



STATE OF DELAWARE  
**STATE COUNCIL FOR PERSONS WITH DISABILITIES**  
MARGARET M. O'NEILL BUILDING  
410 FEDERAL STREET, SUITE 1  
DOVER, DE 19901

VOICE: (302) 739-3620  
TTY/TDD: (302) 739-3699  
FAX: (302) 739-6704

**MEMORANDUM**

DATE: December 21, 2012

TO: Ms. Sharon L. Summers, DSS  
Policy, Program & Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 16 DE Reg. 605 [DSS Proposed Interpreter & Translation Services Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Social Services' (DSS) proposal to revise its regulations covering interpreter services for non-English speaking clients and clients with hearing loss. The proposed regulation was published as 16 DE Reg. 605 in the December 1, 2012 issue of the Register of Regulations. The following rationale for the changes is as follows:

The language in DSSM §§1009 and 1010 is changed to People First and the titles are changed to more accurately reflect the activity performed. In addition, the outdated listing of contracted vendors is removed. Finally, procedure is removed from the manual.

SCPD has the following observations.

§1009

First, the title to §1009 refers to "non-English speaking clients". Likewise, the second paragraph of text refers to "non-English speaking clients". This is unduly narrow. The first sentence of text more accurately refers to individuals who have "limited English proficiency". Moreover, the latter reference conforms to the attached HHS guidance excerpted from 68 Fed Reg. 47311 (August 8, 2003):

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English may be limited English proficient, or

“LEP,” and may be eligible to receive language assistance with respect to a particular type of service, benefit, or encounter.

See also attached excerpt from HHS OCR Website describing “LEP” as covering individuals who have “not developed fluency in the English language”. Individuals who speak “some English” but lack “fluency” still qualify for “LEP” services.

DSS may wish to use the term “limited English proficiency” and include a definition.

Second, the regulation authorizes interpreter services only to “applicants” and “recipients”. This is unduly narrow. There may be individuals who request information on their behalf or on behalf of others. The above HHS standard refers to a “service, benefit, or encounter”.

Third, the second paragraph of text suggests that staff or vendor translation is the exclusive approach to address the needs of persons who would benefit from interpreter services. Consistent with the attached HHS OCR guidance, individuals should be offered the option of relying on their own interpreter. OCR notes that some individuals may be more comfortable with a family member interpreting. See also attached resolution agreement. Moreover, an individual may prefer to use a “personal” interpreter in lieu of waiting for a State interpreter or rescheduling a visit.

Fourth, it would be preferable to include a standard of “timely” provision of interpreter services. HHS characterizes undue delay in providing interpreter services as a “frequently encountered” Title VI violation. See attached 67 Fed Reg. 4975-76 (February 1, 2002).

Fifth, the exclusive context for determining need for interpreter services is a receptionist assessment upon the physical appearance of the individual:

The receptionist will identify the need for services when the applicant or recipient arrives at the office.

HSS guidance contemplates advertising the availability of interpreter services. It would be preferable to allow individuals to request an interpreter in advance (e.g. via phone).

As an aside, SCPD understands people can apply for benefits online at the DSS website. HHS guidance contemplates providing accommodations for high percentage minority languages (e.g. Spanish). Does the DSS website provide an online version of applications in Spanish that may satisfy accommodation requirements?

## §1010

First, the title to the section suggests that only existing “clients” are covered by the policy. This is too narrow to meet ADA standards. See attached DOJ ADA guidance:

The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who simply contact state or local government agencies seeking information about programs, services, or activities.

Second, the regulation authorizes interpreter services only to “applicants” and “recipients”. This is unduly narrow. There may be individuals who request information on their behalf or on behalf of others.

Third, the policy recites that it covers “auxiliary aids” for persons with hearing impairments. It then omits any accommodations apart from interpreter services. Consistent with the attached DSAMH policy, “30% to 50% of persons > 65 years of age have significant hearing loss leading to impairment in functioning.” If a person presents a “hard of hearing” profile, providing an ASL interpreter will not be useful. Moreover, the attached DOJ ADA guidance provides a long list of “auxiliary aids” apart from interpreters for individuals with hearing impairments.

Fourth, SCPD recommends incorporating a reference to “effective communication” in the regulation since this is the operative ADA benchmark.

Fifth, covering the arrangement of services for individuals with hearing impairments with the 3-sentence policy is ostensibly inadequate guidance to staff.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation. In addition, SCPD and the Council on Deaf & Hard of Hearing Equality would be available to offer technical assistance in preparing a more robust version of §1010.

cc: Ms. Elaine Archangelo  
Mr. Brian Hartman, Esq.  
Council on Deaf & Hard of Hearing Equality  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

16reg605dss-interpreter and translation services 12-20-12

relays inaccurate information that results in the denial of benefits to clients.

- A state welfare agency does not advise a mother of her right to free language assistance and encourages her to use her eleven year old daughter to interpret for her. The daughter does not understand the terminology being used and relays inaccurate information to her mother whose benefits are jeopardized by the failure to obtain accurate information.
- A medical clinic uses a medical student as an interpreter based on her self-identification as bilingual. While in college, the student had spent a semester in Spain as an exchange student. The student speaks Spanish haltingly and must often ask patients to speak slowly and to repeat their statements. On several occasions, she has relayed inaccurate information that has resulted in misdiagnosis.
- A managed care plan calls the receptionist at an Ethiopian community organization whenever it or one of its providers needs the services of an interpreter for an Ethiopian patient. The plan instructs the receptionist to send anyone who is available as long as that person speaks English. Many of the interpreters sent to a provider either do not understand English well enough to interpret accurately or are unfamiliar with medical terminology. As a result, clients often misunderstand their rights and benefits.
- A local welfare office forces a Mandarin-speaking client seeking to apply for SCHIP benefits on behalf of her three year old child to wait for a number of hours (or tells the client to come back another day) to receive assistance because it cannot communicate effectively with her, and has no effective plan for ensuring meaningful communication. This results in a delay of benefits.
- An HMO that enrolls Medicaid beneficiaries instructs a non-English speaking client to provide his or her own interpreter services during all office visits.
- A health plan requires non-English speaking patients to pay for interpreter services.

#### D. Promising Practices

In meeting the needs of their LEP patients and clients, some recipient/covered entities have found unique ways of providing interpreter services and reaching out to the LEP community. As part of its technical assistance, OCR has frequently assisted, and will continue to assist, recipient/covered

entities who are interested in learning about promising practices in the area of service to LEP populations. Examples of promising practices include the following:

**Simultaneous Translation**—One urban hospital is testing a state of the art medical interpretation system in which the provider and patient communicate using wireless remote headsets while a trained competent interpreter, located in a separate room, provides simultaneous interpreting services to the provider and patient. The interpreter can be miles away. This reduces delays in the delivery of language assistance, since the interpreter does not have to travel to the recipient/covered entity's facility. In addition, a provider that operates more than one facility can deliver interpreter services to all facilities using this central bank of interpreters, as long as each facility is equipped with the proper technology.

**Language Banks**—In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services, or where there is a large variety of language needs.

**Language Support Office**—A state social services agency has established an "Office for Language Interpreter Services and Translation." This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

**Multicultural Delivery Project**—Another county agency has established a "Multicultural Delivery Project" that is designed to find interpreters to help immigrants and other LEP persons to navigate the county health and social service systems. The project uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.

**Pamphlets**—A hospital has created pamphlets in several languages, entitled "While Awaiting the Arrival of an Interpreter." The pamphlets are intended to facilitate basic

communication between inpatients/outpatients and staff. They are not intended to replace interpreters but may aid in increasing the comfort level of LEP persons as they wait for services.

**Use of Technology**—Some recipient/covered entities use their internet and/or intranet capabilities to store translated documents online. These documents can be retrieved as needed.

**Telephone Information Lines**—Recipient/covered entities have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers, in the non-English languages, on how to leave a recorded message that will be answered by someone who speaks the caller's language.

**Signage and Other Outreach**—Other recipient/covered entities have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations; (b) putting notices in newspapers, and on radio and television stations that serve LEP groups; (c) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; and (d) establishing information lines in appropriate languages.

#### E. Model Plan

The following is an example of a model language assistance program that is potentially useful for all recipient/covered entities, but is particularly appropriate for entities such as hospitals or social service agencies that serve a significant and diverse LEP population. This model plan incorporates a variety of options and methods for providing meaningful access to LEP beneficiaries:

- A formal written language assistance program;
- Identification and assessment of the languages that are likely to be encountered and estimating the number of LEP persons that are eligible for services and that are likely to be affected by its program through a review of census and client utilization data and data from school systems and community agencies and organizations;
- Posting of signs in lobbies and in other waiting areas, in several languages, informing applicants and clients of their right to free interpreter services and inviting them to identify themselves as persons needing language assistance;
- Use of "I speak" cards by intake workers and other patient contact

how meaningful access will be assessed by OCR:

—A physician, a sole practitioner, has about 50 LEP Hispanic patients. He has a staff of two nurses and a receptionist, derives a modest income from his practice, and receives Medicaid funds. He asserts that he cannot afford to hire bilingual staff, contract with a professional interpreter service, or translate written documents. To accommodate the language needs of his LEP patients, he has made arrangements with a Hispanic community organization for trained and competent volunteer interpreters, and with a telephone interpreter language line, to interpret during consultations and to orally translate written documents. There have been no client complaints of inordinate delays or other service related problems with respect to LEP clients. Given the physician's resources, the size of his staff, and the size of the LEP population, OCR would find the physician in compliance with Title VI.

