



# LANGUAGE ACCESS

---

Act 290 SLH 2006 & Act 008 SLH 2008

## **HRS Chapter 371, Part II**

**as amended**

Effective July 10, 2006

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

### Description:

Expects effective and timely communication between state or state aided persons or agencies and individuals who are precluded from using or participating in state aided services due to language-proficiency barriers.

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

### SECTION 1.

HRS Chapter 371 (DLIR), is amended by adding a new part on LANGUAGE ACCESS (Part II)

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

**§371-31 Purpose.** Most individuals in Hawaii read, write, speak, and understand English. There are many individuals, however, who are limited English proficient (LEP). Language for LEP persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

**§371-31 Purpose.** (continued) The purpose of this part is to affirmatively address, on account of national origin, the language access needs of LEP persons. In providing the delivery of language accessible services, it is the intent of the legislature that those services be guided by Executive Order 13166 and succeeding provisions of federal law, regulation, or guidance.

# *Executive Order 13166*

## *\*HHS LEP Policy Guidance*

---

*Published in the Federal Register August 3, 2003 (13p)*

*[http://www.hhs.gov/ocr/lep/lep\\_guidance080403.pdf](http://www.hhs.gov/ocr/lep/lep_guidance080403.pdf)*

*In HTML on the web at*

*<http://www.hhs.gov/ocr/lep/revisedlep.html>*

# *Title VI of the Civil Rights Act*

*§601 (1964), 42 USC §2000d et. seq.*

---

*No person in the United States 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 receiving Federal financial assistance.*

# *HHS Title VI regulation*

## *45 CFR §80.3(b)(2)*

---

*Recipients may not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin.*



# *U.S. Supreme Court decision*

## *Lau v. Nichols, 414 U.S. 563 (1974)*

---

*Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination.*

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

### §371-32 Definitions.

“Access” or “participate” means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

“State” or “state agency” means the executive, legislative, or judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

“Covered entity” means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services to the public. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

---

# *HHS Title VI regulation*

## *45 CFR §80.2*

---

*Covered are all recipients of \*HHS Federal financial assistance either directly or indirectly, through grant, contract or subcontract. Common types include:*

- *Loans*
- *Grants*
- *Grants or loans of Federal property*
- *Use of equipment and donations of surplus property*
- *Training*
- *Details of Federal employees*
- *Any other agreement to provide assistance*

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

“Limited English proficient” means individuals who, on account of national origin, do not speak English as their primary language and \*who identify themselves as having a limited ability to read, write, speak, or understand the English language.

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

“Purchase-of-service contract” means any and all types of formal written agreements, regardless of what they may be called, between the State and any person, to purchase or otherwise acquire any service for the purpose of rendering services to the public.

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

“Vital documents” means printed documents that provide important information necessary to access or participate in services, programs, and activities of a state agency or covered entity including, but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

# *\*HHS LEP Policy Guidance*

## *§VI.C Written Language Services (Translation)*

*Vital written materials could include, for example:*

- *Consent and complaint forms*
- *Intake forms that may have important consequences*
- *Written notices of eligibility criteria, right, denial, loss or decrease in benefits or services, actions affecting parental custody or child support*
- *Notices advising LEP persons of free language aid*
- *Written competency test for license, job or skill where English is not required*
- *Applications to participate in a program or activity or to receive benefits or services*



# *\*HHS LEP Policy Guidance*

## *§VI.C Written Language Services (Translation)*

---

*Non-vital written materials could include, for example:*

- *Hospital menus*
- *Third party documents, forms or pamphlets by a recipient as a public service*
- *For a non-governmental recipient, government documents and forms*
- *Large documents such as enrollment handbooks (though vital information in them may need translation)*
- *General information about the program intended for informational purposes only*

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

“Oral language services” means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.

“Written language services” means the free provision of written information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.

---

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

### §371-33 Oral and written language services.

(a) Each state agency and all covered entities shall take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons, which will be determined by a totality of circumstances, including the following factors:

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

- (1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;
- (2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The nature and importance of the services, programs, or activities; and
- (4) The resources available to the State or covered entity and the costs.

# *\*HHS LEP Policy Guidance*

## *§V.(1) Factor 1*

---

1. *The number or proportion of LEP persons served or encountered in the eligible service population*
    - *How many LEP persons are eligible to be served, or likely to be affected by a program or activity*
      - *Consider*
        - *Does the program serve minors with LEP parents or guardians*
        - *Are there populations underserved because of language barriers*
      - *Potential sources of data may include*
        - *Encounter data*
        - *Census data, school data, government data*
        - *Community organizations*
-

# *\*HHS LEP Policy Guidance*

## *§V.(2) Factor 2*

---

2. *The frequency with which LEP persons come in contact with program, activity or service*

—■ *How often is a particular language encountered?*

# *\*HHS LEP Policy Guidance*

## *§V.(3) Factor 3*

---

### *3. Nature and importance of the program, activity or service*

- *How important is the activity, information, service or program?*
  - *What are the possible consequences if effective communication is not achieved?*
  - *Could denial or delay of access have serious life-threatening implications?*
-

