

(3) *The Nature and Importance of the Recipient's Program, Activity, or Service*

The more important the recipient's activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Thus, the recipient should consider the importance and urgency of its program, activity, or service. If the activity is both important and urgent—such as the communication of information concerning emergency surgery and the obtaining of informed consent prior to such surgery—it is more likely that relatively immediate language services are needed. Alternatively, if the activity is important, but not urgent—such as the communication of information about, and obtaining informed consent for, elective surgery where delay will not have any adverse impact on the patient's health, or communication of information regarding admission to the hospital for tests where delay would not affect the patient's health—it is more likely that language services are needed, but that such services can be delayed for a reasonable period of time. Finally, if an activity is neither important nor urgent—such as a general public tour of a facility—it is more likely that language services would not be needed. The obligation to communicate rights to a person whose benefits are being terminated or to provide medical services to an LEP person who is ill differ, for example, from those to provide medical care for a healthy LEP person or to provide recreational programming.

Decisions by a federal, state, or local entity to make an activity compulsory, such as job search programs in welfare to work programs, can serve as strong evidence of the program's importance.

(4) *The Resources Available to the Recipient and Costs*

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take to comply with Title VI. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, reasonable steps may cease to be "reasonable" where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological

advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.⁷ Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

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This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons, to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient—or to another recipient—for language assistance. In certain circumstances, pursuant to an arrangement, where there is no

⁷ Recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

discriminatory intent, the purpose is beneficial and will result in better access for LEP persons, it may be appropriate for a recipient to refer the LEP beneficiary to another recipient. For example, if two physicians in the same field, one with a Spanish-speaking assistant and one with a Vietnamese-speaking assistant, practice in the same geographic area and have a custom/practice of referring patients between each other, it may be appropriate for the first doctor to refer LEP Vietnamese patients to the second doctor and for the second doctor to refer LEP Spanish patients to the first doctor. In certain circumstances, a referral would not be appropriate: for example, a Korean speaking LEP woman comes to a battered women's shelter requesting assistance. Although the shelter has space, it has no arrangement to provide language assistance for LEP persons. Instead, as with all LEP persons, the staff only offer her a prepared list of three shelters in the neighborhood that generally provide language assistance. The staff does not check to assure that any of the three alternative shelters can actually provide the Korean language assistance she needs, or that any have space available for her.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. In some circumstances, where the importance and nature of the activity, the number or proportion and frequency of contact with LEP persons may be high and the relative costs and resources needed to provide language services may be low, it may be appropriate for a recipient to hire bilingual staff or staff interpreters. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, in which case language services for the particular activity may not be necessary. In situations that fall in between the two, it may be appropriate for recipients to use contract interpreters or telephone language lines to provide language services to LEP persons in contact with their program or activity. A hospital emergency room in a city with a significant Hmong population may need immediately available oral interpreters and may want to give serious consideration to hiring some bilingual staff. (Of course, many hospitals have already made such arrangements.) On the other hand, a physician's practice which encounters one LEP Hmong patient per month on a walk-in basis