



STRATEGIC LANGUAGE ACCESS PLAN (LAP)
*TO IMPROVE ACCESS TO CMS FEDERALLY
CONDUCTED ACTIVITIES BY PERSONS WITH
LIMITED ENGLISH PROFICIENCY (LEP)*



2014 Updates



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850



DATE: FEB 28 2014

TO: Center/Office Directors
Consortia Administrators

FROM: Marilyn Tavenner
Administrator

A handwritten signature in black ink, appearing to read "M. Tavenner", is written over the printed name and title of the sender.

SUBJECT: 2014 Strategic Language Access Plan (LAP) for Limited English Proficient Persons

I am pleased to announce that CMS has updated its Strategic Language Access Plan (LAP). The LAP highlights the agency's ongoing commitment to ensure that limited English proficient (LEP) individuals have equal access to CMS programs and activities.

The updates fully implement the spirit of Executive Order 13166 and the U.S. Attorney General's February 17, 2011 memorandum entitled, *Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166*. Executive Order 13166 requires agencies and programs to ensure that Federally-funded activities are accessible to all persons who, as a result of national origin, are not proficient or are limited in their ability to communicate in the English language. The attached updated Strategic Language Access Plan outlines 12 elements designed to ensure that our processes continue to improve, affording LEP persons access and an equal opportunity to participate in CMS activities.

It is the policy of CMS to provide timely and meaningful access to agency-conducted programs, services and activities to beneficiaries and members of the general public who are limited English proficient. Interpreters, translators and other aids needed to comply with this policy shall be provided without cost to the person being served. The administration of all CMS activities should be governed in accordance with this plan and policy.

If you have any questions about the plan, please contact Karen Gross at Karen.Gross2@cms.hhs.gov in the Office of Equal Opportunity and Civil Rights.

ATTACHMENT

I. Background

A. Limited English Proficiency

Limited English Proficient (LEP) persons are individuals 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 individual will benefit from an interpreter who will translate to and from the person's primary language. An LEP individual 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. (See Appendix A - Glossary for an explanation of the terms used in this document.)

B. Purpose and Authority¹

The CMS Strategic Language Access Plan (LAP) is established under authority of Executive Order 13166, *Improving Access to Services For Persons With Limited English Proficiency*, issued August 11, 2000. Executive Order 13166 requires agencies and programs take steps to ensure that federally conducted activities are accessible to all persons who, as a result of national origin, are not proficient or are limited in their ability to communicate in the English language ("Limited English Proficient" persons). In addition, on February 17, 2011, the U.S. Attorney General issued a memorandum entitled: Federal Government's Renewed Commitment to Language Access Obligations Under Executive Order 13166. This updated Strategic LAP supports CMS' renewed commitment to language access obligations under Executive Order 13166.

Title VI of the Civil Rights Act of 1964 and implementing regulation, and Section 1557 of the Patient Protection and Affordable Care Act also provide guidance for language access activities. Specifically, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives Federal financial assistance. Likewise, Section 1557 of the Patient Protection and Affordable Care Act prohibits discrimination on the ground of race, color, national origin, sex, age, or disability under any health program or activity, any part of which is receiving Federal financial assistance or under any program or activity that is administered by an Executive agency or any entity established under Title I of the Affordable Care Act or its amendments.

Recipients of CMS funding are required to comply with Title VI of the Civil Rights Act of 1964, Section 1557 of the Patient Protection and Affordable Care Act and Executive Order 13166. (See Appendix B - CMS Limited English Proficiency Language Access Approach for Federally Financially Assisted Programs: White Paper.)

¹ The CMS Strategic LAP is intended only to improve the internal management of the agency's language access program and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against HHS, CMS, its officers or employees, or any person.

II. Policy Statement

The policy of CMS is to provide beneficiaries and members of the general public who are limited English proficient timely and meaningful access to CMS conducted programs, services and activities.

