

encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

## Appendix A

### Questions and Answers Regarding the Department of Health and Human Services Guidance to Federal Financial Assistance Recipients Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

1. Q. What is the purpose of the guidance on language access released by the Department of Health and Human Services (HHS)?

A. The purpose of the Policy Guidance is to clarify to members of the public, and to providers of health and social services who receive Federal financial assistance from HHS, the responsibility of such providers to Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964. Among other things, this guidance clarifies existing legal requirements by providing a description of the factors providers of health and social services who receive Federal financial assistance from HHS should consider in determining and fulfilling their responsibilities to LEP persons under Title VI.

2. Q. What does the policy guidance do?

A. The policy guidance does the following:

- Reiterates the principles of Title VI with respect to LEP persons.

- Discusses the reasonable policies, procedures and other steps that recipients can take to ensure meaningful access to their program by LEP persons.

- Clarifies that failure to take one or more of these steps does not necessarily mean noncompliance with Title VI.

- Explains to recipients of Federal financial assistance that OCR will determine compliance on a case by case basis, in light of the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program, activity or service provided by the recipient; (2) the frequency with which LEP individuals come in contact with the recipient's program, activity or service; (3) the nature and importance of the recipient's program, activity, or service; and (4) the resources available to the recipient and costs.

- Provides that, based on these four factors, recipients with limited resources will not have the same compliance responsibilities applicable to recipients with greater resources. All recipients will have a great deal of flexibility in achieving compliance.

- Provides that OCR will offer extensive technical assistance for recipients.

3. Q. Does the guidance impose new requirements on recipients?

A. No. Since its enactment, Title VI of the Civil Rights Act of 1964 has prohibited discrimination on the basis of race, color or national origin in any program or activity that receives Federal financial assistance. Title VI requires that recipients take reasonable steps to ensure meaningful access to their programs and activities by LEP

persons. Over the past three decades, OCR has conducted thousands of investigations and reviews involving language differences that affect the access of LEP persons to medical care and social services. This guidance synthesizes the legal requirements that OCR has been enforcing for over three decades.

4. Q. Who is covered by the guidance?

A. Covered entities include any state or local agency, private institution or organization, or any public or private individual that (1) Operates, provides or engages in health, or social service programs and activities, and (2) receives Federal financial assistance from HHS directly or through another recipient/covered entity. Examples of covered entities include but are not limited to the following entities, which may receive federal financial assistance: 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; state Medicaid agencies; state, county and local welfare agencies; federally-funded 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.

5. Q. How does the guidance affect small practitioners and providers who are recipients of federal financial assistance?

A. Small practitioners and providers will have considerable flexibility in determining precisely how to fulfill their obligations to take reasonable steps to ensure meaningful access for persons with limited English proficiency. OCR will assess compliance on a case by case basis and will take into account the following factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the recipient's program, activity or service; (2) the frequency with which LEP individuals come in contact with the program, activity or service; (3) the nature and importance of the program, activity, or service provided by the recipient; and (4) the resources available to the recipient and costs. 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. Thus, smaller recipients with smaller budgets will not be expected to provide the same level of language services as larger recipients with larger budgets. OCR will continue to be available to provide technical assistance to HHS recipients, including sole practitioners and other small recipients, seeking to operate an effective language assistance program and to comply with Title VI.

6. Q. The guidance identifies some specific circumstances which OCR will consider to be strong evidence that a program is in compliance with its obligation under Title VI to provide written materials in languages other than English. Does this mean that a recipient/covered entity will be considered out of compliance with Title VI if its program does not fall within these circumstances?

A. No. The circumstances outlined in the guidance are intended to identify

circumstances which amount to a "safe harbor" for recipients who desire greater certainty with respect to their obligations to provide written translations. This means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations. However, the failure to provide written translations under the circumstances outlined in the "safe harbor" does not mean there is non-compliance. Rather, the safe harbor provides a tool which recipients may use to consider whether the number or proportion of LEP persons served call for written translations of vital documents into frequently encountered languages other than English. However, even if the safe harbors are not used, if written translation of certain documents would be so financially burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances when, upon application of the four factors, translation services are required.

7. Q. The guidance makes reference to "vital documents" and notes that, in certain circumstances, a recipient/covered entity may have to translate such documents into other languages. What is a vital document?

A. As clarified by the guidance, the extent of Title VI obligations will be evaluated based on a four-factor test including the nature or importance of the service. In this regard, the guidance points out that documents deemed "vital" to the access of LEP persons to programs and services may often have to be translated. Whether or not a document (or the information it contains or solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their various activities, what documents are "vital" to the meaningful access of the LEP populations they serve. Thus, vital documents could include, for instance, consent and complaint forms, intake forms with potential for important health consequences, written notices of eligibility criteria, rights, denial, loss, or decreases in benefits or services, actions affecting parental custody or child support, and other hearings, notices advising LEP persons of free language assistance, written tests that do not assess English language competency, but test competency for a particular license, job or skill for which knowing English is not required, or applications to participate in a recipient's program or activity or to receive recipient benefits or services.

8. Q. Will recipient/covered entities have to translate large documents such as managed care enrollment handbooks?

A. Not necessarily. Some large documents may contain no vital information, and others will contain vital information that will have to be translated. Again, the obligation to