


Language Access & Health Care: Rules & Reimbursement for Immigrant Services

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What is the law?

FEDERAL

- ▶ Title VI of the Civil Rights of 1964 provides:
 - ▶ 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 program or activity receiving Federal financial assistance.
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What is the law?


- ▶ National origin discrimination includes discrimination on the basis of limited English proficiency

- ▶ *Lau . Nichols*, 414 U.S. 536 (1974)


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

What is the law?

FEDERAL AGENCIES FUNDING SERVICES


- ▶ Executive Order 13166 (2000) – Applies to Federal Agencies
 - ▶ Directs all federal agencies to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons
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What is the law?


- ▶ If the recipient is found to be in violation of the language access laws, the federal funding agency can terminate funds.
 - ▶ Complaints can be filed with the Office of Civil Rights of the federal funding agency. In many situations the agency will work out a resolution agreement with the recipient.
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What is the law?

STATE LAW FUNDING SERVICES

- ▶ State Language Access Law, Hawai'i Revised Statutes Chapter 371
 - ▶ Substantially similar to federal law
 - ▶ Established Office of Language Access
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What is the law?

- ▶ In contrast to the federal law, if the recipient is found to violate language access laws, the State funding agency **WILL NOT** terminate funds.
 - ▶ A complaint can be filed with OLA.
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What is the law?

- ▶ There is no federal or state private cause of action for violations of language access. *Alexander v. Sandoval*, 532 U.S. 275 (2001)


What is national origin discrimination?

- ▶ No one can be denied services because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group.

What does LEP mean?

- ▶ “Limited English Proficiency” means individuals who, on account of their national origin, do not speak English as their primary language or *identify themselves* as having a limited ability to read, write, speak or understand the English language.
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What is LEP?

- ▶ LEP is NOT the same as non English speaking or reading
 - ▶ Determining whether someone is LEP depends on the circumstances
 - ▶ Examples
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Who must comply with Limited English Proficient Federal and State Laws?


- ▶ All programs and operations of entities that receive federal *or* state funds or assistance
 - federal, state and local government agencies
 - private and not-for-profit organizations
 - cannot *isolate* programs – if one program receives federal or state funding, **entire** organization must provide limited English proficiency services
- ▶ Failure to comply may be national origin discrimination under Title VI law

What must be provided?

Meaningful access

- ▶ “Meaningful access”: to be informed of, participate in, and benefit from the services, program, and activities offered by the entities receiving federal or state funding
- ▶ Interpreter services *at no cost* to the limited English proficient person

What is meaningful access?

- ▶ May include multilingual informational brochures, posters or handouts describing services, programs, and activities
 - ▶ May include multilingual forms, other key documents
 - ▶ **Service delayed is service denied**
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What does the language access law require?

- ▶ Recipients of federal and state funding are required to take reasonable steps to ensure meaningful access to services, programs, and activities.

Is this “meaningful access”?


Assuming the services are state or federally funded:

- ▶ A) Jorge speaks only Spanish. He requests services from you or your office. He is told he will have to pay for an interpreter. Is Jorge getting “meaningful access” to your services?

Is this “meaningful access”?

- ▶ B) Mei speaks Mandarin. Through a relative, she requests services from you or your office. She is told to bring the relative to interpret for her. Is Mei getting “meaningful access” to your services?
- ▶ C) Kim speaks Korean, no English. She requests services from you or your office. You contact an interpreter but he can’t come until a week from now. Is Kim getting “meaningful access” to your services?


What steps should be taken to assure language access?

- ▶ (1) conduct the four-factor analysis;
 - ▶ (2) develop a Language Access Plan (LAP); and
 - ▶ (3) provide appropriate language assistance.
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Where do I begin in determining meaningful access?


- ▶ While designed to be a flexible and fact-dependent standard, the starting point is an **individualized assessment.**

Starting Point for Language Access: Developing A Language Access Plan

- ▶ Federal law: Every entity receiving federal funding or assistance should have a written language access plan/individual assessment
 - ▶ State law: Every state or agency or department and non-profit receiving state funding must have a written language access plan/individual assessment
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Four key factors for a language access plan

A language access plan must balance the following four factors:

1. Number or proportion of LEP persons eligible to be served or encountered
 2. Frequency with which LEP persons come into contact with the program
 3. Nature and importance of the program to people's lives
 4. Resources available to the grantee and the costs
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Language Access & Health Care

3. Nature and importance of the program to people's lives – Given nature & importance of healthcare services, providers have special obligation to ensure patients have language access ¹
4. Resources available to the grantee and the costs – large organizations such as hospitals, health plans, & health systems should universally be providing language assistance services ²

¹ The Legal Framework for Language Access in Healthcare Settings: Title VI and Beyond Journal of General Internal Medicine. 2007 Nov; 22(Suppl 2)362-367.

² Id.


Some questions to ask in creating a plan:

- ▶ Have you determined the impact on actual and potential beneficiaries of delays in the provision of services or participation in your programs and/or activities (economic, educational, health, safety, housing, ability to assert rights, transportation costs, etc.)?

YES NO

- ▶ If so, what are they?