III. CMS Language Access Plan Point of Contact

The CMS Civil Rights Agency Liaison is the designated official that leads the development, implementation and monitoring of the CMS Strategic LAP and its elements. Comments and/or questions regarding the CMS Strategic LAP may be directed to:

OFFICE OF EQUAL OPPORTUNITY AND CIVIL RIGHTS (OEOCR)
Centers for Medicare & Medicaid Services
CMS Civil Rights Agency Liaison
CMSCivilRightsProgram@cms.hhs.gov
7500 Security Boulevard
North Building, Room N2-22-16
Baltimore, Maryland 21244-1850
Main Number: (410) 786-5110
FAX Number (410) 786-9549
TTY: Dial 711 for Relay, then 410-786-5110

IV. Plan Development and Implementation

The CMS Civil Rights Workgroup is led by the CMS Civil Rights Agency Liaison on behalf of the Director, CMS Office of Equal Opportunity and Civil Rights and is comprised of Civil Rights Points of Contacts who are representatives from every CMS component, consortia and office. The Workgroup members serves as gatekeepers to their designated areas as it relates to information gathering and sharing, budget requests, questions and general outreach. Specifically, they serve as the single source of contact on all civil rights related matters with the CMS Civil Rights Agency Liaison.

The Workgroup meets quarterly or as needed to develop agency wide language access initiatives. The Workgroup also monitors and evaluates progress and effectiveness in meeting obligations under Executive Order 13166. Particular functions include but are not limited to providing feedback, data and/or information on:

- Annual language access assessment report
- Language access budget needs
- Various language access documents, policies, training materials, etc.

V. The Role of HHS Office for Civil Rights

The Department of Health and Human Services (HHS) is committed to ensuring the programs and services offered by the Department and its' Operating Divisions are accessible to the populations served. HHS is increasingly attentive to the language and cultural needs of

customers. Responsibility for informing recipients about the requirements and for providing technical assistance to recipients rests with HHS funding agencies. HHS is available to provide language assistance to customers with whom it directly interacts, and will provide technical assistance tools to improve the ability of HHS-funded entities to offer language assistance to service individuals.

If you feel a health care provider, or state or local government agency, has discriminated against you (or someone else) based on race, national origin, disability, or age, you may file a civil rights complaint. Additional information for filing a complaint may be found at the following websites:

- Complaint Process: <http://www.hhs.gov/ocr/civilrights/complaints>
- Online Complaint Portal: https://ocrportal.hhs.gov/ocr/cp/wizard_cp.jsf

VI. Language Access Plan Updates

The current update of the CMS Strategic LAP is directed by HHS guidance, directives included in Executive Order 13166 as well as the U.S. Attorney General's February 17, 2011 memorandum. The original eleven elements have been reviewed and updated. In addition, a new element has been added as directed by HHS guidance.

Although this plan is intended to provide a plan for how CMS will provide meaningful access to individuals with LEP, many aspects of this plan can also ensure effective communication with individuals with disabilities. Agency guidance on Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act will provide specific guidance regarding meaningful access for individuals with disabilities.

VII. Specific Elements of the CMS Strategic Language Access Plan

- a. The CMS LAP outlines the processes that must be in place to capture the language access capabilities of all organizations that receive funding for federally conducted activities. The following twelve (12) elements are components of the overall CMS Strategic LAP. CMS will strive to establish a LEP baseline and/or implementation plan for each element within a three-year period beginning fiscal year 2014 through fiscal year 2016 by establishing priorities that will best meet the needs of Limited English Proficient individuals in the context of resource constraints.
- b. CMS Components/Consortia engaged in a LEP related federally conducted activities are required to provide language assistance services to LEP persons. The summation of the activities must be documented in the annual CMS Strategic Language Access Plan Outcome Report. The report will describe how each element of the Strategic LAP is executed. However, if CMS Components/Consortia cannot proceed with the LAP implementation strategy, the associated cost impact will be documented in the above stated Strategic LAP report.

c. Reporting Requirements:

CMS activities that support LEP populations will be reflected in the CMS Annual Language Access Assessment Report. CMS components shall prepare the CMS Annual Language Access Assessment report each fiscal year. The report is due to the CMS Civil Rights Agency Liaison, annually not later than close of business December 1st of the following fiscal year. For example, the FY 2014 reporting period is October 1, 2013 through September 30, 2014, the Language Access Assessment is due December 1, 2014.

