certified interpreters to deal with the matter that brought the LEP customer to you?
 - * Will you be using telephone interpreters, contract interpreters, or community based organizations as a resource?
- Sample Language for Procedure

Providing Oral Language Services

To ensure that the inability to communicate in English does not deprive the public of rights and privileges, our agency will continue to provide an interpreter, at no cost to the client, for LEP individuals pursuant to the following procedures:

Oral Interpreters - An individual approaches an employee and appears to be asking for help but has difficulty communicating what he or she needs.

1. When a request for an interpreter is made either orally or in writing, the employee shall determine whether bi-lingual staff in the office or a nearby unit is available who speaks the language being requested.
2. When bilingual staff is not available, the employee shall contact a telephone interpreter service to provide interpreter services. *(this is only a sample & not the entire procedure)*

- Does the plan include a sample multi-lingual signage asking LEP customers to identify the language they need?
 - * OLA is charged with creating and distributing to the State and covered entities, multi-lingual signage (Customers will point to primary language).
 - * You may refer to OLA's sign, or include a plan to create your own based upon the language(s) that you frequently encounter.
- Does the plan include a list of multi-lingual employees?
 - * In the event your plan is to use employees as interpreters, please include a list of employees, or a plan on how to gather names of employees that are able to provide competent oral interpretation.
- Does the plan include a list of most common languages encountered?
 - * If you do not know of languages encountered, you may provide a plan on how you will determine the most common languages encountered. See "Data Collection"

Oral Language Services



What are the requirements for the provision of Oral Language Services?

- Hawai'i's Language Access Law requires State and Covered Entities to provide:
 - * competent and
 - * timely (must be in a manner that avoids effective denial of service)
 - * Oral Language Services to LEP persons who seek to access services, programs, or activities.
- “Oral Language Services” means:
 - * the free provision
 - * of oral information
 - * necessary to enable LEP persons to access or participate in services, programs or activities.
- Note: provision of oral language services are subject to the “Reasonable Steps Test”
 - “**Reasonable Steps Test**” - Will we provide oral language services?
 1. Number of LEP persons served? Excluded if no language service?
 2. Frequency of LEP person coming into contact with service? Frequency of Languages?
 3. Nature & Importance of service or consequence?
 4. Resources available?
 - “**Meaningful Access**” - If it is reasonable, how will we provide & give notice of the language service?
 - Oral interpretation
 - Notice of oral interpretation

What are the methods for providing Oral Language Services?

- Bilingual Employee;
- Phone Interpretation through and employee in another office,
- Telephone Service;
- Contract Interpreter, or
- Using resources of community-based organizations.

Written Translation of Vital Documents for LEP Groups

- Hawai'i's Law requires "Vital Documents" be translated subject to the "Reasonable Steps Test" (Number, Frequency, Nature & Importance, Resources).
- Vital Documents are defined as (HRS § 371-32):
 - * Printed documents that provide important information necessary to participate in services, programs or activities.
 - * Includes, but is not limited to:
 - Applications,
 - Outreach Materials, and
 - Written notices of rights, denials, losses or decreases in benefits or services.

Q: Do all my applications, materials and written notices have to be translated?

A: Written translation of a document will depend on whether it is reasonable. To determine if it is reasonable, apply the "Reasonable Steps Test":

"Reasonable Steps Test" - Will we provide written translation of this document?

1. Number of LEP persons served? Excluded if no translation of document?
2. Frequency of LEP person coming into contact with service? Frequency of Languages?
3. Nature & Importance of service or consequence?
4. Resources available?

"Meaningful Access" - If it is reasonable, how will we provide & give notice of the language service?