—A county TANF program, with a large budget, serves 500,000 beneficiaries. Of the beneficiaries eligible for its services, 3,500 are LEP Chinese persons, 4,000 are LEP Hispanic persons, 2000 are LEP Vietnamese persons and about 400 are LEP Laotian persons. The county has no policy regarding language assistance to LEP persons, and LEP clients are told to bring their own interpreters, are provided with application and consent forms in English and if unaccompanied by their own interpreters, must solicit the help of other clients or must return at a later date with an interpreter. Given the size of the county program, its resources, the size of the eligible LEP population, and the nature of the program, OCR would likely find the county in violation of Title VI and would likely require it to develop a comprehensive language assistance program that includes all of the options discussed in Section C. 3, above.

—A large national corporation receives TANF funds from a local welfare agency to provide computer training to TANF beneficiaries. Of the 2,000 clients that are trained by the corporation each month, approximately one-third are LEP Hispanic persons. The corporation has made no arrangements for language assistance and relies on bilingual Hispanic students in class to help LEP students understand the oral

instructions and the written materials. Based on the size of the welfare agency and corporation, their budgets, the size of the LEP population, and the nature of the program, OCR would likely find both the welfare agency and the corporation in noncompliance with Title VI. The welfare agency would likely be found in noncompliance for failing to provide LEP clients meaningful access to its benefits and services through its contract with the corporation, and for failing to monitor the training program to ensure that it provided, such access. OCR would likely also find the corporation in noncompliance for failing to provide meaningful access to LEP clients and would require it to provide them with both oral and written language assistance.

#### 5. Interpreters

Two recurring issues in the area of interpreter services involve (a) the use of friends, family, or minor children as interpreters, and (b) the need to ensure that interpreters are competent, especially in the area of medical interpretation.

(a) *Use of Friends, Family and Minor Children as Interpreters*—A recipient/covered entity may expose itself to liability under Title VI if it requires, suggests, or encourages an LEP person to use friends, minor children, or family members as interpreters, as this could compromise the effectiveness of the service. Use of such persons could result in a breach of confidentiality or reluctance on the part of individuals to reveal personal information critical to their situations. In a medical setting, this reluctance could have serious, even life threatening, consequences. In addition, family and friends usually are not competent to act as interpreters, since they are often insufficiently proficient in both languages, unskilled in interpretation, and unfamiliar with specialized terminology.

If after a recipient/covered entity informs an LEP person of the right to free interpreter services, the person declines such services and requests the use of a family member or friend, the recipient/covered entity may use the family member or friend, if the use of such a person would not compromise the effectiveness of services or violate the LEP person's confidentiality. The recipient/covered entity should document the offer and declination in the LEP person's file. Even if an LEP person elects to use a family member or friend, the recipient/covered entity should suggest that a trained interpreter

sit in on the encounter to ensure accurate interpretation.

(b) *Competence of Interpreters*—In order to provide effective services to LEP persons, a recipient/covered entity must ensure that it uses persons who are competent to provide interpreter services. Competency does not necessarily mean formal certification as an interpreter, though certification is helpful. On the other hand, competency requires more than self-identification as bilingual. The competency requirement contemplates demonstrated proficiency in both English and the other language, orientation and training that includes the skills and ethics of interpreting (e.g. issues of confidentiality), fundamental knowledge in both languages of any specialized terms, or concepts peculiar to the recipient/covered entity's program or activity, sensitivity to the LEP person's culture and a demonstrated ability to convey information in both languages, accurately. A recipient/covered entity must ensure that those persons it provides as interpreters are trained and demonstrate competency as interpreters.

#### 6. Examples of Frequently Encountered Scenarios

Over the course of the past 30 years enforcing Title VI in the LEP context, OCR has observed a number of recurring problems. The following are examples of frequently encountered policies and practices that are likely to violate Title VI:

—A woman is brought to the emergency room of a hospital by her brother. The hospital has no language assistance services and requires her brother to interpret for her. She is too embarrassed to discuss her condition through her brother and leaves without treatment. Alternatively, she is forced to use her brother as the interpreter, who is untrained in medical terminology and through whom she refuses to discuss sensitive information pertaining to her medical condition.

—A health clinic uses a Spanish-speaking security guard who has no training in interpreting skills and is unfamiliar with medical terminology, as an interpreter for its Hispanic LEP patients. He frequently relays inaccurate information that results in inaccurate instructions to patients.

—A local welfare office uses a Vietnamese janitor to interpret whenever Vietnamese applicants or beneficiaries seek services or benefits. The janitor has been in America for six months, does not speak English well and is not familiar with the terminology that is used. He often

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

---

Michael R. Carter

Date

Regional Manager, Region II

U.S. Department of Health & Human Services

Office for Civil Rights

---

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

- 7. Assist with the recruitment and assignment of bilingual staff, if applicable;
- 8. Analyze the impact of all procedural and policy changes affecting LEP Individuals;
- 9. Reassess the linguistic needs of the affected population by conducting the Assessment for Determining Linguistic Needs described in Section IV.C.; and
- 10. Develop and conduct a self-assessment program to determine whether language assistance services are provided to LEP persons when they visit MCDSS offices or contact an office by telephone. The self-assessment program shall include:
  - a. Unannounced site visits to a sampling of randomly selected offices to be conducted every six (6) months, beginning within six (6) months of the Effective Date of this Agreement; and
  - b. Requests for public assistance information in languages other than English by testers.

**U. MCDSS Internal Data Collection.** MCDSS shall maintain a centralized record-keeping system that facilitates coordination between MCDSS programs, divisions, branches, and units and assures the ready availability of data regarding the provision of language assistance services to LEP individuals, in which:

- 1. MCDSS shall record the primary language spoken by each LEP person in its record keeping system.
- 2. MCDSS shall record in each LEP individual's case file the primary language of the individual, the type of language assistance provided during each encounter, if any, and if a family member or friend of the LEP individual provided interpretation, the name of the family member or friend, pursuant to Section IV. M. of this Agreement.
- 3. MCDSS shall identify, in consultation with OCR, any other data needed to ascertain compliance with this Agreement, which may include but is not limited to:
  - a. The number of LEP individuals served, by primary language; and
  - b. The number and type of language assistance services provided.

### V. Reporting Requirements to OCR

- 1. Within sixty (60) calendar days of the Effective Date of this Agreement, MCDSS shall submit written policies and procedures pursuant to Section IV. B. of this Agreement for OCR's review and approval.
- 2. Within ninety (90) calendar days of the Effective Date of this Agreement, MCDSS shall submit to OCR, a preliminary report on the data collected pursuant to Section IV.U. of this Agreement.
- 3. Beginning within six (6) months of the Effective Date of this Agreement, MCDSS shall provide to OCR semi-annual progress reports, every six (6) months, concerning its compliance with the terms of this Agreement,
- 4. MCDSS, in consultation with OCR, shall determine the content and the form for each report submitted pursuant to this Section.

### IV. Signatures

\_\_\_\_\_  
William M. Crancker

\_\_\_\_\_  
Date

Commissioner

Montgomery County Department of Social Services, New York

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

1. The training program shall be of sufficient content and duration to cover the following:
  - a. The importance of effective communication with LEP individuals;
  - b. The policy and procedures outlined in this Agreement;
  - c. The method used to assess an individual's need for interpreter or other language assistance services;
  - d. The use of interpreters when staff members receive incoming calls from or make outgoing calls to LEP individuals;
  - e. The impact of ethnic and cultural differences on effective communication and the need for sensitivity to diversity issues;
  - f. The effective method of using an in-person and telephone interpreter; and
  - g. Applicable record-keeping procedures.
2. MCDSS shall maintain a training registry that records the names and dates of the staff members who have been trained.

**Q. Complaint Procedures.** Within thirty (30) calendar days of the Effective Date of this Agreement, MCDSS will develop and implement uniform procedures for receiving and responding to complaints and concerns from LEP individuals who need language assistance services. These complaints will be forwarded to the MCDSS Language Assistance Coordinator for review and response to questions and complaints regarding language assistance services.

**R. Notice of Non-Discrimination Policy.** Within thirty (30) calendar days of the Effective Date of this Agreement, MCDSS shall develop and post, in each area in which participants wait for service at each office, a notice of its non-discrimination policy.

**S. MCDSS Sub-Recipients and Contractors.** MCDSS shall ensure that all applicable sub-recipients and contractors are informed of the LEP requirements of Title VI and this Agreement. MCDSS shall further ensure that the applicable sub-recipients and contractors complete an individualized assessment and implement a written policy corresponding to the requirements herein, including, but not limited to, the provision of language assistance services, training for staff, and complaint procedures. MCDSS shall provide information to and oversee the applicable sub-recipients and contractors as necessary to monitor compliance with these requirements.