The CMS Civil Rights Agency Liaison will consolidate the CMS component responses in the CMS Annual Language Access Assessment Report and publish the CMS Strategic Language Access Plan Outcome Report by March 30th of the following fiscal year the Assessment Report is received. For example, the FY 2014 CMS Annual Language Access Assessment Report is due December 1, 2014. Therefore, the FY 2014 CMS Strategic Language Access Plan Outcome Report will be published by March 30, 2015.

d. Results Based Outcome measures:

- i. Each of the following twelve (12) elements has a process “Outcome Measurement” that will be used to gather baseline data and/or establish an implementation plan for a three-year period (Fiscal Year 2014 through Fiscal Year 2016).
- ii. Beginning Fiscal Year (FY) 2014, each CMS federally conducted activity must:
 - a) Ensure at least 90% of the beneficiaries who request LEP related materials and/or assistance receives it during the first attempt. Measurement for this requirement will begin at the conclusion of the establishment of the FY 2014 baseline.
 - b) Ensure that beneficiaries requesting LEP related materials or assistance are satisfied or very satisfied with the customer service provided at least 80% of the time. Measurement of this requirement will begin at the conclusion of the establishment of the FY 2014 baseline.

e. Funding Requirements:

Each element’s applicable funding requirements will be documented in the CMS Annual Language Access Plan Outcome Report. Additional resources will be requested as identified.

VIII. Elements

The current update to the CMS Strategic LAP is now inclusive of 12 elements:

- Element 1: Assessment: Needs and Capacity
- Element 2: Oral Language Assistance Services
- Element 3: Written Translations
- Element 4: Policies and Procedures
- Element 5: Notification of the Availability of Language Assistance at No Cost
- Element 6: Staff Training
- Element 7: Assessment: Access and Quality
- Element 8: Resource Utilization
- Element 9: Stakeholder Consultation
- Element 10: Emergency Preparedness
- Element 11: Digital Information
- Element 12: Grant Assurance and Compliance

Element 1: Assessment: Needs and Capacity

1. Objective

CMS will have in place mechanisms to assess, on a regular and consistent basis, the LEP status and language assistance needs of current and potential customers as well as mechanisms to assess the agency's capacity to meet these needs according to the elements of this plan.

2. Implementation Strategy

CMS will prepare an agency LAP Assessment report. The outcome of the CMS Annual LAP Assessment report will be used to improve existing, or establish new mechanisms for assessing LEP status and language assistance needs of current and potential customers. To the extent practical, use of coordination across CMS Components/Consortia that participated in LEP activities will be used in order to maximize the efficiency with which CMS can serve its customers. Emphasis will be on ensuring that there are outreach and assistance activities in place, such as, but not limited to customer service phone numbers, clearinghouses, ombudsman activities, assessment and satisfaction instruments, websites, and more to enhance the effectiveness of LEP activities.

- a. CMS will examine existing data sources which may include but not be limited to federal, state and local statistics and advocacy organizations (e.g., American Community Survey), and determine a consistent source to use for evaluating the need for particular language services where program-specific data is not available or sufficient.
- b. The CMS Civil Rights Agency Liaison will work within CMS to identify areas where coordination and/or collaboration would improve the efficiency of similar services.
- c. The CMS Civil Rights Agency Liaison will explore how to identify existing staff-based knowledge of non-English languages and various cultures and how to leverage that knowledge base across CMS. We will identify proven practices and examples of needed skill sets to determine the feasibility of recruiting and explore the continued development of bilingual and multi-cultural staff.
- d. The CMS Civil Rights Agency Liaison will explore ways to examine existing surveys of beneficiaries and customers to determine feasibility of including language preferences to data collection, determine LEP and immigration trends.
- e. The CMS Civil Rights Agency Liaison will explore ways to align existing and future survey activity with standards on data collection and language access.
- f. The CMS Civil Rights Agency Liaison will share data within CMS on estimated language needs of CMS customers and of individuals that CMS-funded entities serve. This data will include information from HHS OCR on complaints it receives from

Limited English Proficient individuals who allege inadequate language assistance from CMS-funded entities, as well as data from customer satisfaction surveys.

3. Outcome Measurement

- a. Receive a Language Access Assessment for CMS activities.
- b. Provide an overall assessment of LEP services to determine agreed upon requirements of timely service.

In the case where the LEP population services are not adequate, CMS will include in the annual Language Access Assessment report a mitigation strategy that includes, cost, schedule and timeline.

- c. CMS activities are at liberty to develop their own definitions of what are “timely services” and what is considered “not adequate” in the CMS annual Language Access Assessment report.

4. Implementation Timeline

FY 2014 Conduct CMS Annual Language Access Assessment

Element 2: Oral Language Assistance Services

1. Objective

CMS will arrange for the provision of oral language assistance, from language interpreter services and more, in response to the needs of LEP customers in both face-to-face, on-line and telephone encounters with CMS.