# *\*HHS LEP Policy Guidance*

## *§V.(4) Factor 4*

---

### *4. Costs and resources available*

- *What are the reasonable costs of providing language assistance services?*
- *What resources are available?*



# *\*HHS LEP Policy Guidance*

## *Applying the 4 factors*

---

*Implicates what the “correct mix” of LEP resources will be required based on what is both necessary and reasonable*

- *Oral interpretation: in person or remotely (e.g., telephone or videoconference)*
- *Written translation: entire document to short description of a document*

# *\*HHS LEP Policy Guidance*

## *Applying the 4 factors*

---

### *Ways to provide cost-effective language services*

- *Information sharing*
  - *Training bilingual staff*
  - *Telephone and videoconference services*
  - *Pooling resources, standardizing documents*
  - *Using sufficiently qualified interpreters and translators to avoid errors or unnecessary costs*
  - *Centralizing services*
  - *Formalized use of qualified volunteers*
-

# *\*HHS LEP Policy Guidance*

*Applying the 4 factors - examples*

---

*A PHN section in a community with a significant Filipino population may need immediately available oral interpreters and may need to give serious consideration to hiring bilingual staff.*

# *\*HHS LEP Policy Guidance*

*Applying the 4 factors - examples*

---

*A WIC clinic which encounters one LEP Japanese client per month on a walk-in basis may want to use a telephone interpreter service.*

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

(b) Subject to subsection (a), each state agency and covered entity shall provide competent, timely oral language services to limited English proficient persons who seek to access services, programs, or activities.

# *\*HHS LEP Policy Guidance*

## *Interpreter competency*

---

*The recipient should take reasonable steps to assess that the interpreter is able to:*

- *Be proficient in English and the other language*
  - *Know specialized terms or concepts appropriate to the need*
  - *Understand and maintain confidentiality and impartiality*
  - *Understand the interpreter's role without deviating to other roles*
-

# *\*HHS LEP Policy Guidance*

## *Timeliness*

---

*When language assistance is needed and is reasonable, it should be provided in a timely manner (e.g., at a time and place that avoids the effective denial or delay of the service, benefit or right at issue).*

# *\*HHS LEP Policy Guidance*

## *Selecting language assistance services*

---

*Options for oral language services (interpretation):*

- *Bilingual staff*
- *Staff interpreters*
- *Contract interpreters*
- *Telephone and videoconference*
- *Community volunteers*



# *\*HHS LEP Policy Guidance*

## *Family members or friends as interpreters*

---

### *Issues in using family members or friends*

- *Recipient will provide free of charge*
- *Provide meaningful access*
- *Not require LEP person to provide interpreter*
- *Not rely on family members or friends*
- *Evaluate if there are special concerns*
- *Respect LEP persons wishes*

# *\*HHS LEP Policy Guidance*

## *Family members or friends as interpreters*

---

*Special concerns: should respect LEP persons desire to use interpreter of their choosing instead of free interpreter provided subject to:*

- *Issues of competence, appropriateness, conflict of interest, and confidentiality*
  - *Heightened caution when an LEP person asks for a minor child to serve as an interpreter*
  - *The recipient is responsible for assuring effective communication*
-

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

(c) Subject to subsection (a), each state agency and covered entity shall provide written translations of vital documents to limited English proficient persons who seek to access services, programs, or activities, as follows:

# *\*HHS LEP Policy Guidance*

## *Written translations*

---

*Vital written materials should be translated.*

- *“Vital” depends on the importance of the program, information, encounter, or service involved and consequences to the LEP person if the information is not provided accurately or in a timely manner*

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

(1) Written translations of vital documents for each eligible limited English proficient group that constitutes five per cent or one thousand, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered; or

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

(2) If there are fewer than fifty persons in a  
limited English proficient group that reaches  
the five per cent threshold in paragraph (1),  
written notice in the primary language to the  
limited English proficient language group of  
the right to receive competent oral  
interpretation of those written materials, free  
of cost.

# *\*HHS LEP Policy Guidance*

## *Translation steps to consider*

---

### *When doing translations*

- *Use certified interpreters*
- *Use a different translator to check the translation for extremely critical documents*
- *Use a different translator to translate back into English*
- *Understand the expected reading level of the audience - vocabulary and phrasing*
- *Use community agencies to test a “good” level*

# *\*HHS LEP Policy Guidance*

## *Written translations - Safe Harbor*

---

*Meeting “Safe Harbor” is strong evidence of compliance....but not meeting it does not necessarily mean non-compliance.*

- *All vital documents are translated for groups that meet the 5% or 1000 trigger (OR)*
- *Can provide written notice of the right to receive free oral interpretation of those written materials in the language if there are fewer than 50 persons in the group that meet the 5%*



# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

(d) To the extent that the State requires additional personnel to provide language services based on the determination set forth in this section, the State shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions.