Some questions to ask

- ▶ Have you identified the resources needed to provide meaningful access for LEP persons?
YES NO
 - ▶ Are those resources currently in place?
YES NO
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When does a document need to be translated?

Is it a vital document?


Vital documents:

any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically

When does a document need to be translated?

- ▶ Whether or not a document (or the information it solicits) is "vital" may depend upon the **importance** of the program, information, encounter, or service involved, and the **consequence** to the LEP person if the information in question is not provided accurately or in a timely manner.
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What are some examples of vital documents?

- ▶ Eviction notices?
 - ▶ Termination of benefits notices?
 - ▶ Any other examples?
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Translated documents and the “Safe Harbor” for translations

Size of Language Group

- ▶ 1,000 or more in the eligible population or among current beneficiaries
- ▶ More than 5% of the eligible population or beneficiaries *and* more than 50 in number
- ▶ 5% or less of the eligible population or beneficiaries and less than 1,000 in number

Recommended Provision of Written Language Assistance

Translate vital documents

Translate vital documents

No translation *required*

Is there a safe harbor for oral interpretation?

NO

Assisting LEP persons

What would you do if a LEP person wanted services from your office and:

- ▶ Called your office?
- ▶ Walked into your office?

Assisting LEP persons

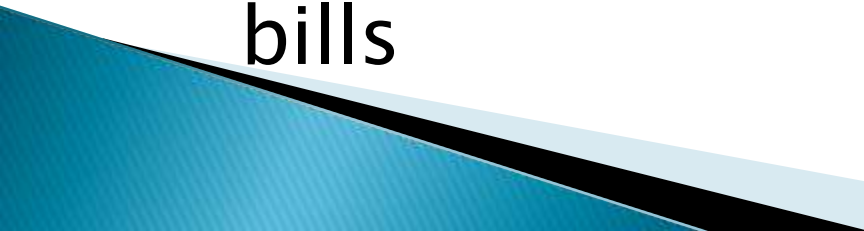
- ▶ There is a form that needs to be filled out by clients in the office before services can be provided.

Would you help a LEP client fill out the form? How?

Resources

- ▶ <http://www.lep.gov> (health care)
- ▶ <http://www.hawaii.gov/labor/ola>
- ▶ National Health Law Program – Language Access Publications
 - www.healthlaw.org

REIMBURSEMENT for Immigrant Services

- ▶ Crime Victim Compensation Commission (“CVCC”)
 - ▶ Pre-Certified Victims of Human Trafficking
 - ▶ VAWA Approval or T Visa Certification
 - ▶ Subcontractor to federal grantee
 - ▶ Immigration reasons to encourage clients to be responsible for their own bills
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REIMBURSEMENT for Immigrant Services: CVCC

- ▶ Crime Victim Compensation Commission (“CVCC”)
 - Chapter 351, Hawaii Revised Statutes & Section 23–605 of Hawaii Administrative Rules
 - Covers Necessary Medical Expenses
 - Injuries arising from certain criminal incidents
 - Victim must make police report
 - Upon substantiation of claim CVCC generally contacts provider directly to negotiate payment
 - Client should continue to make payments on bill (even if nominal) while CVCC investigates claim
 - Immigration status does not matter


REIMBURSEMENT for Immigrant Services: Pre-Certified Victims of Trafficking

ALLOWABLE	UNALLOWABLE
<p>Health Screening & Medical Care</p> <ul style="list-style-type: none">-Health-related exams & med treatment-Treatment for STIs-Family planning counseling/services-Full range of legally permissible gynecological & obstetric care-Prescriptions-Medical assistive devices	<p>Health Screening & Medical Care</p> <ul style="list-style-type: none">-Non-health related med treatment (e.g. elective plastic surgery)-Elective surgeries (non-life saving or nonessential health related surgeries)-No funds may be expended for an abortion except in certain circumstances
<p>Mental Health Care</p> <ul style="list-style-type: none">-Mental Health Screenings-Individual/Family/Group Sessions (Licensed Medical Health Care Professionals)-Formal in-patient & out-patient substance abuse programs	<p>Mental Health Care</p> <ul style="list-style-type: none">- Informal counseling and support provided to a client by staff or volunteers who are not mental health care providers


REIMBURSEMENT for Immigrant Services: VAWA & T Certified

- ▶ VAWA & T Nonimmigrant status = Immigration remedies
 - ▶ Once clients are approved as a VAWA or T recipient they're eligible to apply for welfare including Medquest and can then be covered for future services.
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REIMBURSEMENT for Immigrant Services: Subcontractor to federal grantee

- ▶ HIJC at Legal Aid is a partner agency to a federal grant covering services to victims of human trafficking.
 - ▶ Under this grant, medical providers may be eligible for reimbursement if the victim is referred by our medical partner agency.
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REIMBURSEMENT for Immigrant Services: Encourage Self-Pay

- ▶ Incentive for HJC @ Legal Aid to encourage clients to pay medical bills as failure to pay may negatively impact future immigration applications
 - ▶ Can help prove client resided in the U.S. for a period of time which may be required for immigration relief client requesting.
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Contact information

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