- Provide written translation of the entire document
- Provide written translation of the important parts of document
- Notice of oral interpretation of the document

- **Steps to Determine whether to translate a document:**

- * Compile a list of all applications, outreach materials written notices that are sent to applicants, and any other documents that are provided to the public.
Go through Analysis:
- * "Reasonable Steps Test"
- * If reasonable, determine what method the language services will be provided in (Meaningful Access Test)

Written Translation of Vital Documents for LEP Groups

5% Rules: HRS § 371-33(c)(1)-(2)

Complying with the “5% Rules” means that you have demonstrated strong compliance with Hawai'i's Language Access Law. Note that the provision of all types of written translation is subject to the “Reasonable Steps Test,” and thus, not providing the written translation or oral interpretation to LEP groups that meet the 5% threshold, does not mean you are non-compliant.

- The first 5% rule, found in HRS § 371-33(c)(1), states that:
 - * If it is reasonable,
 - * written translation for vital documents must be provided,
 - * for each eligible LEP group that constitutes 5% or 1000, whichever is less,
 - * of the population of persons eligible to be served or likely to be affected or encountered.
 - * How do you use this 5% rule?
 - Go through “Reasonable Steps Test”
 1. Number: Does the LEP Group constitute 5% or 1000 persons of the population your serve or would be excluded?
 2. Frequency of LEP person coming into contact with service? Frequency of Languages?
 3. Nature & Importance of service or consequence?
 4. Resources available?
 - If found reasonable, provide written translation of the vital document for the LEP Group that constitutes 5% or 1000 persons in your population. Determine whether to provide translation of entire or parts of document.
 - If not found reasonable to provide written translation of the document is it reasonable to provide oral interpretation of the document?
- The second 5% rule, found in HRS § 371-33(c)(2), states that:
 - * If there are fewer than 50 persons in a LEP group that reaches the 5% threshold, written translation of vital documents are not required.
 - * Instead, written notice
 - * in the primary language to the LEP group
 - * of the right to receive competent, oral interpretation, of those written materials, free of cost,
 - * shall be provided if reasonable. (Must go through “Reasonable Steps Test” to determine whether the provision of notice of oral interpretation is reasonable.)

3. Written Translation of Vital Documents

- Does the plan include a list of vital documents for translation?
- What languages will the vital documents be translated in? What are the LEP groups that require translation?
 - * Or a plan on how you will gather the languages of the LEP populations you encounter.
- Note: Safe Harbor provision
- Sample Language:

Written Translation

Our agency currently has 2 documents translated into a 3 languages. An internal needs assessment will be completed to determine whether any additional materials need simplification and written translation. Written translation of those documents will be subject to the four-factor analysis and reasonableness.

A notice regarding a request for oral translation of a document shall be attached to important documents that are not yet translated in order to provide meaningful access to LEP individuals and/or sent with documents that division personnel have sufficient reason to believe are addressed to a LEP individual.

4. Written Notice for Oral Translation of Documents

- Does the plan provide for written notice in the LEP person's primary language of the right to receive competent, free oral interpretation of written materials if part of a group that meets 5% threshold but number less than 50 persons?
- Note: Safe Harbor provision
- Sample Language

Written Notice for Oral Translation for LEP Groups

Procedures for providing oral language services will be followed upon request for oral interpretation of a document for an individual in an LEP group that meets the 5% threshold, but number fewer than 50. Written translation is subject to the four-factor analysis and reasonableness.

5. Data Collection and Reporting System

How does you determine the *number, frequency, importance, and resources?*

- What data does you currently have, and/or how do you plan to enact a data collection system to obtain information regarding the LEP populations:
 - * that access your services; or
 - * would access your services if they were linguistically accessible (provided in the population's language)?
- Also, how will you record the types of oral or written language services provided to LEP persons?
- Does your plan include a sample of the data collection instrument?
- Your data collection and reporting system, should allow you to determine:
 - * The characteristic of LEP customers;
 - * The type and quality of services provided;
 - * The number and nature of complaints.
- See next two pages for sample data collection forms.
- Methods of obtaining data:
 - * Census - www.lep.gov, choose "Demographics Data"
 - * Ask Community based organizations
 - * Consider direct and indirect customers. Examples of indirect customers would be parents and guardians.
- Sample Language:



Data Collection System

To determine which services, programs, and activities are provided directly to the public and to estimate the percentage of LEP persons who are eligible to receive each service, benefit, or activity, our agency will develop and provide surveys to the various divisions without our agency.

