



HAWAII STATE DEPARTMENT OF HEALTH
HEALTHY PEOPLE - HEALTHY COMMUNITIES - HEALTHY ISLANDS

DEPARTMENT OF HEALTH
LANGUAGE ACCESS PLAN
2016 revision and replaces earlier plan

INTRODUCTION AND BACKGROUND

DIRECTIVES AND LEGAL BASES

Most individuals living in Hawaii read, write, speak, and understand English. There are many individuals, however, who are limited English proficient. Language for limited English proficient (LEP) 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.

In providing the delivery of language accessible services, it is the intent of the entire Hawaii State Department of Health (DOH) to comply with the provisions and guidance of

- Chapter 321C, Hawaii Revised Statutes (HRS), Language Access, and, additionally, and
- Chapter 489 HRS, Discrimination in Public Accommodations, which includes protections against discrimination on the basis of ancestry

We are also subject to federal laws that include language access,

- Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., 45 and CFR part 80
- § 1557 of the Affordable Care Act, (42 U.S.C. § 18116) and implementing regulation 42 C.F.R Part 92.
- Executive Order 13166 and, US Health and Human Services (HHS) Guidance to Federal Financial Recipients Regarding Title VI Prohibition

These laws require that we ensure that consumers are adequately informed of their rights, ensure meaningful access to services, programs, and activities by providing clients with oral and written language services, including written translations of vital documents, if, on account of national origin, clients do not speak English as their primary language and have a limited ability to read, write, speak, or understand the English language. If it is necessary to provide oral or written language services to a client's family in order for the client to benefit from our services, programs, or activities, we shall provide those language services to the family members.

Steps to improve language access are an ongoing process of making assessments of current

status, setting and resetting goals and expectations, proposing and producing activities, monitoring results and evaluating progress. The steps here are a general outline and a guide for policy, notice, participation, and complaint or correction. Thus, the results are that eligible LEP persons are provided equal access opportunity for DOH and DOH aided programs, activities, and services consistent with Hawaii and U.S. laws and guidelines

The Hawaii State Department of Health shall take reasonable steps to provide meaningful access to limited English proficient individuals (LEP) interacting with, eligible for, participating in or encountering Department facilities, programs, and activities. The policy is to ensure that language will not prevent staff from communicating effectively with LEP interested public, applicants for programs, participants in activities and consumers of services to ensure safe and orderly operations, and that LEP will not prevent the public, customers, clients, or consumers from accessing important programs and information; understanding rules, participating in activities or proceedings; or gaining eligibility for programs or services.

All processes, publications, and training will be reviewed to update or amend as a result of the cited laws and regulations.

PROVISIONS, ASSESSMENT, DIRECTIONS

WHO IS LIMITED ENGLISH PROFICIENT (LEP) & OTHER DEFINITIONS

"Limited English proficient (LEP)" 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

Many LEP persons are in the process of learning English and may read, write, speak, and/or understand some English, but not proficiently.

LEP status may be context-specific – an individual may have sufficient English language skills to communicate basic information (name, address etc.) but may not have sufficient skills to communicate detailed information (e.g., medical information, eyewitness accounts, information elicited in an interview, etc.) in English.

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

"Bilingual" means, for this purpose, the ability to speak two languages fluently and to communicate directly and accurately in both English and another language.

"Covered entity" means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the DOH 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 loanguarantees to private businesses of general concern that do not renderservices on behalf of the State.

"Direct communication" means monolingual communication in a language other than English between a qualified bilingual DOH employee or otherbilingual person and an LEP individual (e.g., Ilokano speaker to Ilokano LEP).

"Interpretation" means the act of listening to a communication in one language and orally converting it into another language, while retaining the same meaning. Even proficient bilingual individuals may require additional training and instruction prior to serving as interpreters. Qualified interpreters are generally required to have undergone specific training.

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

"Meaningful Access" means that the DOH and covered entities take reasonable steps to ensure effective communication and access to individuals to their programs and activities. The obligation is fact-dependent and startswith an individualized assessment that balances the four factors.

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

"Primary Language" means the language in which an individual is most effectively able to communicate.

"Translation" means the replacement of written text from one language into an equivalent written text in another language. Qualified translators aregenerally required to have undergone specific training.

"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, andwritten notices of rights, denials, losses, or decreases in benefits or services.

PLANNING DOCUMENTS.

DOH has several planning documents to consider creating.