2. Implementation Strategy

In the CMS Annual Language Access Plan Outcome report, CMS will document:

- a. Oral language assistance processes in the CMS Annual Language Access Assessment report.
- b. Activities for the provision of oral language assistance resources.
- c. LEP resources that can be shared across CMS.
- d. New arrangements that could provide language assistance resources more efficiently within CMS, such as the feasibility of developing criteria, certification and policies to use bilingual staff for face to face and telephonic interpreter services in languages other than English.
- e. Telephonic interpreter service activities provided by contractors.
- f. "Proven practices" in the delivery of oral language assistance services that can be used in CMS activities.

3. Outcome Measurement

CMS will measure its ability to provide oral language assistance services for beneficiaries against existing data (based on previously agreed upon data sources) to ensure all LEP populations received oral language assistance services.

4. Implementation Timeline

FY 2015 CMS Annual Language Access Plan Outcome Report

Element 3: Written Translations

1. Objective

CMS will continue to translate its “vital” documents in languages other than English to ensure meaningful access by LEP individuals to CMS programs and services. CMS currently provides some “vital” documents in the following languages: Arabic, Armenian, Chinese, Farsi, French, German, Greek, Haitian Creole, Italian, Korean, Polish, Portuguese, Russian, Spanish, Tagalog, and Vietnamese.

2. Implementation Strategy

- a. Create a plan to expand the number of translated “vital” documents for frequently encountered languages that include: Chinese (traditional and simplified), Korean, Polish, Russian, Spanish, Tagalog and Vietnamese.²
- b. Create a plan for consistently determining what documents are vital to the meaningful access of the LEP populations served.
- c. CMS will explore the feasibility of adding multilingual taglines to vital documents written in English so LEP individuals can obtain translation of the document or an interpreter to read or explain the document.
- d. In the CMS Annual Language Access Plan Outcome Report, CMS will list the languages into which vital documents have been translated. The list of languages shall include, but is not limited to the following:
 - i. The emerging languages that would, within one year’s time from the due date of the CMS Annual Language Access Assessment report submission, exceed criteria when evaluated against current trends.
 - ii. The URL for the Web site where the documents are posted.
 - iii. The LEP service feedback process.
 - iv. The arrangements and resources available for each CMS federally conducted activity that makes provisions for written language assistance.
 - v. The oversight and vital document update process.
 - vi. The resources used for material translation that can be shared across CMS Components/Consortia.

² Activities under this plan must also comply with The Plain Writing Act of 2010 which requires federal agencies to use plain writing for all public communication, especially public communication about benefits and services. The use of plain language in any language used to communicate with individuals with LEP will help ensure accurate, understandable interpretations and translations and support the overall goal of meaningful access.

- vii. The new arrangements that could provide language assistance services more efficiently.
- viii. Identify "proven practices" in the provision of vital documents in languages other than English that can be used in CMS Federally conducted activities.
- ix. Document ways to improve the efficacy of those who are required to provide written language assistance to LEP individuals through clearer requirements, technical assistance, dissemination of proven practices, coordinated support, and other approaches.

3. Outcome Measurement

- a. The CMS Civil Rights Agency Liaison will obtain Community Stakeholders' feedback regarding CMS LAP.
- b. The CMS Civil Rights Agency Liaison will provide a Language Access Assessment report with recommendations for improvement and documented "proven practices."

4. Implementation Timeline

FY 2014 Update List of vital documents
FY 2015 Plan for consistently determining which documents are vital
FY 2015 Plan for LEP written material quality control process

Element 4: Policies and Procedures

1. Objective

CMS will have in place specific written policies and procedures related to each of the plan elements and designated staff that will be responsible for implementing activities related to these policies.

2. Implementation Strategy

- a. CMS will develop/update and implement written policies and procedures related to each of the plan elements, modified as needed for each CMS federally conducted activity with public contact based on the schedule below.
- b. CMS will designate staff that will be responsible for coordinating and implementing activities related to improving services to individuals with LEP.
- c. CMS will consider identifying a dedicated short-term commitment to this activity, such as detailing critical staff to an off-site workgroup project for developing initial policies and/or updating existing policies.
- d. CMS will develop policies and procedures for receiving and addressing language assistance concerns or complaints from customers with LEP of CMS conducted activities and establish policies and procedures to improve services.

3. Outcome Measurement

CMS staff will be designated to coordinate activities, implement LEP policies and document outcome in the CMS Annual Language Access Assessment report.

4. Implementation Timeline

FY 2015 Policy statements & procedures development for LAP elements
FY 2015 Policy statement & procedure for concerns and complaints

Element 5: Notification of the Availability of Free Language Services

1. Objective

CMS will proactively inform LEP customers of the availability of free language assistance services through both oral and written notice.