**T. Monitoring.** To ensure effective language assistance and access to services, MCDSS shall develop and implement a program to monitor the provision of language assistance services to LEP individuals and compliance with this Agreement. As part of the monitoring program, MCDSS may:

1. Review LEP individuals' case records to assess whether primary languages are properly recorded in all case records and whether such persons are provided adequate language assistance services;
2. Review complaints filed by LEP individuals to determine adequacy of language assistance services;
3. Assess MCDSS staff, and sub-recipients and contractors' knowledge about MCDSS' language assistance policies and procedures;
4. Review the accuracy of the list(s) containing the availability of bilingual staff, interpreters, and other resources;
5. Request feedback from LEP individuals and advocates;
6. Review the development and distribution of translated MCDSS documents and posting of signs in public assistance offices;

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

1. If an LEP individual, after the offer of free language assistance in his or her primary language, elects to use a family member or friend to provide interpretation, MCDSS shall take reasonable steps to determine whether the individual providing the interpretation is competent to provide this service. Further, MCDSS shall take reasonable steps to determine whether conflict of interest, confidentiality or other concerns make use of the friend or family member inappropriate. These concerns are heightened and require the exercise of significant caution, if the LEP individual asks to have a minor provide interpretation. If the family member or friend is not competent or appropriate under the circumstances, MCDSS shall provide interpreter services in place of or, if appropriate, in addition to the person selected by the LEP individual.
2. For each LEP individual who declines the offer for MCDSS to provide an interpreter free of charge, MCDSS staff shall document in the LEP individual's record:
  - a. that an offer was made for MCDSS to provide an interpreter free of charge;
  - b. that the offer was declined; and
  - c. the name of the family member or friend who provided language assistance at the LEP individual's request, if any.
3. MCDSS shall inform an LEP individual who has declined the offer for MCDSS to provide an interpreter free of charge that he or she may reconsider and request an interpreter at any time.

**N. MCDSS Language Assistance Coordinator.** Within thirty (30) calendar days of the Effective Date of this Agreement, MCDSS shall designate a senior staff person to serve as its Language Assistance Coordinator. The MCDSS Language Assistance Coordinator shall have overall responsibility for coordinating MCDSS' comprehensive language assistance services and directing compliance with this Agreement, including but not limited to:

1. Serving as a liaison between MCDSS and USDHHS, and other stakeholders serving LEP individuals who seek to access and fully participate in programs and activities operated by MCDSS; and.
2. Performing other duties identified in MCDSS policies and procedures that will be implemented pursuant to Part IV.B. of this Agreement.

**O. Language Assistance Personnel.** Within sixty (60) calendar days of the Effective Date of this Agreement, MCDSS shall identify appropriate personnel at each level of the organization (i.e. division, branches, unit, etc.) who will coordinate language assistance services for their respective levels. The identified personnel shall have responsibility for directing compliance with Title VI and Implementation of this Agreement at their respective levels, including but not limited to:

1. Distributing to the appropriate MCDSS staff members the policies and procedures regarding language assistance referenced in Section IV. B of this Agreement, and the list of available language assistance services referenced in Section IV.F. 3. of this Agreement;
2. Consulting with the MCDSS Language Assistance Coordinator on the development and implementation of staff training pursuant to Section IV. P. of this Agreement;
3. Collecting MCDSS internal data pursuant to Section IV.U. of this Agreement; and
4. Performing other duties as identified in MCDSS policies and procedures implemented pursuant to Section IV.B. of this Agreement.

**P. Training.** Within six (6) months of the Effective Date of this Agreement, MCDSS will develop and implement mandatory staff training for all supervisors as well as for staff members who have regular contact with applicants and participants on the MCDSS policies and procedures for communicating with and serving LEP individuals. The training will specifically address MCDSS's responsibility to provide interpreter services to LEP individuals during home visits to determine eligibility for services. Thereafter, training on these policies and procedures shall be conducted annually and at orientation for new employees, or at least within thirty (30) calendar days of employment. Training may be conducted online and be self-paced with acknowledgement of understanding by the trainees.

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

later-created vital documents shall be translated into the same languages within a reasonable time of being created, but not to exceed six (6) months of being created.

a. If there are fewer than fifty (50) persons in a language group that reaches the five (5%) percent trigger, MCDSS may, in lieu of translating the vital documents, elect to provide written notice in the primary language of the LEP language group of the right to receive competent oral translation of the vital documents, free of cost to the LEP individual.

b. MCDSS shall develop a process for ensuring that correspondence and other documents submitted by an LEP individual in the LEP individual's primary language are translated without undue delay.

**H. Timely, Competent Language Assistance.** MCDSS shall ensure that each LEP individual receives competent oral and written language assistance services necessary to ensure meaningful access to MCDSS programs, pursuant to Section IV.A. of this Agreement and Title VI.

MCDSS may offer to schedule appointments for LEP individuals at specified times in order to minimize waiting times and to ensure the availability of appropriate qualified language interpreters, provided that the use of an appointment facilitates the provision of language assistance and does not impede or delay the individual's access to benefits and/or services provided by MCDSS.

**I. Language Assistance Resources.** Based on the language needs assessment conducted pursuant to Section IV.C., of this Agreement, MCDSS shall annually determine what resources and arrangements are needed to provide sufficient language assistance services in a timely manner for oral and written communication. MCDSS shall hire appropriate staff and utilize outside agencies as required to provide necessary services.

**J. Telephone Communication.** MCDSS shall provide uniform procedures for timely and effective telephone communication between staff members and LEP individuals.

**K. Home-Based Communication.** MCDSS shall provide uniform procedures for timely and effective communication between staff members and LEP individuals during home visits and inspections.

**L. Language Assistance Standards.** MCDSS shall ensure that MCDSS staff interpreters and translators, bilingual/multilingual staff, interpreters from community organizations, and contractors providing language assistance services, including interpretation and translation, are capable of competently performing their duties. Competency of language assistance service providers may be established by a variety of means including self-attestation of the interpreter after having reviewed the interpreter competency standards listed below. Whether self-attestation or another means is used to establish competency, MCDSS shall take reasonable steps to ensure that the individuals providing the interpretation and translation are capable of facilitating effective communication between LEP persons and MCDSS in accordance with Section IV.A. of this Agreement.

Standards for interpreter competency shall include the following:

1. Communicate in both English and the LEP individual's primary language accurately and effectively;
2. Interpret to and from English and the LEP individual's primary language accurately and impartially;
3. Possess appropriate knowledge of specialized terms and concepts used frequently in the provision of the MCDSS' services and programs;
4. Understand and follow the obligation to maintain confidentiality;
5. Understand the roles of interpreters and the ethics associated with being an interpreter; and
6. For those providing written translations, have the ability to translate written documents effectively.

**M. Use of Family or Friends as Interpreters.** The parties recognize that LEP individuals may seek to use family members or friends as interpreters. Regardless, MCDSS shall not require an LEP individual to utilize family members or friends to provide interpretation or translation services, and must make the LEP individual aware that he or she has the option of MCDSS providing an interpreter free of charge. In addition:

---

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

1. Posters and signs translated into frequently-encountered languages prominently displayed in each MCDSS office, in waiting rooms, reception areas, and other initial points of entry;
2. Brochures or flyers translated into frequently-encountered languages providing notice to community agencies and organizations;
3. Statements included on application forms and informational material disseminated to the public, including the MCDSS website.

**E. Request for an Interpreter.** If an LEP individual requests an interpreter, one shall be provided. Under no circumstances shall a staff member deny a request for an interpreter based solely on whether an LEP individual can answer short questions by nodding or through the use of questions to which the answers are simply "yes" or "no."

### F. Oral Language Services (Interpretation)

1. Within thirty (30) calendar days of the Effective Date of this Agreement, MCDSS shall provide interpretation, pursuant to Section IV.H., of this Agreement, for LEP individuals who need such assistance to communicate effectively with MCDSS staff, and for all other MCDSS contracted programs and services. MCDSS may utilize any of the following language assistance resources, to the extent such resources result in effective communication:
  - a. Bilingual/multilingual staff;
  - b. Staff or contract interpreters;
  - c. MCDSS language phone banks staffed with bilingual/multilingual staff;
  - d. Interpreters from community organizations;
  - e. Telephone Interpreter services procured under contract by MCDSS; or
  - f. Volunteer Interpreter program.
2. MCDSS shall ensure that, pursuant to Section IV.L, of this Agreement, regardless of the type of language assistance provided, the language assistance provider is competent to interpret or translate.
3. Within thirty (30) calendar days of the Effective Date of this Agreement, MCDSS will develop, and ensure that each MCDSS office maintains a list identifying all available language interpreters, telephone language lines, and other services and resources. For each MCDSS office, the list shall identify all of the following:
  - a. The name and telephone number of every language assistance resource available to the office;
  - b. The location of the office to which the interpreter is assigned, if the interpreter is a staff member of MCDSS;
  - c. The languages for which each interpreter is qualified;
  - d. The hours and days the interpreter or resource is available to provide interpretation or other assistance; and
  - e. The procedure by which each interpreter or resource shall be accessed by staff.