A revised general directive, as well as background information and as many specifics as appropriate to DOH and its covered entities. This directive will be the overarching document from which we implement the Language Access Plan. Intra-departmental directive 80-50, Bilingual Services, and 81-55, Bilingual Services Referral and Notice Process will be

revised to be consistent with current state law and federal guidelines up to and including the federal §1557 regulations effective October 2016.

- An Implementation Plan will identify policy directions and priorities and operational and management strategies as well as planning options for implementing the language access policy.
- Other methods including clarifying guidance, processes, and resources will utilize various media to communicate with staff and managers regarding protocols and procedures, as appropriate to DOH. These will aid in setting clear expectations and procedures for staff and managers on how and when to access language service options. Where appropriate, different instructions may be issued to cover different types of encounters, so that staff responsible for the particular area have information specific to their duties.
- Language resource lists, signs, instructions on internal websites, training, videos, and other tips and tools could be revised, reissued or created to help staff understand how and when to access and provide language assistance.

Briefings have been held for Division Chiefs, Staff Officers, District Health Officers, and attached agencies at Departmental Executive Committee meetings. Some branches have been oriented on request. Three presentation levels of detail were created and utilized depending on the nature of the audience and the level of detail requested.

FRAMEWORK FOR DECIDING WHEN ORAL and WRITTEN LANGUAGE SERVICES ARE NEEDED

The HRS Language Access act and HHS Guidance for Recipients sets a four-factor analysis that DOH will use to review when determining steps to take to communicate effectively with LEP individuals.

DOH and 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:

- The number or proportion of LEP persons served or encountered in the eligible service population;
- The frequency with which LEP 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 DOH or covered entity and the costs.

The basis, in addition to Census, LEAP, and program client data, for mass market

communication as contrasted to specifically eligible assessment were five reports generated by Ward Research for the DOH. On a statewide basis and for each county assessed Hawaii's LEP audience. (see Ward reports)

In a state language inventory, languages spoken and linguistically isolated groups were identified (see language isolation attachment)

Statewide, top languages identified were Tagalog, Japanese, Ilokano, Chinese, and Korean. In addition to those five, statewide, Vietnamese, Samoan, Hawaiian, Marshallese, and Chuukese/Pohnpeian were identified as linguistically isolated.

- DOH and covered entities shall provide competent, timely oral language services to LEP who seek to access services, programs, or activities.
- DOH programs should consider the extent that past use of English proficiency prerequisites has resulted in low numbers of LEP individuals in certain programs or facilities. In such instances, the number and proportion of LEP persons may not be representative of the eligible LEP population if meaningful access were provided. The DOH program should not rely on artificially low numbers of LEP persons encountered in those programs or facilities to limit language service options. Analysis should consider the number or proportion eligible to be served and those likely to be encountered as well as those actually served or encountered.
- DOH programs and entities are required to take reasonable steps to ensure meaningful access. The meaningful access requirement applies to all LEP persons encountered by the DOH and its entities (whether patients, customers, clients, consumers, children, or persons involved in community programs). Additional constitutional, federal or state statutory, or other requirements may apply with regard to language services as well (such as in the case of LEP juveniles when greater rights to educational opportunities may be implicated), and should be coordinated with the Language Access Plan, where appropriate.
- DOH and covered entities shall identify and provide written translations of vital documents to limited English proficient persons who seek to access services, programs, or activities, as follows
 - 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
 - If there are fewer than fifty persons in a limited English proficient group that reaches the five per cent threshold in paragraph, written notice in the primary language to the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

- In addition to program specific documents targeted at specific audiences, the DOH notices and statements for required posting or publication that can be used on a continuing basis to inform persons of their rights. Most have been updated and now include Tagalog, Ilokano, Cebuano, Samoan, Tongan, Chinese, Japanese, Korean, Vietnamese, Laotian, and Spanish.
- In cooperation with community groups and other state agencies, the DOH has developed in cooperation with the Interagency Council for Immigrant Services "I speak" cards in 18 languages. Programs may use these or the simplified "I speak" cards developed by the Judiciary. This will facilitate identifying the language that a LEP person speaks and will augment other tools available to DOH programs. (see attached samples)
- To the extent that the DOH requires additional personnel to provide language services based on the determination set forth in this section, the DOH shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions. (see HRS §321C-3)
- The Department of Human Resources Development (DHRD), in the hiring process, has as part of its applicant intake process, captures other languages spoken. The DOH Human Resources Office (HRO) shall include data from DHRD. The recruitment process is subject to the statute as defined by the DHRD.
- The Affirmative Action Officer (AAO) in coordination with the HRO provides material and training to programs to orient new (and current) employees to their responsibilities. This is done through department-wide distribution of material electronically and in hard copy through an organized process of contacts and offices. Orientation topics use required AAO leaflets, Background for Requirement for Bilingual Services and Equal Health Care – Your Responsibility. These will be updated. (see leaflets)

