

This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive federal financial assistance.”

HHS believes that the DOJ model guidance responds to the important issues raised in comments on the HHS document published in February, and the Department is confident that the DOJ LEP Guidance serves as an appropriate model for HHS to adopt. The Department notes that it has made certain modifications for purposes of clarity and organization, and a few additional modifications to accommodate particular programmatic needs and purposes.

There are many productive steps that the federal government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients of Federal financial assistance may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. In addition, HHS plans to work with representatives of state health and social service agencies, hospital associations, medical and dental associations, managed care organizations, and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, HHS intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, to assist in disseminating this information to recipients, federal agencies, and the communities being served.

As discussed earlier, in certain circumstances, the failure to ensure that LEP persons can effectively participate in, or benefit from, federally-assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and the Title VI regulations against national

origin discrimination. Specifically, the failure of a recipient of Federal financial assistance from HHS to take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI and HHS's implementing regulations. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.² These are the same criteria HHS will use in evaluating whether recipients are in compliance with Title VI and the Title VI regulations.

III. Who Is Covered?

Department of Health and Human Services regulations, 45 CFR 80.3(b)(2), require all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons.³ Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Recipients of HHS assistance may include, for example:

- Hospitals, nursing homes, home health agencies, and managed care organizations.
- Universities and other entities with health or social service research programs.
- State, county, and local health agencies.
- 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.
- Physicians and other providers who receive Federal financial assistance from HHS.

² The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

³ Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to apply additionally to the programs and activities of federal agencies, including HHS.

Recipients of HHS assistance do not include, for example, providers who only receive Medicare Part B payments.⁴

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.⁵

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.

⁴ HHS's Title VI regulations do not apply to (i) Any federal financial assistance by way of insurance or guaranty contracts, (ii) the use of any assistance by any individual who is the ultimate beneficiary under any program which receives federal financial assistance, and (iii) any employment practice, under any such program, or any employer, employment agency, or labor organization, except as otherwise described in the Title VI regulations. 45 CFR 80.2.

⁵ However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its implementing regulations, only funds directed to the particular program or activity that is out of compliance could be terminated. 42 U.S.C. 2000d-1.