### G. Translation of Written Documents.

1. Within six (6) months after the Effective Date of this Agreement, MCDSS shall identify and review existing vital documents and shall establish a process for determining which later-created documents are "vital" to the meaningful access of the LEP populations served.
2. Within one (1) year after the Effective Date of this Agreement, MCDSS shall translate existing vital documents into any language spoken by five (5%) percent of the total population eligible to be served or likely to be directly affected or encountered by MCDSS' programs, or one thousand (1000) persons in that population, whichever is less;

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

- ii. Utilization data from LEP individuals' files;
  - iii. School system data;
  - iv. Data from state and local governments;
  - v. Data from community agencies and organizations; and
  - vi. Information from refugee/immigrant serving agencies.
- c. The points of contact within MCDSS' programs and MCDSS' contracted programs where language assistance is likely to be needed.
- d. The locations and availability of language assistance resources, and arrangements that must be made to access these resources in a timely manner. This shall include the number of bilingual/multilingual staff volunteers, staff interpreters, contracted interpreters, community volunteer interpreters and telephonic interpreting services required at each MCDSS office and the resources needed to translate documents, as required.
- e. Existing vital documents and a process for determining which later-created documents are vital documents.

**2. Determining the Language Needs of Each LEP Individual.** Within thirty (30) calendar days of the Effective Date of this Agreement, MCDSS shall develop and implement a system for determining the primary language of each LEP individual at the first point of contact.

- a. In-person Communication.** Upon a staff member's initial encounter with an LEP individual for whom the staff member cannot personally provide language assistance, the staff member will determine the individual's primary language utilizing one of the following:
- i. Multi-language identification cards or "I speak" cards;
  - ii. Poster-size language list; or
  - iii. If the LEP person does not read or recognize any of the languages included in one of the methods described above, MCDSS shall use a telephone interpreting service to identify the individual's primary language.

Upon identification of the LEP person's primary language, the MCDSS staff member will refer the individual to the pre-printed statement in the individual's primary language that reads, "Please wait while I obtain an interpreter."

- b. Telephone Communication.** When a staff person places or receives a telephone call and cannot determine the language spoken by the person on the line, a telephone interpreter services provider will be contacted to make an assessment of the language spoken by the other party and to assist the other party as necessary.
- c. Documentation.** The primary language of each LEP individual shall be documented in a conspicuous location in the individual's record to alert staff that language assistance services must be provided.
- d. Coordination between MCDSS Departments.** A system or process shall be developed by which information concerning the language assistance needs of applicants and participants are communicated between MCDSS departments and program areas.

**D. Notifying LEP Individuals of the Availability of Free Language Assistance.** Within thirty (30) calendar days of the Effective Date of this Agreement, MCDSS shall provide meaningful notice to LEP and community agencies serving LEP individuals in MCDSS' service area of the right to free language assistance and the process for filing and resolving complaints about such services with MCDSS. Such methods shall include:

---

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

- L. Publication or Release of Agreement.** OCR places no restrictions on the publication of the terms of this Agreement. In addition, OCR may be required to release the Agreement and all related materials to any person upon request consistent with the requirements of the Freedom of Information Act, 5 U.S.C. 552, and its implementing regulations, 45 C.F.R. Part 5.
- M. Authority of Signer.** The individual who signs this document on behalf of MCDSS represents that he or she is authorized to bind MCDSS to this Agreement.
- N. Third Party Rights.** This Agreement can only be enforced by the parties specified in this Agreement, their legal representatives and assigns. This Agreement shall be unenforceable by third parties and shall not be construed to create third party beneficiary rights.
- O. Severability.** In the event that a court of competent jurisdiction determines that any provision of this Agreement is unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain valid and enforceable; provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, they shall, through reasonable, good faith negotiations, agree upon such other amendments hereto as may be necessary to restore the Parties as closely as possible to the relative rights and obligations initially intended by them hereunder.
- P. Technical Assistance.** OCR agrees to provide appropriate technical assistance to MCDSS regarding compliance with this Agreement, as requested and as reasonably necessary.

### IV. Specific Provisions

- A. Recognition.** MCDSS recognizes that LEP individuals need language assistance services to access and fully participate in programs and activities operated by MCDSS. Pursuant to MCDSS policy, MCDSS is committed to providing competent language assistance at no cost and in a timely manner to LEP individuals to ensure meaningful access to and an equal opportunity to participate fully in the services, activities, programs or other benefits administered by MCDSS. This includes ensuring effective communication between MCDSS staff members, contractors, and/or sub-recipients and LEP individuals.
- B. Develop and Implement Policy.** Within sixty (60) calendar days of the Effective Date of this Agreement, MCDSS shall develop written policies and procedures to provide language assistance to LEP individuals pursuant to Section IV.A, of this Agreement, Title VI, and New York State Office of Temporary and Disability Assistance Administrative Directive 06-ADM-05 Revised [NYS Administrative Directive]. The NYS Administrative Directive identifies the responsibilities of local social services district staff to ensure access is provided to persons with disabilities and/or LEP who are inquiring about, applying for, or receiving benefits, programs and services from local social services districts.
- OCR shall review the policy and procedures within thirty (30) calendar days of receipt. The policy and procedures shall not be implemented by MCDSS without the approval of OCR. Within fifteen (15) calendar days of OCR approval, MCDSS shall disseminate the policy and procedures to MCDSS staff members, contractors, and sub-recipients and publish them in an appropriate MCDSS-wide communication piece.

#### C. **Assessment for Determining Linguistic Needs**

- 1. Determining the Language Needs of the Affected Population.** Within ninety (90) calendar days of the Effective Date of this Agreement, and annually thereafter, MCDSS shall assess the language needs of LEP individuals that are eligible for services and are likely to be directly affected by its programs. Such assessment shall identify the following:
- a. The non-English languages likely to be encountered in MCDSS' programs.
  - b. An estimate of the number of LEP Individuals likely to be directly affected by MCDSS' programs and their languages by reviewing various sources including but not limited to:
    - i. Census data;

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

emergency assistance relief, general relief, fraud prevention, children's medical security insurance, adoption, children's day care, foster care, services for welfare recipients and adults, adult protective services, home-based services and Consumer Directed Programs.

- B. Effective Date and Duration of Agreement.** This Agreement shall become effective on the date it is executed by OCR (Effective Date) and shall remain in effect for eighteen (18) months or until OCR's written acceptance of the final progress report, whichever date is later. At such time, the Agreement will terminate, provided MCDSS is in substantial compliance with the Agreement as determined by OCR in its sole judgment upon its review of the Compliance Reports and other relevant information. Notwithstanding the aforementioned time limitation, MCDSS acknowledges that it will comply with Title VI of the Civil Rights Act of 1964 for so long as it continues to receive Federal financial assistance.
- C. MCDSS's Continuing Obligation.** Nothing in this Agreement is intended to relieve MCDSS of its obligation to comply with other applicable non-discrimination statutes and their implementing regulations.
- D. Effect on Other Compliance Matters.** The terms of this Agreement do not apply to any other issues, investigations, reviews, or complaints of discrimination that are unrelated to the subject matter of this Agreement and that may be pending before OCR or any other Federal Agency. Any unrelated compliance matters arising from reviews or investigations will be addressed and resolved separately. OCR shall review complaints against MCDSS that are received on or after the Effective Date that concern the laws, regulations, issues and subject matter covered by this Agreement. Nothing in this Agreement shall be construed to limit or restrict OCR's statutory and regulatory authority to conduct complaint investigations and compliance reviews.
- E. Prohibition Against Retaliation and Intimidation.** MCDSS shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, assisted, or participated in any manner in the investigation of matters addressed in this Agreement.
- F. OCR's Review of MCDSS's Compliance with Agreement.** OCR may, at any time, review MCDSS' compliance with this Agreement. As part of such review, OCR may require MCDSS to provide written reports, permit inspection of offices, interview staff members, and allow OCR to examine and copy documents. MCDSS agrees to retain records required by OCR to assess its compliance with the Agreement, as described in Section IV.T., and to submit reports to OCR as specified in Section IV.V.
- G. Failure to Comply with the Terms of Agreement.** If at any time OCR determines that MCDSS has failed to comply with any provision of this Agreement, OCR shall notify MCDSS in writing. The notice shall include a statement of the basis for OCR's determination and shall allow MCDSS thirty (30) calendar days to either: (a) explain in writing the reasons for its actions and describe the remedial actions that have been or shall be taken to achieve compliance with this Agreement; or (b) dispute the accuracy of OCR's findings. On notice to MCDSS, OCR may shorten the 30-calendar day period if it determines that a delay would result in irreparable injury to the complainant or to other affected parties. If MCDSS does not respond to the notice, or if, upon review of MCDSS's response, OCR determines that MCDSS has not complied with the terms of the Agreement, OCR reserves the right to reopen its investigation of MCDSS's compliance with Title VI. OCR may incorporate into its reopened investigation any relevant evidence of noncompliance with this Agreement, and any relevant evidence gathered by OCR prior to the signing of this Agreement.
- H. Non-Waiver Provision.** Failure by OCR to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision shall not be construed as a waiver of OCR's right to enforce other deadlines or any other provision of this Agreement.
- I. Entire Agreement.** This Agreement constitutes the entire understanding between MCDSS and OCR in resolution of Transaction Number 08-79992. Any statement, promise, or agreement not contained herein shall not be enforceable through this Agreement.
- J. Modification of Agreement.** This Agreement may be modified by mutual agreement of the parties in writing.
- K. Effect of MCDSS Program Changes.** MCDSS reserves the right to change or modify its programs, so long as MCDSS ensures compliance with Title VI and its implementing regulations, and other applicable state and federal laws, and the provisions of this Agreement. Significant program changes that may affect compliance with this Agreement or any applicable statutes and regulations within OCR's jurisdiction must be reported to OCR promptly.