These surveys will be administered by the division managers, and will be returned to LEP Plan Coordinator.

(See Attachments A and B for sample)

Interpretation and Translation Services Log

For the Month Ending _____

Date	Translation Service Used	Start Time	End Time	Originating Phone # or Office	Language	Comments from LEP clients or their representative(s) regarding quality of services provided:
07/07/2007	Employee	10:30 a	11:15 a	555-1256	Ilokano	None.
07/07/2007	"Translations R Us" (Sample Agency)	11:45 a	12:30 p	Benefits Division	Chuukese	Client's representative stated that interpreter was not translating the entire conversation and but for representatives presence, client would not know exactly what was going on.
07/08/2007	Language Line	8:00 a	9:06 a	555-6859	Korean	None.

Limited English Proficiency Questionnaire

This questionnaire is to be completed by Staff providing services to an individual with limited English proficiency. Please complete the questionnaire for each LEP individual served and turn in to LEP Coordinator.

Staff Name: _____ Date: _____

Division/Office: _____

Name of LEP Individual (If known): _____

1. What is the primary language spoken by the LEP person?
(Burmese, Cambodian, Chamorro, Chuukese, Ilokano, Japanese, Korean, Kosraean, Lao, Mandarin, etc.)
2. List the type of services provided this person.
(e.g. applications, permits, license, services, job information, benefits)
3. Was the service provided within the timeframe as services provided to non-LEP individuals?
(Yes or No; if No, please indicate why)
4. What type of LEP services did you provide this person?
(e.g., oral interpretation in person or over the phone, written translation, none)
5. Who provided the interpreter services?
(e.g., bilingual staff, contracted interpreter, Telephone Interpreter Services, community volunteer)
6. Was the person satisfied with the interpreter services provided?
(Yes or No; if No, please explain.)

**Sample
Language Access Survey**

This survey is being done to assess where there may be a need in this department to address language access for limited English proficient persons. Please complete the survey below.

Questions:

Question 1: Does your work involve interaction with the public to provide services, programs or activities to the public? Yes No

If you answered "no" skip Questions 2-6 and go to Question 7.

Question 2: Identify the Division in which you work: _____

Question 3: If you answered "yes" to Question 1, what type of public services, programs or activities does your work involve?

Question 4: If you answered "yes" to Question 1, on average how often during the course of a month do you encounter a member of the public who does not speak English as their primary language and who identifies themselves as having a limited ability to read, write, speak, or understand the English language? Please check one:

- Never or rarely
- 1 to 3 times per month
- More than 3 times per month
- Other Explain: _____

Question 5: If you answered "yes" to Question 1 and you encounter limited English proficient persons as part of your work, please list the types of languages you are encountering:

Question 6: If you answered "yes" to Question 1 and you encounter limited English proficient persons as part of your work, are there vital documents used by the Division that would allow such persons better access to services, programs, or activities if a written translation were provided to the public?

Yes No

If you answered "yes", please list the documents that should be considered for translation: _____

Question 7: We anticipate creating an department directory in the event language assistance is needed. Do you speak, read, or write a non-English Language? If so, and you are willing to provide language assistance when needed by the Department, please provide the following information:

Name: _____ Division: _____

Phone: _____ Languages: _____

6. Evaluation Process

- Does the plan provide for an evaluation process to determine if the goal to provide meaningful access was met?
- Does the plan provide for review, revision, & submission of a plan to OLA every two years?
- Does it create an evaluation process to obtain feedback from the community & stakeholders?
- Sample Language:

Evaluation Process

This LA Plan is a shall be reviewed and revised in light of comments from LEP individuals, their representatives, interested stakeholders, and our staff. Such review and revision shall take place no later than January 31, 2010. A revised LA Plan will be submitted to OLA by June 1, 2010.