2. Implementation Strategy

- a. CMS will prepare a free language service notification plan.
- b. CMS will distribute notification of the availability of free language services to partners and customers.
- c. Where applicable, CMS will develop and distribute a consumer version of the guidance that explains the services available to the customers of particular federally conducted activities.
- d. CMS will explore the availability of consumer-oriented materials in languages other than English on the CMS web sites and other media (e.g. television and radio public service announcements, non-English media and community and faith-based resources).
- e. CMS will make available resources such as HHS LEP guidance and Federal Plain Language Guidelines over the internet to make recipients aware that language assistance services that are provided must be provided at no cost to those in need of language assistance services.

3. Outcome Measurement

Measuring this element will require developing additional capacities within CMS. CMS will determine the types of additional capacities and capabilities required within CMS to provide notification of the availability of free language services.

4. Implementation Timeline

FY 2015 CMS will prepare a free language service notification plan.
FY 2016 Implement free language service strategy

Element 6: Staff Training

1. Objective

CMS will train management and staff on the policies and procedures of its language assistance activities as appropriate.

2. Implementation Strategy

- a. CMS will provide training for CMS managers and staff who communicate directly with LEP persons, partners and stakeholders on how and when to access oral language assistance, how to work with interpreters, how to communicate effectively and respectfully with individuals with LEP.
- b. CMS Components/Consortia that participate in federally conducted LEP activities will develop mechanisms to monitor the needs of LEP customers and use results to create specific training for CMS managers and staff that are responsible for providing language access services.
- c. CMS will provide training for managers and staff who communicate with funded entities about the requirements of Title VI and offer training resources to promote awareness of LEP guidance.
- d. CMS will provide training for managers and staff on written translation policies and procedures.

3. Outcome Measurement

- a. Managers and staff will be familiar with CMS Strategic LAP policies and procedures.
- b. CMS Strategic LAP policies and procedure will be available for view by sources internal and external to the government.

4. Implementation Timeline

FY 2014 CMS will develop a CMS Strategic LAP training plan.

FY 2015 CMS will implement an agency-wide Strategic LAP training plan.

Element 7: Assessing Accessibility and Quality

1. Objective

CMS will institute procedures to assess the accessibility, accountability, and quality of language assistance activities.

2. Implementation Strategy

- a. CMS will create a LEP quality control plan.
- b. CMS will implement steps to regularly assess the accessibility and quality of language access services.
- c. CMS will develop a translation quality standard that will be disseminated agency-wide.
- d. CMS will ensure that documents are translated and tested for LEP accuracy to ensure the translation meets the needs of the target population.
- e. CMS will implement steps to ensure all materials will adhere to accessibility guidelines set for in the Rehabilitation Act of 1973, as amended (29 U.S.C § 794d).

3. Outcome Measurement

Areas of evaluation should include customer waiting lines, customer satisfaction and the accessibility and quality of language assistance services provided.

4. Implementation Timeline

- FY 2014 Document the quality assessment process.
- FY 2014 Develop stakeholder quality review process.
- FY 2015 Implement stakeholder quality review process.
- FY 2015 Develop agency-wide translation quality standard.

Element 8: Resource Utilization

1. Objective

CMS will engage in opportunities to share resources within and across agencies, by leveraging current programmatic partnerships and by forming regional and interagency partnerships.

2. Implementation Strategy

- a. CMS will develop a plan for resource sharing.
- b. The CMS Civil Rights Agency Liaison will consolidate LEP shared resource information (e.g., data, policies, procedures, etc.) in the CMS Annual Language Access Plan Outcome Report.

3. Outcome Measurement

The CMS Civil Rights Agency Liaison will identify in the CMS Annual Language Access Plan Outcome Report:

- a. Opportunities to share resources that will result in a positive agency-wide return on investment.
- b. Specific LEP programmatic “proven practices” in a consolidated format.

4. Implementation Timeline

FY 2015 CMS Annual Language Access Plan Outcome Report

Element 9: Stakeholder Consultation

1. Objective

CMS will consult with partners and stakeholders on identifying LEP needs, strategies and methods to evaluate progress of the LAP to ensure that LEP persons are afforded meaningful access to federally conducted LEP activities and services.