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

For the purpose of this Agreement, the terms listed below shall have the following meaning:

- A. Applicant** means any person who inquires about or submits an application for public assistance benefits under any MCDSS program or service.
- B. Bilingual/Multilingual Staff** means a MCDSS staff member who has demonstrated proficiency in English and at least one other language, and who can interpret accurately, impartially, and effectively to and from such language(s) and English using any specialized terminology necessary for effective communication, but whose main job responsibilities are other than interpretation. A MCDSS staff member who only has a rudimentary familiarity with a language other than English shall not be considered "Bilingual/Multilingual Staff" under this agreement.
- C. Contractor** means any entity that performs work or provides services on behalf of MCDSS under a contractual agreement with reimbursement, which includes monies allocated to MCDSS as Federal financial assistance from HHS.
- D. Frequently-Encountered Language** means any language spoken by a significant number or percentage of the population eligible to be served or likely to be directly affected by MCDSS's programs and services.
- E. Interpreter** means a person who has demonstrated proficiency in both spoken English and at least one other language; and who can interpret accurately, impartially, and effectively to and from such language and English using any specialized terminology necessary for effective communication; and who understands interpreter ethics and client confidentiality needs. A person who has rudimentary familiarity with a language other than English is not to be considered an "Interpreter" under this agreement.
- F. Language Assistance** means all oral and written language services needed to assist LEP Individuals to communicate effectively with MCDSS staff, sub-recipients and contractors to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in the services, activities, programs or other benefits administered by MCDSS.
- G. Limited-English Proficient (LEP) Individual** means an individual who does not speak English as his or her primary language and who has a limited ability to read, write, speak or understand English in a manner that permits him or her to communicate effectively with MCDSS and have meaningful access to and participate fully in the services, activities, programs, or other benefits administered by MCDSS.
- H. Participant** means any person who has applied for and is receiving public assistance benefits or services under any MCDSS program or service for which USDHHS funding is received.
- I. Primary Language** means the language that an LEP individual identifies as the language that he or she uses to communicate effectively, and is the language that the individual prefers to use to communicate with MCDSS.
- J. Staff Interpreter** means a MCDSS staff member whose job is to provide interpretation and translation services.
- K. Sub-recipients** means an entity that expends Federal assistance received as a pass-through from MCDSS to carry out a federally-funded program, in which the sub-recipient provides services to and has contact with applicants and participants in the same manner as MCDSS if MCDSS were to administer the program directly, but does not include an individual applicant or participant who is a beneficiary of the program.
- L. Vital Documents** shall include, but are not limited to: applications; consent forms; complaint forms; letters or notices pertaining to eligibility for benefits; letters or notices pertaining to the reduction, denial, or termination of services or benefits that require a response from the LEP person; written tests that evaluate competency for a particular license, job, or skill for which knowing English is not required; documents that must be provided by law; and notices regarding the availability of free language assistance services for LEP individuals.

### III. General Provisions

- A. Facilities Covered by Agreement.** The agreement covers MCDSS and all programs and services it administers or provides directly or through sub-recipients or contractors. This includes, but is not limited to, programs and services such as cash assistance programs, Temporary Assistance for Needy Families, food stamps, Medicaid,

---

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

[Skip Navigation](#)

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

## Montgomery County Department of Social Services (MCDSS) Resolution Agreement

### RESOLUTION AGREEMENT

#### BETWEEN

#### U. S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### OFFICE FOR CIVIL RIGHTS, REGION II

#### AND

#### MONTGOMERY COUNTY DEPARTMENT OF SOCIAL SERVICES

### I. Introduction

This Resolution Agreement (Agreement) is entered into by the United States Department of Health and Human Services (USDHHS), Office for Civil Rights (OCR) and the Montgomery County Department of Social Services (MCDSS) located in Fonda, New York. This Agreement resolves a complaint, transaction number 08-79992, filed with OCR on February 28, 2008, by [COMPLAINANT'S NAME REDACTED] (the complainant), alleging that MCDSS did not provide the complainant with a Spanish interpreter during a home visit.

#### A. Parties to Agreement

1. United States Department of Health and Human Services, Office for Civil Rights.
2. Montgomery County Department of Social Services in Fonda, New York.

#### B. Jurisdiction

MCDSS receives Federal financial assistance from the USDHHS, and is subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, (Title VI) and its implementing regulation, 45 C.F.R. Part 80. Title VI prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. The implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Policies that have an adverse effect on the ability of national origin minorities to meaningfully access services may also constitute a violation of Title VI.

#### C. Purpose of Agreement

1. To resolve these matters expeditiously and without further burden or expense of investigation or litigation, MCDSS agrees to the terms stipulated in this Agreement and affirms its assurance of compliance with all provisions of Title VI and its implementing regulations. The promises, obligations or other terms and conditions set forth in this Agreement constitute the exchange of valuable consideration between MCDSS and OCR.
2. This Agreement shall not be construed as an admission or as evidence that MCDSS has not complied with those provisions of Title VI of the Civil Rights Act of 1964 or its implementing regulations that relate to language assistance services provided to persons with limited English proficiency with respect to the allegations in the subject complaint.

### II. Definitions

---

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

(404) 562-7886; (404) 331-2867 (TDD)  
(404) 562-7881 FAX

**Region V - IL, IN, MI, MN, OH, WI**

Office for Civil Rights  
U.S. Department of Health & Human Services  
233 N. Michigan Ave. - Suite 240  
Chicago, IL 60601  
(312) 886-2359; (312) 353-5693 (TDD)  
(312) 886-1807 FAX

San Francisco, CA 94103  
(415) 437-8310; (415) 437-8311 (TDD)  
(415) 437-8329 FAX

**Region X - AK, ID, OR, WA**

Office for Civil Rights  
U.S. Department of Health & Human Services  
2201 Sixth Avenue - Mail Stop RX-11  
Seattle, WA 98121  
(206) 615-2290; (206) 615-2296 (TDD)  
(206) 615-2297 FAX

---

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

are "vital" to the program, information, encounter, or service involved and the consequences to the LEP person if the information in question is not provided accurately or in a timely manner. As with the LEP Guidance of other Federal agencies, the HHS Guidance provides recipients with a "safe harbor" that, if undertaken, will be considered strong evidence that the recipient has satisfied its written translation obligations.

#### **INTERPRETER/TRANSLATOR COMPETENCE**

The Guidance provides additional guidance on what to consider in determining interpreter and translator competency in particular contexts.

#### **ELEMENTS OF AN EFFECTIVE LANGUAGE ASSISTANCE PLAN**

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. Recipients have considerable flexibility in developing this plan. The Guidance provides five steps that may be helpful in designing such a plan: (1) identifying LEP individuals who need language assistance; (2) language assistance measures (such as how staff can obtain services or respond to LEP callers); (3) training staff; (4) providing notice to LEP persons (such as posting signs); and (5) monitoring and updating the LEP plan.

