



**FAMILY PLANNING PROGRAM
POLICY AND PROCEDURE MANUAL**

SECTION:Program Administration

SUBJECT:Services for Limited English Proficient
Persons

POLICY: Family Planning programs must develop and implement a plan to ensure meaningful access to services by Limited English Proficient (LEP) persons.

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Section 601 of Title VI, 42 U.S.C. 200d 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 any program or activity receiving federal financial assistance.

In 2002, the Department of Health and Human Services (HHS) published the revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against Nation Origin Discrimination Affecting Limited English Proficient (LEP) Persons (hereafter called Revised HHS LEP Guidance). This revised HHS LEP Guidance became effective immediately and requires all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons.

A Limited English Proficient (LEP) person is an individual who does not speak English as their primary language and who have a limited ability to read, write, speak or understand English. Such a person may be eligible to receive language assistance with respect to services or benefits.

GUIDELINES:

Each Program will assess its obligation to provide LEP Services by completing an individualized assessment that considers the following four factors:

1. The number or proportion of LEP persons served or encountered in the eligible service population.

One factor in determining what language services family planning programs should provide is the number or proportion of LEP persons from a particular language group served in the eligible service population. The greater the number or proportion of LEP persons, the more likely language services are needed. This eligible population is family planning program-specific and includes persons who are in the geographic area approved by North Dakota Department of Health as the program's service area.



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2. The frequency with which LEP individuals come in contact with the family planning program, activity or service.

Programs should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP client from different language groups. The more frequent the contact with a particular language group, the more likely that enhanced language services are needed. For example, the steps that are reasonable for a program that services a LEP person on a one-time basis will be very different than those expected from a program that serves LEP persons daily. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this analysis to determine what to do if an LEP individual seeks family planning services. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services.

3. The nature and importance of the program, activity or service.

The more important the program's information or service, the more likely language services are needed. Programs need to determine whether denial or delay of access to services or information could have serious or even life – threatening implications for the LEP individual. Thus, the recipient should consider the importance and urgency of its program, activity, or service.

If the activity is both important and urgent – such as the communication of information concerning emergency surgery and the obtaining of informed consent prior to such surgery – it is more likely that relatively immediate language services are needed. Alternatively, if the activity is important, but not urgent – such as the communication of information about, and obtaining informed consent for, elective surgery where delay will not have any adverse impact on the patient's health or communication of information regarding admission to the hospital for tests where delay would not affect the patient's health – it is more likely that language services are needed, but that such services can be delayed for a reasonable period of time.

Finally, if an activity is neither important nor urgent - such as a general public tour of a facility - it is more likely that language services would not be needed. The obligation to communicate rights to a person whose benefits are being terminated or to provide medical services to an LEP person who is ill differ, for example, from those to provide medical care for a healthy LEP person or to provide recreational programming.



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4. The resources available to the program and costs.

A family planning program's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take to comply with Title VI. Smaller programs with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets.

When possible, however, resources and costs should be reduced by using technological advances, the sharing of materials and language assistance services between programs and the use of advocacy groups or federal grant agencies. Programs should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource or cost concerns.

Selecting Language Assistance Services. Programs have two main ways to provide language services: Oral language services (interpretation) and written language services (translation).

1. Oral Language Services (Interpretation).

Where interpretation is needed and is reasonable, programs should consider some or all of the following options for providing competent interpreters in a timely manner:

- a. Hiring bilingual staff
- b. Hiring staff interpreter
- c. Contracting for interpreters
- d. Using telephone interpreter lines
- e. Using community volunteers
- f. Use of family members or friends as interpreters

Note: Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. However, programs should make the LEP person aware that he or she has the option of having an interpreter provided at no cost. Programs also need to consider issues of competence, appropriateness, conflicts of interest and confidentiality in determining whether the LEP person should use an interpreter of his/her own choosing.

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What documents should be translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. 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. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are vital to the meaningful access of the LEP populations they serve.

Vital written materials could include, for example:

- a. consent and complaint forms
- b. intake forms with the potential for important consequences
- c. written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings
- d. notices advising LEP persons of free language assistance
- e. written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- f. applications to participate in a recipient's program or activity or to receive recipient benefits or services

Non-vital written materials could include:

- a. third party documents, forms, or pamphlets distributed by a recipient as a public service.
- b. large documents such as enrollment handbooks (although vital information contained in large documents may need to be translated)
- c. general information about the program intended for informational purposes only.

The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations: (a) The HHS recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally or (b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.



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Elements of Effective Plan on Language Assistance for LEP Persons

If, after completing the four-factor analysis, a recipient determines that it should provide language assistance services, a recipient may develop an implementation plan to address the identified needs of the LEP populations it serves. Such recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically updated written plan on language assistance for LEP persons (LEP plan) for use by a recipient's employees who serve or interact with the public could be an appropriate and cost-effective means of documenting compliance with Title VI and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans may provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits may lead recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain HHS recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying Title VI obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it may want to consider alternative and reasonable ways to articulate how it is providing meaningful access in compliance with Title VI.

For the recipient who decides to develop a written implementation plan, the following five steps may be helpful in designing such a plan; they are typically part of effective implementation plans.

- a. Identifying LEP Individuals Who Need Language Assistance
- b. Language Assistance Measures
- c. Training
- d. Providing Notice to LEP
- e. Monitoring and Updating the LEP Plan

Additional Information

Additional information and resources may be found in the US DHHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. A copy of this document is available at www.hhs.gov/ocr/lep/reviseblep.html or may be requested from the North Dakota Family Planning Program at 800.472.2286 (press 1).