2. Implementation Strategy

- a. CMS will document stakeholder contact information. For example, partner meetings, conferences, webcasts, town hall meetings, letters, and in person meetings to gather input on how to ensure LEP persons are afforded meaningful access to federally conducted LEP activities and services.
- b. CMS will also use studies, reports or other relevant material produced by stakeholders as forms of stakeholder input.
- c. CMS will implement mechanisms that record stakeholder input regarding meaningful access to federally conducted LEP activities and services.
- d. CMS will complete a LEP process improvement analysis to enhance existing LEP services.
- e. CMS will post the Strategic LAP updates and resources on the internet and intranet in multiple languages as resources allow.

3. Outcome Measurement

CMS Components/Consortia that participated in federally conducted LEP activities will develop a LEP process improvement analysis.

4. Implementation Timeline

FY 2014 Post the updated CMS Strategic LAP to the web

FY 2015 Document LEP stakeholder contact information

FY 2015 Analyze the use of stakeholder information to enhance LEP services

Element 10: Emergency Preparedness

1. Objective

To mitigate the effects of a natural disaster or other emergency, CMS will implement strategic measures to ensure access to information, benefits, and services.

2. Implementation Strategy

- a. CMS Components/Consortia that participate in federally conducted LEP activities will outline steps to measure emergency preparedness status within the scope of emergency service processes currently in place within the area(s) identified with LEP activities.
- b. CMS will outline steps to ensure access to emergency preparedness information, benefits, and services are in place in the event of a natural disaster or other emergency.
- c. CMS will outline steps to ensure that during emergency individuals are not impeded due to LEP status.

3. Outcome Measurement

CMS will outline an emergency preparedness process.

4. Implementation Timeline

FY 2015 CMS will outline an emergency preparedness process.

FY 2015 CMS will develop specific emergency preparedness procedures for

Components/Consortia that participate in federally conducted LEP activities.

FY 2016 CMS Components/Consortia that participate in federally conducted LEP activities will complete an emergency preparedness drill.

Element 11: Digital Information

1. Objective

CMS will ensure individuals with LEP can use language assistance services to access important digital program information to conduct business with CMS.

2. Implementation Strategy

- a. CMS will place links on the agency's English language website to documents that are also available for viewing or downloading in languages other than English.
- b. CMS will use and promote resources on www.lep.gov by providing links to the LEP.gov website on CMS website(s).
- c. CMS will explore opportunities to leverage social media to increase awareness and utilization by individuals with LEP of agency programs, activities, language assistance services, and products available in non-English languages.
- d. CMS will take steps to ensure all electronic technology is compliant with Section 508 of the 1973 Rehabilitation Act.

3. Outcome Measurement

- a. CMS will post links to documents in other languages.
- b. CMS will post links to LEP.gov where appropriate.

4. Implementation Timeline

FY 2014 CMS will post links to documents in other languages
FY 2015 CMS will post links to LEP.gov where appropriate

Element 12: Grant Assurance and Compliance

1. Objective

CMS will ensure grant recipients understand and comply with their obligations under civil rights statutes and regulations enforced by HHS related to language access.

2. Implementation Strategy

- a. CMS will explore ways to improve the effectiveness of grantees, contractors and others who are required to provide language assistance to LEP individuals, through clearer requirements, technical assistance, and dissemination of proven practices, coordinated support, and other approaches.
- b. CMS will explore a plan to ensure agency program staff can make current and prospective recipients of agency funds aware of their obligations under federal civil rights statutes and regulations with respect to LEP accessibility.
- c. CMS will develop a plan to add civil rights compliance language and guidance to each grant-making agency's program outreach materials to the extent feasible, including recommending that recipients implement language access plans to ensure compliance by program staff, sub-recipients and contractors.
- d. CMS will ensure program reviews of grant recipients include compliance with Title VI and other civil rights laws.
- e. CMS will explore ways to train program staff on how to incorporate civil rights questions into site visit protocols.
- f. CMS will develop grantee-oriented materials explaining grantee responsibilities for compliance with Federal civil rights statutes and regulations with links to relevant guidance and civil rights compliance forms.
- g. CMS will provide and promote links to resources and technical assistance documents on the agency website.

3. Outcome Measurement

- i. Grantee oriented materials will be available to grant recipients.
- ii. Grantees will comply with Title VI and other civil rights laws.
- iii. Civil rights compliance language and guidance will be included in grant program outreach materials.
- iv. Compliance reviews will include Title VI and other civil rights laws.