#### **VOLUNTARY COMPLIANCE EFFORT**

The Office for Civil Rights and HHS are committed to assisting recipients of HHS financial assistance in complying with their obligations under Title VI of the Civil Rights Act of 1964. HHS is committed to engaging in outreach to its recipients and to being responsive to inquiries from its recipients. HHS provides a variety of practical technical assistance to recipients to assist them in serving LEP persons so they are in compliance with the Title VI regulations. The requirement to provide meaningful access to LEP persons is enforced and implemented by the HHS Office for Civil Rights through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

#### **FOR MORE INFORMATION**

Anyone who believes that he/she has been discriminated against because of race, color or national origin may file a complaint with OCR within 180 days of the date on which the discrimination took place. The OCR Regional Offices are listed below:

##### **Region I - CT, ME, MA, NH, RI, VT**

Office for Civil Rights  
U.S. Department of Health & Human Services  
JFK Federal Building - Room 1875  
Boston, MA 02203  
(617) 565-1340; (617) 565-1343 (TDD)  
(617) 565-3809 FAX

##### **Region II - NJ, NY, PR, VI**

Office for Civil Rights  
U.S. Department of Health & Human Services  
26 Federal Plaza - Suite 3313  
New York, NY 10278  
(212) 264-3313; (212) 264-2355 (TDD)  
(212) 264-3039 FAX

##### **Region III - DE, DC, MD, PA, VA, WV**

Office for Civil Rights  
U.S. Department of Health & Human Services  
150 S. Independence Mall West - Suite 372  
Philadelphia, PA 19106-3499  
(215) 861-4441; (215) 861-4440 (TDD)  
(215) 861-4431 FAX

##### **Region IV - AL, FL, GA, KY, MS, NC, SC, TN**

Office for Civil Rights  
U.S. Department of Health & Human Services  
61 Forsyth Street, SW. - Suite 3B70  
Atlanta, GA 30323

##### **Region VI - AR, LA, NM, OK, TX**

Office for Civil Rights  
U.S. Department of Health & Human Services  
1301 Young Street - Suite 1169  
Dallas, TX 75202  
(214) 767-4056; (214) 767-8940 (TDD)  
(214) 767-0432 FAX

##### **Region VII - IA, KS, MO, NE**

Office for Civil Rights  
U.S. Department of Health & Human Services  
601 East 12th Street - Room 248  
Kansas City, MO 64106  
(816) 426-7278; (816) 426-7065 (TDD)  
(816) 426-3686 FAX

##### **Region VIII - CO, MT, ND, SD, UT, WY**

Office for Civil Rights  
U.S. Department of Health & Human Services  
1961 Stout Street - Room 1426  
Denver, CO 80294  
(303) 844-2024; (303) 844-3439 (TDD)  
(303) 844-2025 FAX

##### **Region IX - AZ, CA, HI, NV, AS, GU,**

**The U.S. Affiliated Pacific Island Jurisdictions**  
Office for Civil Rights  
U.S. Department of Health & Human Services  
90 7<sup>th</sup> Street, Suite 4-100

# U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

## Civil Rights

### Office for Civil Rights

#### Guidance to Federal Financial Assistance Recipients Regarding Title VI and the Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons - Summary

The U.S. Department of Health and Human Services has published revised Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons. The Revised LEP Guidance is issued pursuant to Executive Order 13166. It is effective immediately and replaces the Guidance issued August 30, 2000. You can print out a copy of the Guidance from OCR's website at <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/index.html> or contact one of the OCR Regional Offices listed below.

#### LEGAL AUTHORITY

Title VI and Department of Health and Human Services regulations, 45 C.F.R. Section 80.3(b)(2), require recipients of Federal financial assistance from HHS to take reasonable steps to provide meaningful access to Limited English Proficient (LEP) persons. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of HHS assistance may include hospitals, nursing homes, home health agencies, managed care organizations, universities and other entities with health or social service research programs, State, county, and local health agencies. It may also include State Medicaid agencies, State, county, and local welfare agencies, programs for families, youth, and children, Head Start programs, public and private contractors, subcontractors, and vendors, and physicians and other providers who receive Federal financial assistance from HHS.

#### DEFINITION OF LIMITED ENGLISH PROFICIENT INDIVIDUALS

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be LEP and may be eligible to receive language assistance with respect to the particular service, benefit, or encounter.

#### FACTORS USED TO DETERMINE THE TITLE VI OBLIGATION TO ENSURE MEANINGFUL ACCESS FOR LEP PERSONS

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. The Guidance explains that the obligation to provide meaningful access is fact-dependent and starts with an individualized assessment that balances four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come into contact with the program; (3) the nature and importance of the program, activity or service provided by the recipient to its beneficiaries; and (4) the resources available to the grantee/recipient and the costs of interpretation/translation services. There is no "one size fits all" solution for Title VI compliance with respect to LEP persons, and what constitutes "reasonable steps" for large providers may not be reasonable where small providers are concerned.

#### \* USE OF FAMILY MEMBERS AND FRIENDS

Some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. When an LEP person attempts to access the services of a recipient of federal financial assistance, who upon application of the four factors is required to provide an interpreter, the recipient should make the LEP person aware that he or she has the option of having the recipient provide an interpreter for him/her without charge, or of using his/her own interpreter. Recipients should also consider special circumstances that may affect whether a family member or friend should serve as an interpreter, such as whether the situation is an emergency, and whether there are concerns over competency, confidentiality, privacy, or conflict of interest. Recipients cannot require LEP persons to use family members or friends as interpreters.

#### VITAL DOCUMENTS

Recipients can use the four factor analysis described above to determine if specific documents or portions of documents should be translated into the language of the various frequently-encountered LEP groups eligible to be served and/or likely to be affected by the recipient's program. Recipients should assess whether specific documents or portions of documents

[Skip Navigation](#)

## U.S. Department of Health & Human Services

*Improving the health, safety, and well-being of America*

### Civil Rights

#### Limited English Proficiency (LEP)



This section includes documents pertaining to persons with Limited English Proficiency (LEP). This means persons who are unable to communicate effectively in English because their primary language is not English and they have not developed fluency in the English language. A person with Limited English Proficiency may have difficulty speaking or reading English. An LEP person will benefit from an interpreter who will translate to and from the person's primary language. An LEP person may also need documents written in English translated into his or her primary language so that person can understand important documents related to health and human services. Information on OCR's work in the area of

nondiscrimination on the basis of national origin can be found at [www.hhs.gov/ocr/nationalorigin](http://www.hhs.gov/ocr/nationalorigin).

**Teaming up for Language Access Education**



> [Improving Patient-Provider Communication Video Part1 Part2 Part3 Part4](#)  
 > [\(CC\) video available on request](#)  
 > [HHS Press Release - 11/7/09](#)

#### LEP Resources and Tools

- [Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#)
- [Questions and Answers Regarding the Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#)
- [Summary of the Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons](#)
- [Fact Sheet on Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient \(LEP\) Persons](#)
- [Limited English Proficiency Video \(captioned\)](#)
- [Summary of Selected OCR LEP Complaint Investigations and Compliance Reviews](#)
- [OCR Guidance](#)
- [HHS Strategic Plan To Improve Access To HHS Programs and Activities By Limited English Proficient \(LEP\) Persons](#)
- [Other Federal resources](#) (includes documents, references from other HHS components, promising practices and other Federal agencies)
- [State and Local Government resources](#) (includes documents, references from State and Local Governments and promising practices)
- [Non-Government resources](#) (includes documents, references from Non-Government agencies and promising practices)

[HHS Home](#) | [Questions?](#) | [Contacting HHS](#) | [Accessibility](#) | [Privacy Policy](#) | [FOIA](#) | [Disclaimers](#) | [Inspector General](#) | [No FEAR Act](#) | [Viewers & Players](#)  
[The White House](#) | [USA.gov](#) | [HHS Archive](#) | [Pandemic Flu](#)

U.S. Department of Health & Human Services • 200 Independence Avenue, S.W. • Washington, D.C. 20201

to the particular program or activity that is out of compliance could be terminated. 42 U.S.C. 2000d-1.

Example: HHS provides assistance to a state department of health to provide immunizations for children. All of the operations of the entire state department of health--not just the particular immunization programs--are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

#### IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English may be limited English proficient, or "LEP," and may be eligible to receive language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by HHS recipients and should be considered when planning language services may include such as those:

- Persons seeking Temporary Assistance for Needy Families (TANF), and other social services.
- Persons seeking health and health-related services.
- Community members seeking to participate in health promotion or awareness activities.
- Persons who encounter the public health system. \*47314
- Parents and legal guardians of minors eligible for coverage concerning such programs.

#### V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

[skip navigation](#)



Department of Justice

[ADA Home Page](#) | [ADA Publications](#) | [Enforcement](#) | [Site Map](#) | [Search](#)

## ADA Best Practices Tool Kit for State and Local Governments

### Chapter 3

# General Effective Communication Requirements Under Title II of the ADA

---

In this chapter, you will learn about the requirements of Title II of the ADA for effective communication. Questions answered include:

- What is effective communication?
- What are auxiliary aids and services?
- When is a state or local government required to provide auxiliary aids and services?
- Who chooses the auxiliary aid or service that will be provided?

#### A. Providing Equally Effective Communication

Under Title II of the ADA, all state and local governments are required to take steps to ensure that their communications with people with disabilities are as effective as communications with others.<sup>1</sup> This requirement is referred to as “effective communication”<sup>2</sup> and it is required except where a state or local government can show that providing effective communication would fundamentally alter the nature of the service or program in question or would result in an undue financial and administrative burden.

What does it mean for communication to be “effective”? Simply put, “effective communication” means that **whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities**. This is important because some people have disabilities that affect how they communicate.

How is communication with individuals with disabilities different from communication with people without disabilities? For most individuals with disabilities, there is no difference. But people who have disabilities that affect hearing, seeing, speaking, reading, writing, or understanding may use different ways to communicate than people who do not.



The effective communication requirement applies to ALL members of the public with disabilities, including job applicants, program participants, and even people who

simply contact state or local government agencies seeking information about programs, services, or activities.