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

**§371-34 Additional obligations.** (a) Each state agency and covered entity shall establish a plan for language access.

(b) Each state agency's plan shall be established in consultation with the executive director of the office of language access and the state agency's coordinator. State agencies receiving federal financial assistance shall file an initial plan with the office of language access no later than July 1, 2007, and every two years thereafter.

---

# *\*HHS LEP Policy Guidance*

## *Designing effective language access plans*

---

### *Five steps*

- *Identifying LEP individuals*
- *Identifying methods of language assistance*
- *Training staff*
- *Providing notice of language services*
- *Monitoring and updating LEP Plan*

# *\*HHS LEP Policy Guidance*

## *Designing effective language access plans*

---

### *Step 1 Identifying LEP individuals*

- *Ways to identify*
  - *Language identification card*
  - *Encounter data*
  - *Posted notices*

# *\*HHS LEP Policy Guidance*

## *Designing effective language access plans*

---

### *Step 2 Language assistance measures*

- *May include information on*
    - *Types of language assistance available*
    - *How staff can obtain those services*
    - *How to respond to LEP callers*
    - *How to respond to written communication from LEP persons*
    - *How to respond to LEP individuals in person*
    - *How to ensure competency of language assistance*
-

# *\*HHS LEP Policy Guidance*

## *Designing effective language access plans*

### *Step 3 Training staff*

- *May include training to ensure staff:*
  - *Knows about LEP policies and procedures*
  - *Can work effectively with in-person and telephone resources*
    - *Bilingual Access Line (in-person+)*  
*<http://www.helpinghandshawaii.org/bilingual.htm>*
    - *Hawai'i Language Bank (in-person+)*  
*<http://www.pacificgateway.org/>*
    - *Language Line (telephone)*  
*<http://www.language.com>*

# *\*HHS LEP Policy Guidance*

## *Designing effective language access plans*

---

### *Step 4 Providing notice to LEP persons*

- *Examples include:*
    - *Post signs in intake areas  
(Contact AAO for sample DOH signs)*
    - *Announce language services in outreach materials*
    - *Use a telephone voicemail menu (including hotlines)*
    - *Provide notices in media and websites (English and non-English)*
    - *Work with community-based organizations and stakeholders*
-

# *\*HHS LEP Policy Guidance*

## *Designing effective language access plans*

---

### *Step 5 Monitoring and updating the LEP plan*

- *Consider assessing changes in:*
  - *Frequency of encounters with LEP language groups*
  - *Current eligible LEP populations*
  - *Availability of resources*
  - *Efficacy of existing assistance in meeting the needs of LEP persons*



# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

(c) Each state agency shall designate a language access coordinator who shall establish and implement the plan for language access in consultation with the office of language access.

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

### §371-E35 Public meetings and public hearings.

(a) State agencies shall not be required to translate meeting notices, agendas, or minutes.

(b) Subject to section 371-C oral language services for public meetings or public hearings held by the legislature shall be provided if requested at least 48 hours in advance of the meeting or hearing. Where the notice of any public meeting or public hearing is posted less than forty-eight hours in advance of the meeting or hearing, oral language services shall be provided if requested at least 24 hours in advance of the meeting or hearing.

---

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

**§371-36 Executive Director of the Office of Language access; duties.** There is established within the DLIR, for administrative purposes only, an office of language access. The head of the office shall be known as the executive director. The executive director shall be appointed by the governor without regard to chapter 76. The executive director shall:

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

- (1) Provide oversight, coordination, and technical assistance to state agencies;
  - (2) Provide technical assistance to covered entities;
  - (3) Review and monitor agency language access plans;
  - (4) Where reasonable access is not provided, endeavor to eliminate the barrier using informal methods. Where it cannot be eliminated by informal methods, the executive director shall submit a report and may request that it be notified of action;
-

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

- (5) Consult with coordinators, the council, and department directors;
  - (6) Subject to section 371-C, create, distribute to the State, and make available to covered entities multilingual signage in the more frequently encountered languages, and other languages as needed, informing individuals of their right to free oral language services and inviting them to identify themselves as persons needing services; and
  - (7) Adopt rules.
-

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

### **§371-37 Language access advisory council.**

(a) The council shall consist of sixteen members (including one representative from state government).

(b) Appointed in accord with HRS 26-34 for four-year terms

(c) Advises on implementation, quality and adequacy of agency or entity dissemination and training, policies and procedures, competency of interpreters, and its understanding of interpretation dynamics.

---

# LANGUAGE ACCESS

## HRS Chapter 371, Part II

---

### SECTION 2.

Designates HRS 371-1 to -18 as Part I.

### SECTION 3.

Requires Office of Language Access to report annually to the governor and legislature.

### SECTION 4.

Appropriates \$440,000 for FY2006-2007.

---

# LANGUAGE ACCESS

HRS Chapter 371, Part II

---

*pau*

**§§ 371-31 to 37**  
Effective July 10, 2006

---