4. Implementation Timeline

FY 2015 Development of grant oriented materials

FY 2015 Grantee oriented materials will be posted to the agency website

FY 2016 Program reviews will include compliance with Title VI and other civil rights laws

Glossary

Bilingual

An individual who has the ability to use two languages. A bilingual person can learn to become a translator or an interpreter, but is not automatically so qualified by virtue of his or her language abilities.

- For instance, a *bilingual* person may be fluent and well-suited to having direct monolingual conversations (e.g., Spanish to Spanish and English to English conversations) in more than one language, but may not be skilled at converting those conversations from one language to another.

Certified Interpreter/Translator

A person who has passed the required language fluency examination in the certified languages or has passed a recognized written translation examination offered by another organization (e.g., Department of Social and Health Services, American Translators Association, etc.). The person must understand the client's culture and be able to integrate that understanding into the translation of written material.

CMS Activities

CMS activities as described in the CMS Strategic LAP are operational programs that CMS Components and/or Consortia may be involved with that directly impacts LEP persons. For example, Components and/or Consortia that participate in activities that directly come into contact with beneficiaries must submit the CMS Annual Language Access Assessment report. Other Components and/or Consortia may provide contributing information (e.g. budgeting support and data analysis) in support of LEP analysis, but are not required to submit an annual report.

Contractor

Any entity that performs work or provides services on behalf of an agency or division under a contractual agreement with reimbursement.

Cultural and Linguistic Competency

A set of behaviors, attributes, and policies enabling an agency (or individual) to function effectively and appropriately in diverse and cross-cultural interactions and settings. Creating culturally and linguistically competent materials requires considerations for individual, cultural and linguistic differences, and the use of appropriate language, messages and images that are relevant to the specific community or population.

Digital Information

Information that the government provides digitally. Information, as defined in OMB Circular A-130, is any communication or representation of knowledge such as facts, data, or opinions in any

medium form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.

Federally Conducted Activities

Under Executive Order 13166 a federally conducted program or activity is, in simple terms, anything a Federal agency does. Each federal agency subject to Executive Order 13166 must design and implement a federally conducted plan to ensure access for LEP individuals to all of its federally conducted programs and activities.

Federal Financial Assistance

Federal financial assistance broadly includes: (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and permission to use Federal property or interest in such property without consideration or at a nominal consideration, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. [45 C.F.R. § 80.13\(f\)](#).

Inadequate service

Not being able to contact an interpreter within a timely fashion. An untimely fashion includes a busy signal, a constantly ringing line, holding for more than 10 minutes without speaking to an interpreter, and CMS' non-responsiveness to the customer's request for interpreter services within one hour.

Interpretation

Interpretation involves the immediate communication of meaning from one language (the source language) into another (the target language). An interpreter conveys meaning orally, while a translator conveys meaning from written text to written text. As a result, interpretation requires skills different from those needed for translation. From the standpoint of the user, a successful interpretation is one that faithfully and accurately conveys the meaning of the source language orally, reflecting the style, register and cultural context of the source message, without omissions, additions or embellishments on the part of the interpreter.

Interpreter

An individual who listens to a communication in one language and orally converts to another language while retaining the same meaning.

Language Access

Achieved when individuals with LEP can communicate effectively with employees and contractors and participate in programs and activities.

Limited English Proficient persons

Individuals who may or may not have English as their primary language and who may feel more comfortable speaking or reading a document to someone in a language other than English.

Plain Language

Plain language as defined in the Plain Writing Act of 2010 is writing that is “clear, concise and well organized.”

Preferred Language

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.

Primary Languages

Frequently encountered languages other than English spoken and preferred by target populations.

Proven Practice

A proven practice is a technique or methodology that, through experience and research, has proven to reliably lead to a desired result. A commitment to using the proven practices is a commitment to using all the knowledge and technology at one's disposal to ensure success.

Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act of 1973, as amended is a national law that protects qualified individuals from discrimination based on their disability. The nondiscrimination requirements of the law apply to employers and organizations that receive financial assistance from any Federal department or agency. These organizations and employers include many hospitals, nursing homes, mental health centers and human service programs. Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

Section 508 of the Rehabilitation Act

The goal of Section 508 of the Rehabilitation Act of 1973, as amended, is to reduce electronic and information technology barriers experienced by people with disabilities. Under this law, the Federal Government is required to purchase and deploy new Information Technology and other electronic products that are accessible or compatible with assistive technology used by people with disabilities.

Source Language

The language from which translation occurs. Most often the source language will be English.

Taglines

Brief messages that may be included in or attached to a document. Taglines in languages other than English can be used on documents written in English that describe individuals with LEP can obtain translation of the document or an interpreter to read or explain the document.