7. Training for Staff

- Does the plan provide for the training of staff regarding the LA Plan?
- How will you ensure your employees understand the LA Plan and the provision of language services?
- Note: Language Access Council will be reviewing training of employees, and OLA can provide technical assistance on training.
- Sample Language:

Training of staff on the LA Plan

The LEP Plan Coordinator will be responsible for providing information on this plan and its procedures to our employees. The training will address issues of competency & confidentiality regarding in-person interpretation.

8. Language Access Coordinator or Contact Person

- Did you designate a Language Access Coordinator (required for the State, HRS 371-34(c)), or Language Access Contact (for covered entities)?
- Duties of Language Access Coordinator or Contact may also be specified in plan. Duties may include being responsible for:
 - * the overall implementation of the LEP Plan;
 - * responding to any inquiries or comments/complaints regarding the LEP Plan and its implementation;
 - * making any revisions and modifications to the LEP Plan, as necessary;
 - * training employees by providing the proper background necessary to implement the objectives of the LEP Plan;
 - * serving as the primary contact for LEP customers who need a written translation of important documents;
 - * developing a survey form to collect information necessary to enable the department to render meaningful access to its LEP customers and compile the data on a yearly basis and submit an annual report to the Director by no later than July 31, 2008 and every year at this date thereafter;
 - * compiling listing of multi-lingual listing of employees who would be willing to provide interpretations/translation services to LEP customers; and
 - * coordinating efforts to implement the LEP Plan, monitor the LEP Plan, evaluate the LEP plan, and invite stakeholders' input aimed at improving the current LEP Plan.

8. Bilingual Personnel (for the State)

- Include the provision pursuant to HRS § 371-33(d), to provide for the hiring of qualified personnel who are bilingual?
 - * The State shall hire a bilingual person if:
 - additional personnel are needed to provide language services (apply the "Reasonable Steps Test", see page 5-7 of this handout.)
 - That individual is qualified for the position;
 - There is an existing, budgeted vacant public contact position.
- Sample Language:

Hiring of Bilingual Personnel

In the event that we require additional personnel to provide language access to our LEP customers, as determined by the "Relevant Factors," described on page 2 of this language access plan, we shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions.

The Role of the Office of Language Access

OLA:

- Provides central coordination;
- Technical assistance - will work with you on creating & implementing your plan;
- Reviews and monitors for compliance; and
- Provides multi-lingual signage for you to inform LEP customers of the availability of language services.

Process for Language Access Plan Review & Implementation

- After your LA Plan is submitted, OLA Research Analysts will review the LA Plan.
- Analysts will provide LA Plan Coordinator with "Findings and Recommendations."
- LA Plan is revised by LA Plan Coordinator with OLA's assistance, if necessary.
- Implement LA Plan.

Implementation and Next Steps

- Implement the LA Plan that meets the requirements of the law.
- Begin:
 - * Gathering statistics,
 - * Training employees about language access plan and procedures,
 - * Creating taskforces, or internal investigation committees.
- Work with OLA to implement your plan (call us: 586-8730)
- OLA will monitor progress and provide technical assistance

OLA's Role in Ensuring Compliance with the Language Access Law

- OLA will use Informal Compliance Methods HRS § 371-36(4)
 - * Conference, conciliation, mediation, or persuasion;
 - * If informal methods do not remedy situation, Executive Director of OLA will submit a report to the State or Covered Entity and may request action be taken within a specified time.
- Executive Director of the OLA is also mandated to report to the Legislature, 20 days prior to commencement of legislature, detailing compliance, complaints & resolutions, recommendations to enhance compliance, and statutory changes.
- Note: Remember the Federal Requirements (if you are a recipient of Federal funds)