---

<sup>1</sup> Department of Justice Nondiscrimination on the Basis of State and Local Government Services Regulations, 28 C.F.R. Part 35, § 35.160 (2005). The Department's Title II regulation is available at [www.ada.gov/reg2.html](http://www.ada.gov/reg2.html).

<sup>2</sup> See Department of Justice Americans with Disabilities Act Title II Technical Assistance Manual II-7.1000 (1993). The Technical Assistance Manual is available at [www.ada.gov/taman2.html](http://www.ada.gov/taman2.html).

---

## 1. Providing Equal Access With Auxiliary Aids and Services

There are many ways that you can provide equal access to communications for people with disabilities. These different ways are provided through "auxiliary aids and services." **"Auxiliary aids and services" are devices or services that enable effective communication for people with disabilities.**<sup>3</sup>

Title II of the ADA requires government entities to make appropriate auxiliary aids and services available to ensure effective communication.<sup>4</sup> You also must make information about the location of accessible services, activities, and facilities available in a format that is accessible to people who are deaf or hard of hearing and those who are blind or have low vision.<sup>5</sup>

Generally, the requirement to provide an auxiliary aid or service is triggered when a person with a disability requests it.

---

<sup>3</sup> 28 C.F.R. §§ 35.104, 35.160.

<sup>4</sup> 28 C.F.R. Part 35.160(b)(1).

<sup>5</sup> 28 C.F.R. § 35.163 (a).

---

## 2. Different Types of Auxiliary Aids and Services

\* Here are some examples of different auxiliary aids and services that may be used to provide effective communication for people with disabilities. **But, remember, not all ways work for all people with disabilities or even for people with one type of disability. You must consult with the individual to determine what is effective for him or her.**

- qualified interpreters
- notetakers
- screen readers
- computer-aided real-time transcription (CART)
- written materials
- videotext displays
- description of visually presented materials
- exchange of written notes
- TTY or video relay service
- email

- telephone handset amplifiers
- assistive listening systems
- hearing aid-compatible telephones
- computer terminals
- speech synthesizers
- communication boards
- text telephones (TTYs)
- open or closed captioning
- closed caption decoders
- video interpreting services
- text messaging
- instant messaging
- qualified readers
- assistance filling out forms
- taped texts
- audio recordings
- Brailled materials
- large print materials
- materials in electronic format  
(compact disc with materials in plain text or word processor format)

## **B. Speaking, Listening, Reading, and Writing: When Auxiliary Aids and Services Must be Provided**

Remember that communication may occur in different ways. Speaking, listening, reading, and writing are all common ways of communicating. When these communications involve a person with a disability, an auxiliary aid or service may be required for communication to be effective. The type of aid or service necessary depends on the length and complexity of the communication as well as the format.

### **1. Face-to-Face Communications**

For brief or simple face-to-face exchanges, very basic aids are usually appropriate. For example, exchanging written notes may be effective when a deaf person asks for a copy of a form at the library.

For more complex or lengthy exchanges, more advanced aids and services are required. Consider how important the communication is, how many people are involved, the length of the communication anticipated, and the context.

Examples of instances where more advanced aids and services are necessary include meetings, hearings, interviews, medical appointments, training and counseling sessions, and court proceedings. In these types of situations where someone involved has a disability that affects communication, auxiliary aids and services such as qualified interpreters, computer-aided real-time transcription (CART), open and closed captioning, video relay, assistive listening devices, and computer terminals may be required. Written transcripts also may be appropriate in pre-scripted situations such as speeches.

#### **Computer-Aided Real-Time Transcription (CART)**

Many people who are deaf or hard of hearing are not trained in either sign language or lipreading. CART is a service in which an operator types what is said into a computer that displays the typed words on a screen.

## 2. Written Communications

Accessing written communications may be difficult for people who are blind or have low vision and individuals with other disabilities. Alternative formats such as Braille, large print text, emails or compact discs (CDs) with the information in accessible formats, or audio recordings are often effective ways of making information accessible to these individuals. In instances where information is provided in written form, ensure effective communication for people who cannot read the text. Consider the context, the importance of the information, and the length and complexity of the materials.

When you plan ahead to print and produce documents, it is easy to print or order some in alternative formats, such as large print, Braille, audio recordings, and documents stored electronically in accessible formats on CDs. Some examples of events when you are likely to produce documents in advance include training sessions, informational sessions, meetings, hearings, and press conferences. In many instances, you will receive a request for an alternative format from a person with a disability before the event.

If written information is involved and there is little time or need to have it produced in an alternative format, reading the information aloud may be effective. For example, if there are brief written instructions on how to get to an office in a public building, it is often effective to read the directions aloud to the person. Alternatively, an agency employee may be able to accompany the person and provide assistance in locating the office.

### Don't forget . . .

Even tax bills and bills for water and other government services are subject to the requirement for effective communication. Whenever a state or local government provides information in written form, it must, when requested, make that information available to individuals who are blind or have low vision in a form that is usable by them.

## 3. Primary Consideration: Who Chooses the Auxiliary Aid or Service?

When an auxiliary aid or service is requested by someone with a disability, you must provide an opportunity for that person to request the auxiliary aids and services of their choice, and you must give primary consideration to the individual's choice.<sup>6</sup> "Primary consideration" means that the public entity must honor the choice of the individual with a disability, with certain exceptions.<sup>7</sup> The individual with a disability is in the best position to determine what type of aid or service will be effective.

The requirement for consultation and primary consideration of the individual's choice applies to aurally communicated information (i.e., information intended to be heard) as well as information provided in visual formats.

The requesting person's choice does not have to be followed if:

- the public entity can demonstrate that another equally effective means of communication

is available;

- use of the means chosen would result in a fundamental alteration in the service, program, or activity; or
- the means chosen would result in an undue financial and administrative burden.

### **Video Remote Interpreting (VRI) or Video Interpreting Services (VIS)**

VRI or VIS are services where a sign language interpreter appears on a videophone over high-speed Internet lines. Under some circumstances, when used appropriately, video interpreting services can provide immediate, effective access to interpreting services seven days per week, twenty-four hours a day, in a variety of situations including emergencies and unplanned incidents.

On-site interpreter services may still be required in those situations where the use of video interpreting services is otherwise not feasible or does not result in effective communication. For example, using VRI / VIS may be appropriate when doing immediate intake at a hospital while awaiting the arrival of an in-person interpreter, but may not be appropriate in other circumstances, such as when the patient is injured enough to have limited mobility or needs to be moved from room to room.

VRI / VIS is different from Video Relay Services (VRS) which enables persons who use sign language to communicate with voice telephone users through a relay service using video equipment. VRS may only be used when consumers are connecting with one another through a telephone connection.

---

<sup>6</sup> 28 C.F.R. Part 35.160(b)(2).

<sup>7</sup> See Title II Technical Assistance Manual II-7.1100.

---

## **4. Providing Qualified Interpreters and Qualified Readers**

When an interpreter is requested by a person who is deaf or hard of hearing, the interpreter provided must be qualified.

A "qualified interpreter" is someone who is able to sign to the individual who is deaf what is being spoken by the hearing person and who can voice to the hearing person what is being signed by the person who is deaf. Certification is not required if the individual has the necessary skills. To be qualified, an interpreter must be able to convey communications effectively, accurately, and impartially, and use any necessary specialized vocabulary.<sup>8</sup>

Similarly, those serving as readers for people who are blind or have low vision must also be "qualified."<sup>9</sup> For example, a qualified reader at an office where people apply for permits would need to be able to read information on the permit process accurately and in a manner that the

person requiring assistance can understand. The qualified reader would also need to be capable of assisting the individual in completing forms by accurately reading instructions and recording information on each form, in accordance with each form's instructions and the instructions provided by the individual who requires the assistance.

### **Did You Know That There are Different Types of Interpreters?**

#### **Sign Language Interpreters**

Sign language is used by many people who are deaf or hard of hearing. It is a visually interactive language that uses a combination of hand motions, body gestures, and facial expressions. There are several different types of sign language, including American Sign Language (ASL) and Signed English.

#### **Oral Interpreters**

Not all people who are deaf or hard of hearing are trained in sign language. Some are trained in speech reading (lip reading) and can understand spoken words more clearly with assistance from an oral interpreter. Oral interpreters are specially trained to articulate speech silently and clearly, sometimes rephrasing words or phrases to give higher visibility on the lips. Natural body language and gestures are also used.

#### **Cued Speech Interpreters**

A cued speech interpreter functions in the same manner as an oral interpreter except that he or she also uses a hand code, or cue, to represent each speech sound.

---

8 28 C.F.R. § 35.104.

9 28 C.F.R. § 35.104.

---

## **5. Television, Videos, Telephones, and Title II of the ADA**

The effective communication requirement also covers public television programs, videos produced by a public entity, and telephone communications.<sup>10</sup> These communications must be accessible to people with disabilities.

### **a. Public Television and Videos**

If your local government produces public television programs or videos, they must be accessible. A common way of making them accessible to people who are unable to hear the audio portion of these productions is closed captioning. For persons who are blind or have low vision, detailed audio description may be added to describe important visual images.