Target Audience

The audience to whom the translated document is intended. A target audience may be identified as primary (people to whom messages are targeted) or secondary (someone with a stake in the program/project including key community contacts).

Target Language

The language to which translation or adaption occurs.

Timely service for language assistance will be measured as follows:

- a. If applicable, the Limited English Proficient individual contacting a call center is contacted by the Customer Service Representative interpreter within 10 minutes of the call.
- b. The Limited English Proficient individual obtains in person services of an interpreter within one hour on the first attempt 50% of the time for Calendar Year (CY) 2014.
- c. The Limited English Proficient individual obtains in person services of an interpreter within one hour on the first attempt 60% of the time for CY 2015.
- d. The Limited English Proficient individual obtains in person services of an interpreter within one hour on the first attempt 70% of the time for CY 2016.
- e. The Limited English Proficient individual obtains in person services of an interpreter within one hour on the first attempt 80% of the time for CY 2017.

Translation

The conversion of written communications from one language to another preserving the intent and essential meaning of the original text. Translation does not include interpretation, the oral conversion of a spoken message from one language to another.

Translator

Replaces written text from one language into an equivalent written text in another language.

- By contrast, *professional interpreters and translators* are generally required to have completed rigorous and specialized training.

Vital document

A document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or if CMS is required by law to provide the document. Vital documents include, but are not limited to applications for benefits, consent forms and complaint forms; notices of rights and notices of disciplinary action; notices advising LEP persons of the availability of free language assistance; prison rulebooks; written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For example, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be a vital document. For example, non-vital information included documents that are not critical to access such benefits and services. Advertisements of federal agency tours and copies of testimony presented to Congress that are available for information purposes would be considered non-vital information.

CMS Limited English Proficiency Language Access Approach for Federally Financially Assisted Programs: White Paper

Background

The purpose of this white paper is to clarify the Centers for Medicare and Medicaid Services' (CMS) approach to language access services in support of Limited English Proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and the Department of Health and Human Services (HHS) implementing regulations specified within this document. Title VI prohibits discrimination "on the ground of race, color, or national origin" under any program or activity that receives federal financial assistance. Additionally, Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000), directs each Federal agency subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation. The provisions applicable to Limited English Proficiency and language access under Title VI are Sections 601 and Section 602.

Federally Conducted Activities

Federally conducted activities are covered under Section 601 of Title VI. Section 601 provides that no person shall, "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity" covered by Title VI.

These activities are, in simplest terms, anything a federal agency does. Each federal agency subject to Executive Order 13166 must design and implement a federally conducted plan to ensure access for Limited English Proficient individuals to all of its federally conducted programs and activities. CMS developed and is currently implementing its strategic Language Access Plan to improve access to its federally conducted activities by Limited English Proficient persons.

Federally Financially Assisted Activities

Federally financially assisted programs are covered under Section 602 of Title VI. Section 602 authorizes federal agencies to "effectuate the provisions of [§601]...by issuing rules, regulations, or orders of general applicability." It provides federal agencies with the authority to implement regulations to "effectuate" the rights created under §601 and to regulate the activities of the recipients of federal funds. Specifically, Department of Health and Human Services (HHS) regulations forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination." CMS continues to operate under the HHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, where federally financially assisted programs are covered.

These programs broadly include: (1) grants and loans of federal funds, (2) the grant or donation of federal property and interests in property, (3) the detail of federal personnel, (4) the sale and

lease of, and permission to use federal property or interest in such property without consideration or at a nominal consideration, and (5) any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. [45 C.F.R. § 80.13\(f\)](#).

Improving access to services for Limited English Proficient persons also includes, but is not limited to the following regulations:

1. Federal regulations at 42 CFR 430.2, 435.901, 457.110(a) and 438.10(c), which apply to Medicaid managed care entities, require that state Medicaid and CHIP agencies comply with Title VI requirements.
2. Section 201(b) of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA, Public Law 111-3) provides enhanced administrative funding for translation and interpretation services in connection with the “enrollment of, retention of and use of services” under CHIP and Medicaid, and is available beginning with the enactment date of the law: February 4, 2009.
3. In accordance to Section 187 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), the Office of Inspector General (OIG) of the Department of Health and Human Services requires that CMS report on its compliance with and enforcement of national standards on culturally and linguistically appropriate services (CLAS) in Medicare.

No additional policy development is needed at this time for federally financially assisted programs.