The Role of the Office of Language Access

Deadlines to Abide By

- **State**

- * Required to establish a plan for language access (HRS 371-34)
- * State agencies receiving federal financial assistance -
 - ♦ plan was due July 1, 2007, and
 - ♦ an updated plan is due every two years thereafter.
- * Other State agencies -
 - ♦ plan is due July 1, 2008, and
 - ♦ an updated plan is due every two years thereafter.
 - ♦ The "other state agencies" are:
 - Office of the Governor
 - Office of the Lieutenant Governor
 - Department of Budget and Finance
 - Department of Commerce and Consumer Affairs
 - Department of Human Resources Development
 - Department of Taxation
 - House of Representatives
 - The Senate

- **Covered Entities**

- * Required to establish a plan for language access (HRS 371-34)

- **OLA's internal deadline**

- * Recommend that the State and covered entities submit plan to OLA by October or November so plans can be implemented by December 31, 2007.

Please fill out the information sheet & evaluation form and turn in before you leave.

Thank you!

Appendix A
State of Hawai'i's Language Access Law
HRS Sections 371-31 to 371-37
(2006 Haw. Sess. L. Act 290)

[§371-31] Purpose.

Most individuals living in Hawai'i read, write, speak, and understand English. There are many individuals, however, who are limited English proficient. Language for limited English proficient persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.

The purpose of this part is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons. In providing the delivery of language accessible services, it is the intent of the legislature that those services be guided by Executive Order 13166 and succeeding provisions of federal law, regulation, or guidance. [L 2006, c 290, pt of §1]

[§371-32] Definitions.

Whenever used in this part, unless a different meaning clearly appears from the context:

"Access or participate" means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

"Covered entity" means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services on behalf of the State. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

"Language" means human speech or the expression of ideas by written characters and includes systems used by nations, people, or other distinct communities.

"Limited English proficient" means individuals who, on account of national origin, do not speak English as their primary language and who identify themselves [as] having a limited ability to read, write, speak, or understand the English language.

"Oral language services" means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities.

"State" means the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

"Vital documents":

- (1) Means printed documents that provide important information necessary to participate in services, programs, and activities; and
- (2) Includes but is not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services. [L 2006, c 290, pt of §1]

State of Hawai'i's Language Access Law, HRS Sections 371-31 to 371-37

[§371-33] Oral and written language services.

(a) Each state agency and all covered entities shall take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons, which will be determined by a totality of circumstances, including the following factors:

- (1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;
- (2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The nature and importance of the services, programs, or activities; and
- (4) The resources available to the State or covered entity and the costs.

(b) Subject to subsection (a), each state agency and covered entity shall provide competent, timely oral language services to limited English proficient persons who seek to access services, programs, or activities.

(c) Subject to subsection (a), each state agency and covered entity shall provide written translations of vital documents to limited English proficient persons who seek to access services, programs, or activities, as follows:

- (1) Written translations of vital documents for each eligible limited English proficient group that constitutes five per cent or one thousand, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered; or
- (2) If there are fewer than fifty persons in a limited English proficient group that reaches the five per cent threshold in paragraph (1), written notice in the primary language to the limited English proficient language group of the right to receive competent oral interpretation of those written materials, free of cost.

(d) To the extent that the State requires additional personnel to provide language services based on the determination set forth in this section, the State shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions. [L 2006, c 290, pt of §1]

[§371-34] Additional obligations.

(a) Each state agency and covered entity shall establish a plan for language access.

(b) Each state agency's plan for language access shall be established in consultation with the executive director of the office of language access and the state agency's coordinator for language access. State agencies receiving federal financial assistance shall file an initial language access plan with the executive director of the office of language access no later than July 1, 2007, and every two years thereafter. All other state agencies shall file a language access plan with the executive director of the office of language access no later than July 1, 2008, and every two years thereafter.

