



Language Access and the Law

Title VI of the U.S. Civil Rights Act (1964)

What is Title VI of the U.S. Civil Rights Act of 1964?

Title VI prohibits a recipient of funds from the U.S. Department of Health and Human Services (HHS) from engaging in policies or practices that have the effect of discriminating against individuals on the basis of national origin, including policies or practices that preclude or inhibit equal access to a recipient's programs and activities for patients of limited English proficiency.

What are Organizations Required to Provide?

The Office for Civil Rights (OCR) issued a policy guidance for Title VI compliance in 2004 that states LEP persons must be notified of the availability of free interpreting services, and the services must not require friends or family to provide interpretation. Interpreters must be competent in medical terminology and understand issues of confidentiality and impartiality.

For translated written information, OCR has "safe harbor" requirements that are considered strong evidence of compliance with an organization's obligation to have translated written material available. However, the safe harbor provisions apply to translated documents only. This does not affect the requirements for oral language services.

- Written translations of vital documents for each LEP language group that constitutes 5% or 1000 persons, whichever is less, of the population served.
- If fewer than 50 persons in an LEP language group are 5% of the population served, in lieu of translated written materials, the organization may provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

What Written Materials are Considered "Vital" or Non-Vital?"

Written information is difficult to classify as "vital" or "non-vital," and some documents may include both "vital" and "non-vital" information. However, examples for "vital" and "non-vital" materials could include:

Examples of "vital" written materials:

- Consent and complaint forms
- Information about free language assistance programs or services
- Intake forms that have the potential for important consequences
- Notices of eligibility criteria, rights, denial, loss, or decreases in benefits

Examples of "non-vital" written materials:

- Menus
- Third party documents, forms, or pamphlets distributed by a recipient as a public service
- Large documents such as enrollment handbooks (although vital information contained within these documents may need to be translated)

Knowing What to Provide: The Four Factor Analysis

To help determine the extent of an organization's obligation to provide LEP services, OCR recommends organizations perform an individualized assessment to balance the following four factors:

1. The number or proportion of LEP persons served or encountered in the eligible service population.
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.
4. The resources available to the recipient and costs.

Source: *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons*. Washington, DC: United States Department of Health and Human Services, Office for Civil Rights; 2003. Retrieved from: <http://www.usdoj.gov/crt/cor/lep/hhsrevisedlepguidance.pdf>

What Institutions are Covered by These Laws?

All entities receiving direct or indirect Federal financial assistance from HHS through a grant, contract, or subcontract, are covered by these policies. Examples of institutions that may receive financial assistance from HHS include:

- Hospitals
- Nursing homes
- Physicians and other providers
- Home health agencies
- Managed care organizations
- State, county, and local health agencies
- State Medicaid agencies
- Universities and other entities with health or social service research programs

Source: *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons*. Washington, DC: United States Department of Health and Human Services, Office for Civil Rights; 2003. Retrieved from: <http://www.usdoj.gov/crt/cor/lep/hhsrevisedlepguidance.pdf>



Language Access and the Law

Title III of the Americans with Disabilities Act (1990) Section 504 of the Rehabilitation Act (1973)

What Institutions are Covered by These Laws?

Places of public accommodation are defined as facilities, operated by a private entity, whose operations affect commerce, and fall within at least one of the categories outlined by the Department of Justice. Examples of public accommodation include:

- Pharmacies
- Professional offices of health care providers
- Hospitals
- Other service establishments
- Social service establishments
- Places of education
- Places of exercise or recreation

What is Title III of the Americans with Disabilities Act of 1990?

No individual shall be discriminated against on the basis of disability in any place of public accommodation, which includes the professional office of a health care professional and hospitals. In addition, a public accommodation shall take steps to provide auxiliary aids and services, defined to include qualified interpreters, note takers, computer-aided transcription services, and written materials.

What is Section 504 of the Rehabilitation Act of 1973?

No qualified individual with a disability shall be excluded from, denied the benefits of, or be subjected to discrimination under any program activity that receives Federal financial assistance. Requirements include effective communication with the deaf and hard of hearing.

Who are Considered Individuals with Disabilities?

Individuals with disabilities are defined as persons who have (or who have a history of) a physical or mental impairment which substantially limits one or more major life activities. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. Examples of impairments that may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness.

Source: U.S. Department of Justice, Civil Rights Division, Disability Rights Section. (2005). *A Guide to Disability Rights Laws*. Retrieved from: <http://www.usdoj.gov/crt/ada/cguide.htm>.

Auxiliary Aids and Services

What do Auxiliary Aids Include?

Auxiliary aids must be provided when necessary to ensure effective communication with individuals who have hearing, vision, or speech impairments. Examples include services or devices such as:

- Qualified interpreters
- Note takers
- Transcription services
- Written materials
- Assistive listening devices and systems
- Telephone communication devices for deaf persons
- Telephone handset amplifiers
- Video interpretive services

Take Into Account...

The individual's needs and circumstances:

- Individuals who are deaf or hard of hearing have different degrees of hearing loss
- Some individuals may speak though they cannot hear
- Individuals have different skills and use a variety of ways to communicate, including different types of interpreters

The type of communication:

- Length of communication
- Number of persons involved
- Purpose of communication
- Complexity of information being communicated
- The resources available to the recipient and costs

Source: U.S. Department of Justice, ADA Business Brief. (2003). *Communicating with People Who Are Deaf or Hard of Hearing in Hospital Settings*. Retrieved from: <http://www.usdoj.gov/crt/ada/hospcombr.htm>