ORAL LANGUAGE SERVICES

Direct communication with LEP individuals by bilingual staff

- Often, the most efficient and cost-effective method for communicating with LEP individuals is direct communication through qualified bilingual employees fluent both in English and the LEP person's language.
- Consider taking the following steps to ensure accurate communications:
 - Creating written standards and adopting assessments for qualifying DOH employees as bilingual.
 - Assessing fluency in both languages and in the terminology used by the

DOH prior to designating a staff member as bilingual. A person may be able to convey simple instructions or hold conversations in an LEP individual's primary language, but not be sufficiently proficient in that language to perform more complicated tasks such as conducting investigations, conducting interviews, collecting data, or conveying rights or responsibilities. These individuals are not yet "bilingual."

- Providing initial and periodic training to bilingual employees on their role in direct bilingual communication, code of conduct for bilingual communications, and terminology in other languages.
- Consider taking the following steps to improve effective utilization of bilingual employees:
 - Maintaining a directory of all qualified bilingual employees, including a list of the non-English language(s) they speak and their contact information, assignments, shifts, etc.
 - Considering bilingual capabilities and language assistance needs of the general population and other communities encountered by the DOH.
- Posting or otherwise making known its notices and/or, when appropriate, those of other State or Federal agencies such as the Office of Language Access (OLA) to inform the public of their rights and opportunities to language access

Interpretation

- When language services are needed, the DOH should use qualified interpretation services when a non-bilingual employee needs to communicate with an LEP person or vice versa, when qualified bilingual employees are unavailable or in transit, and when available bilingual employees lack the skills or assignment to provide direct communication services.
- In determining the nature and level of interpreter services needed in a particular situation, and, if it is unclear, our guide by both directive and guideline, is that the following priority be followed:
 - Most appropriate and accessible DOH employee;
 - Fee for service interpreter or telephonic or video interpreter services
 - Qualified Volunteer
 - Personnel of other organization
 - An LEP person may prefer a family member or friend to interpret, the program remains responsible as to its appropriateness and efficacy
 - Is the person aware that DOH will provide an interpreter?
 - Is the person competent to interpret?
 - Is there a conflict of interest (e.g., privacy, HIPAA, ethics)?

Description of options to consider

- Staff interpreters (trained and qualified) who are employed by the DOH exclusively to perform interpretation services.
- Contract in-person interpreters, such as state and federal court interpreters, among others.
- Contract telephonic interpreters who provide interpretation according to DOH guidelines. The language assistance implementation plan could set forth telephonic interpretation options, and how to access them, including use of telephonic or videoconference equipment to:
 - Access commercial telephonic interpretation services. The Plan will set forth information on access codes and assurances of quality control for such services.
 - Access employees, interpreters from other agencies, or others who have been qualified as interpreters by the DOH or other appropriate agency.
- A bilingual person may be sufficiently proficient in English and a foreign language to have direct monolingual conversations in that foreign language with an LEP individual, but not sufficiently proficient to convert orally what is said in the foreign language back into English. Likewise, the person may be perfectly fluent in both languages, but unskilled in interpreting and untrained in the various modes of interpretation and appropriate use of those modes (simultaneous, consecutive, sight).
- Consider creating written standards for assessing and qualifying bilingual DOH employees as interpreters, and provide or secure training for qualified employees on the role of an interpreter, the modes of interpretation, the code of conduct, and the use of terminology in other languages.
- Volunteer interpreters who have undergone training and meet DOH language proficiency standards, and have formal arrangements with the DOH to perform interpretation services.
- Family members or unqualified volunteers should not be used for interpretation, especially for communications involving medical, psychological, or other privileged information, investigations and disciplinary procedures, collection of data or evidence, or other sensitive situations, except temporarily in unforeseen, emergency circumstances while awaiting professional interpretation or bilingual employees or professional interpreters.

Choosing between telephonic and in-person interpretation

- When interpretation is needed, in-person interpreters may be preferred (Department employees or contract) for lengthy interactions and interactions with

significant potential consequences to the LEP person, such as disciplinary or grievance proceeding, hearings, interviews, medical and mental health appointments.