(c) Each state agency shall designate a language access coordinator who shall establish and implement the plan for language access in consultation with the executive director of the office of language access and the language access advisory council. [L 2006, c 290, pt of §1]

State of Hawai'i's Language Access Law, HRS Sections 371-31 to 371-37

[§371-35] Public meetings and public hearings.

(a) State agencies to which this part applies shall not be required to translate meeting notices, agendas, or minutes.

(b) Subject to section 371-33, oral language services for public meetings or public hearings held by the legislature shall be provided if requested at least forty-eight hours in advance of the meeting or hearing. Where the notice of any public meeting or public hearing is posted less than forty-eight hours in advance of the meeting or hearing, oral language services shall be provided if requested at least twenty-four hours in advance of the meeting or hearing. [L 2006, c 290, pt of §1]

[§371-36] Executive director of the office of language access; duties.

There is established within the department of labor and industrial relations, for administrative purposes only, an office of language access. The head of the office shall be known as the executive director of the office of language access, hereinafter referred to as executive director. The executive director shall be appointed by the governor without regard to chapter 76. The executive director shall:

- (1) Provide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements under this part or under any other law, regulation, or guidance;
- (2) Provide technical assistance to covered entities in their implementation of this part;
- (3) Review and monitor each state agency's language access plan for compliance with this part;
- (4) Where reasonable access is not provided, endeavor to eliminate the barrier using informal methods such as conference, conciliation, mediation, or persuasion. Where the language access barrier cannot be eliminated by informal methods, the executive director shall submit a written report with the executive director's opinion and recommendation to the state agency or the covered entity. The executive director may request the state agency or the covered entity to notify the executive director, within a specified time, of any action taken on the executive director's recommendation;
- (5) Consult with language access coordinators, the language access advisory council, and department directors or their equivalent;
- (6) Subject to section 371-33, create, distribute to the State, and make available to covered entities multilingual signage in the more frequently encountered languages in the State, and other languages as needed, informing individuals of their right to free oral language services and inviting them to identify themselves as persons needing services; and
- (7) Adopt rules pursuant to chapter 91 to address the language needs of limited English proficient persons. [L 2006, c 290, pt of §1]

State of Hawai'i's Language Access Law, HRS Sections 371-31 to 371-37

[\S371-37] Language access advisory council.

(a) There is established the language access advisory council within the department of labor and industrial relations for administrative purposes. The council shall consist of the following members to be appointed by the governor:

- (1) One representative from the state government;
- (2) One representative from a covered entity;
- (3) One bilingual case management worker, or an individual who is or has been employed by a state-funded immigrant service agency or program;
- (4) One representative of an advocacy organization that provides services to limited English proficient persons;
- (5) One member from the limited English proficient population who has an interest in the provision of oral language services;
- (6) One representative from the University of Hawai'i department of language and linguistics who provides professional training and interpretation and translation;
- (7) One representative of a Hawaiian language advocacy organization;
- (8) One representative of a professional interpreter's organization;
- (9) One representative of a bilingual referral service or program;
- (10) The executive director of the Hawai'i Civil Rights Commission or authorized representative; and
- (11) The executive director, as ex-officio member.

(b) Members shall be appointed in accordance with section 26-34. The terms of the members shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The council shall select one of its members to serve as chair. No member of the council shall receive any compensation for council services, but shall be allowed necessary expenses for travel, board, and lodging incurred in the performance of council duties.

(c) The language access advisory council shall serve in an advisory capacity to the executive director, providing input on:

- (1) Implementation and compliance with this part;
- (2) The quality of oral and written language services provided under this [part]; and
- (3) The adequacy of a state agency or covered entity's dissemination and training of its employees likely to have contact with limited or no-English proficient persons, its policies and procedures for language services, its competency in working effectively with in-person and telephone interpreters, and its understanding of the dynamics of interpretation between clients, providers, and interpreters. [L 2006, c 290, pt of \S1]

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