### **b. Telephone Communications**

Public entities that use telephones must provide equally effective communication to individuals with disabilities. There are two common ways that people who are deaf or hard of hearing and those with speech impairments use telecommunication. One

way is through the use of teletypewriters (TTYs) or computer equipment with TTY capability to place telephone calls. A TTY is a device on which you can type and receive text messages. For a TTY to be used, both parties to the conversation must have a TTY or a computer with TTY capability. If TTYs are provided for employees who handle incoming calls, be sure that these employees are trained and receive periodic refreshers on how to communicate using this equipment.

A second way is by utilizing telephone relay services or video relay services. Telephone relay services involve a relay operator who uses both a standard telephone and a TTY to type the voice messages to the TTY user and read the TTY messages to the standard telephone user. Video relay services involve a relay operator who uses both a standard telephone and a computer video terminal to communicate voice messages in sign language to the computer video terminal user and to voice the sign language messages to the standard telephone user.

Public employees must be instructed to accept and handle relayed calls in the normal course of business. Untrained individuals frequently mistake relay calls for telemarketing or collect calls and refuse to accept them. They also may mistakenly assume that deaf people must come into a government office to handle a matter in person even though other people are allowed to handle the same matter over the telephone.

---

<sup>10</sup> 28 C.F.R. §§ 35.104, 35.160, 35.161.

---

### **C. Planning Ahead to Provide Effective Communication**

Even before someone requests an auxiliary aid or service from your public entity, plan ahead to accommodate the communication needs of persons with disabilities. Prepare for the time when someone will request a qualified interpreter, Braille documents, video relay, or another auxiliary aid or service.

- **Identify local resources for auxiliary aids and services.** Even if you do not think there is anyone with a disability in your community, you need to be prepared.
- **Find out how you can produce documents in Braille or acquire other aids or services.** Technology is changing, and much of the equipment needed to ensure effective communication is less expensive than it once was. Consider whether it makes sense to procure equipment or obtain services through vendors. If your needs will be best met by using vendors, identify vendors who can provide the aids or services and get information about how much advance notice the vendors will need to produce documents or provide services.
- **Contract with qualified interpreter services and other providers so that interpreters and other aids and services will be available on short notice.** This is especially critical for time-sensitive situations, such as when a qualified interpreter is necessary to communicate with someone who is arrested, injured, hospitalized, or involved in some other emergency.

- **Use the checklist included in this Chapter to assess your agency's ability to provide effective communication and to figure out the next steps for achieving ADA compliance.**
  - **Train employees about effective communication and how to obtain and use auxiliary aids and services. All employees who interact with the public over the telephone or in person need to know their role in ensuring effective communication.**
- 

## ADA Tool Kit for State and Local Governments

### ADA Home Page

February 27, 2007



DELAWARE PSYCHIATRIC CENTER  
POLICY AND PROCEDURE DIRECTIVE

Division of Substance Abuse and Mental Health  
Delaware Health and Social Services

<b>FUNCTION</b> PATIENT RIGHTS AND ORGANIZATIONAL ETHICS		<b>REVISION/REVIEW DATES</b> July 2, 1990 July 30, 1991	
<b>SUBJECT</b>	<b>PAGE 1 OF 3</b>	August 12, 1992 August 1, 1994 August 14, 1998 (revised) January 14, 2000 (revised)	
<b>DEAF OR HARD OF HEARING CLIENTS</b>			
<b>POLICY NUMBER</b>	<b>RI 30</b>	May 19, 2003 September 7, 2006 (revised) March 11, 2011 ( revised )	
<b>EFFECTIVE DATE</b>	<b>July 1, 1989</b>		
<b>MEDICAL DIRECTOR</b>	<b>DATE</b>	<b>HOSPITAL DIRECTOR</b>	<b>DATE</b>
<i>Maureen</i>	<i>4/5/11</i>	<i>Kevin</i>	<i>4-11-11</i>

**PURPOSE**

This policy explains the procedures used in providing assistance in communication to patients who are deaf or hard of hearing.

**STANDARDS**

Delaware Psychiatric Center (DPC) assures that no person, solely on the basis of his/her hearing loss, is excluded from participation in treatment, is denied the benefits of services, or is subjected to discrimination. It is the practice of DPC to ensure that clients who are deaf or hard of hearing are identified at admission and are informed in their primary mode of communication of their legal rights and are able to participate to the extent feasible in the formulation and review of their individual treatment plans. A client's care and treatment includes use of sign language when that is the client's primary mode of communication. DPC staff also recognize and are sensitive to elderly clients who have experienced hearing loss due to the natural aging process and have become hard of hearing.

**DEFINITIONS**

**D/HH:** Deaf and Hard of Hearing.

**VP:** Videophone device (camera device and television connected to high speed internet).

**TTY/TDD:** Telecommunication device for the deaf.



**PROCEDURES:**

- I. **Deaf and Hard of Hearing Clients at Admission and During Treatment:**
- A. A list of interpreter agencies that provide qualified and certified interpreters and their contact information are provided by the Director of Social Services to the Admissions Nurse, to all Physicians and is posted in the Admissions Suite. A sign is posted in the Admissions Suite stating that DPC shall provide qualified and certified sign language interpreters at a client's request. .
  - B. The Admitting Physician recognizes when a client has a communication barrier and alerts the Nurse and Admissions Clerk.
  - C. Staff are sensitive to the client's need for an interpreter during the admissions process. Staff shall act in a way that demonstrates sensitivity to the communication barrier which will minimize a client's level of anxiety and calms the client. Staff shall utilize the following when communicating with a D/HH client:

**Guidelines for Communicating with the Hard of Hearing**

- 1. Get the client's attention and establish eye contact.
  - 2. Always have pen and paper available.
  - 3. Write in short, simple sentences.
  - 4. Use facial expressions and gestures to communicate.
- D. Upon intake or admission of a D/HH client, staff shall make an immediate attempt to contact an interpreter from a list of qualified interpreters/interpreting agencies. To prevent potential bias, do not use family members as interpreters. Staff shall also determine if the D/HH client's family member/s or support staff also needs an interpreter.
  - E. Director of Social Services shall notify the DPC Business Office Manager x52866 or the Sr. Accountant x52864 that language service has been arranged, and confirms the required schedule and projected duration of service. Any invoices received by the Unit are forwarded to the Business Office Manager.
  - F. Upon the arrival of the interpreter, staff communicates all rights, notices, statements or explanations required by the Mental Health Code to the client through the interpreter. The D/HH client needs to be comfortable with the interpreter; therefore, staff should ask questions consistent with the following to ensure there is an appropriate match between the interpreter and client: "Is the interpreter clear? Would you like to keep this interpreter or do you want us to get a different one through the agency?" These questions should be posed in private and not in the presence of the interpreter so that the client will feel comfortable answering candidly. .
  - G. Orientation of the D/HH client includes, but is not limited to, the location and purpose of visual fire alarms, TTY/TDD and VP.



- H. When interpreter services are provided, the name of the person by whom it was given, the fact that the services were provided and the time of services are documented in the Progress Notes in the client's Medical Record.
- I. Throughout the client's treatment stay, interpreter services are arranged by the Director of Social Services. It is suggested that the client have access to an interpreter for 8-9 hours per day; however, the Director of Social Services shall work with the Physician who represents the Recovery Team in determining the amount of interpreter services required by the client and the client should be present at the Recovery Team meeting. In the event that additional services are arranged by the Recovery Team, the Physician notifies the Social Services Director to facilitate the authorization of payment. In order to authorize the payment, the Social Services Director notifies the Senior Fiscal Administrative Officer. The client's access to services and progress in treatment is documented in the Progress Notes and minutes of the Recovery Team meeting.
- J. The unit Social Worker monitors the interpreter's time and forwards that information to the Social Services Director to sign timecard. The Social Services Director must submit the timecard to the Business Office on a weekly basis.
- K. If assistance is not available to DPC staff, the Hospital Director is contacted to obtain assistance.
- L. The Social Worker making the discharge plans is responsible for establishing firm linkage for any individual's need for accommodations (e.g. interpreters) before being transferred to an alternative program.

**II. TREATMENT OF GERIATRIC AND HARD OF HEARING CLIENTS**

- A. Staff recognize that from 30% to 50% of persons greater than 65 years of age have significant hearing loss leading to decreased level in functioning and are alert to the following signs and symptoms:

**Signs and Symptoms of Possible Hearing Loss**

- Difficulty following and participating in conversation
  - Poor attention span with distractibility
  - Accusations of others not speaking clearly
  - Changes in quality of voice; speech too loud or too soft
  - Changes in personality; indifference, social withdrawal, insecurity
  - Difficulty hearing high-pitched voices of women and children
  - Offering noncommittal, ambiguous answers to questions that are misunderstood
- B. When clinically indicated, the Medical staff shall order a hearing consultation and a hearing test to rule out the possibility of a hearing loss. Based on the findings and recommendations of the consultant, the client's recovery plan is revised to address any additional treatment needs.