- In general, when interpretation is needed, telephonic interpretation services are most appropriate for brief encounters, situations in which no qualified in-person interpreter is available, while awaiting a qualified in-person interpreter, and during telephone conversations with LEP persons.

WRITTEN LANGUAGE SERVICES

General forms and documents.

- Using the four-factor analysis, the DOH should translate the vital written materials into languages of frequently-encountered LEP groups (considering literacy of LEP populations in their language).
- Vital information from those documents should be interpreted when translations are not available for LEP or when oral communication is more effective, such as in the case of LEP individuals whose primary language is traditionally an oral one.
- In the absence of DOH criteria detailing the State and Federal definition of "vital documents," any questions arising out what should be designated a "vital document" requiring written translation should be referred to division or branch bilingual coordinators and/or the DOH language access coordinator.
- Taglines and contact information will be set upon department deciding on provider of telephonic interpreter services. Guidance will be provided programs. It will not mandate its use if the program has arranged for other similar access
- In addition, the DOH shall determine the nature and the Office of Health Equity (OHE) shall conduct Cultural and Linguistic Competency Training to identified managers, supervisors, and direct contact staff on an ongoing. The Office of Health Equity has an online training available for the DOH. (see <http://health.hawaii.gov/healthequity/files/2013/07/OHETraining.pdf>)

PROCESSES

COMPLAINT

Additionally, customers, clients, patients, or the public may use a Services Discrimination Complaint Form (and process) available through the AAO. It should be noted that the form is an aid and not a requirement to filing a complaint. (see form)

To assess patterns and frequency of providing interpreting and translation services, the DOH language access coordinator, in collaboration with DOH programs, OHE and OLA, will

develop a log or report when interpreter services have been used with an LEP person and when translations for written materials have been made. Among the data collection characteristics being considered are date, language, type of interpreter service, time and duration, possible identifiers, and comments. (see survey sample)

VENDOR ASSURANCE/RECIPIENTS OF STATE AND FEDERAL AID

The AAO shall revise its process in agreement language and in advice to funding programs of language access and other issues to orient recipients. Certain recipients already receive initial federal review. Issues of new content and frequency will require assistance. (see Office for Civil Rights, HHS, <http://www.hhs.gov/civil-rights/for-providers/clearance-medicare-providers/clearance-form-instructions/>)

DOH LANGUAGE ACCESS COORDINATOR

The DOH requested a position in the AAO to be the DOH Americans with Disabilities Act Coordinator and the DOH Language Access Coordinator. This position was not funded.

In the interim, the AAO is the DOH designated Language Access Coordinator (LAC). The person is the assigned contact, as well as liaison to the OLA Executive Director and staff and the Language Access Advisory Council

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The LAC staff of the AAO as an attached program, reports to the Planning Officer, Office of Planning, Policy and Program Development under the Deputy Director of Health. Some of the responsibilities of that position may include to:

- Coordinate identification of language service needs and strategies for responding to those needs.
- Assist in identifying and securing existing and needed resources (in-house, new hires, resource sharing with other agencies, volunteers, or other) to provide oral and written language services.
- Revise or develop or recommend Directives to implement the Plan.
- Reassess and set criteria for designation of languages for initial round of translation, based on demographic data and usage projections;
- Support systems to distribute or deposit translated documents, post electronically,

and maintain list of where supplies exist;

- Identify training needs and coordinate and provide for training to staff, and managers needing to use language services, as well as language service providers.
 - Assess and/or establish protocols for ensuring quality, timeliness, cost- effectiveness, and appropriate levels of confidentiality in translations, interpretation, and bilingual staff communications.
 - Identify and implement a system for receiving and responding to complaints of ineffective language assistance measures.
 - Exchange promising practices information with other programs, departments, and other organizations.
 - Work with programs to moderate a system so that language needs are identified and responded to as early as possible.
 - Review the progress of the DOH in providing meaningful access to LEP persons, develop reports, and modify or recommend modification to the Plan and implementing Directives/orders, as appropriate to DOH and OLA.
- * Submit an updated plan to OLA by November and every two years thereafter.

PUBLIC MEETING AND PUBLIC HEARINGS

While notices, agendas, or minutes are not required to translated, the DOH seeks guidance on the extent to which actual meetings or hearings need to be accessible and to what extent communication might be impacted by the other parts of the Language Access requirements

See attached samples of resources in Binders 1 and 2