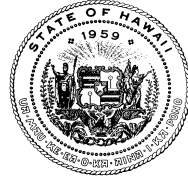


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APHIRAK BAMRUNGRUAN
EXECUTIVE DIRECTOR

OFFICE OF LANGUAGE ACCESS
MEMORANDUM No. 2021-003
November 4, 2021

TO: All Language Access Coordinators

FROM: Aphirak Bamrungruan, Executive Director
Office of Language Access

A handwritten signature in blue ink that reads "Aphirak Bamrungruan".

SUBJECT: Requirements of the Law and Elements of the Language Access Plan (LAP)

Sections 321C-4(a) and 321C-4(b) and, Hawai'i Revised Statutes, requires each state agency and covered entity to establish and file a plan for language access with the Office of Language Access (OLA) and every two years thereafter.

An agency language access plan (LAP) is a document that details how an agency/covered entity will provide services to individuals with limited English proficiency (LEP). A LAP should be tailored to the needs, demands, and services specific to each agency, but may include similar elements.

This memo provides basic steps for the development of a language access plan. It does not create new legal requirements or change existing requirements under Chapter 321C, Hawai'i Revised Statutes. The following elements are critical to an effective language access plan and will assist an agency in the development and implementation of language assistance services to LEP individuals.

Basic Elements in Creating a Language Access Plan

1. Language Access Coordinator: Who is responsible to establish and implement the LAP?

Each agency shall designate a language access coordinator who shall establish and implement the plan for language access [HRS 321C-4(c)] to ensure meaningful access to services, program and activities by LEP person [HRS 321C-3].

2. Assessment: Who are your current/future LEP clients? How does the LEP client interact with your agency? How often?

To ensure meaningful access to services, program, and activities by LEP individuals, this is accomplished through an assessment of the totality of circumstances, including the following factors.

Four Factor Analysis [HRS 321C-3].

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

This is a fact-dependent, balancing test and is the starting points in determining what are reasonable steps an agency should take to provide meaningful access.

Reasonable Steps Test

Look at all of the circumstances surrounding the provision of the service, program, activity, or information being accessed along with the four-factors.

- If you look at all the factors and find the provision of language services to be reasonable, then you must provide the language service as required by the law either through oral interpretation or written translation of a document.
- The four factors and facts to consider are described in greater detail below.

Factor 1: The **number or proportion** of LEP persons served or encountered in the eligible service population.

- Look at the internal data you currently have. Useful internal data sources may include call center information, information provided by your staff, applications for services, or other related records. Your data collection and reporting system should allow you to determine and identify LEP population in your service area.
- If your agency does not have internal data, there are publicly available resources you can utilize such as census data, data from school systems, or data from agencies that serve LEP individuals.
- The greater the number or proportion of LEP individuals from an LEP group, the more likely language services are needed and are reasonable.

- Look at past experiences and determine how many LEP persons are served and determine the breadth and scope.
- What is the number or proportion of people who will be excluded from the benefits or services absent efforts to remove language barriers? Greater number or proportion excluded; the more likely language services are needed.
- Include minority LEP persons who are eligible for services but are not served because of existing language barriers.

Factor 2: The **frequency** with which LEP persons come in contact with the services, programs, or activities;

- Determine points of contact, points of entry, positions of public contact that LEP persons do or would access. Also, what information is accessed?
- Greater the frequency the greater the duty to provide language services.
- How often does the LEP group come into contact with that particular service, program, or activity?
- Frequency of various languages?

Factor 3: The **nature and importance** of the services, programs, or activities;

- Greater:
 - the importance of the service, program or activity, or information; OR
 - possible consequence of contact to the LEP person, the more likely language services are needed.
- Does a denial or delay in provision of language services have implications for the LEP persons?
- If you have made the service, program or activity compulsory, it is strong evidence of that service, program or activity's importance.

Factor 4: The **resources** available to the State or covered entity and costs.

- An agency's level of resources & costs impacts the nature of steps it should take to provide language access.
- Smaller agencies with limited budgets are not expected to provide same level of language services as larger agencies.
- Cost analysis - the provision of language services may cease to be reasonable only where the costs imposed substantially exceeds the benefits.

- NOTE: Should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Resource limitations should be well-substantiated.

Determining whether the provision of the language service is reasonable, by using the four-factor analysis described above, is the first step. After determining whether the provision of language service is reasonable, an agency must determine the method of provision of the language service (oral or written) to ensure “meaningful access.”

3. Notification: How do you notify LEP clients about the availability of language services upon request?

Based on the agency-client interaction assessment conducted, an agency must notify LEP (potential/current) clients that free and timely language assistance is available **upon request** as a part of their language access rights. Example, of language access rights multilingual signage notifications (Language poster, I-Speak Cards) in areas LEP encounter your agency. Also, language access rights notification can be done through mail, email, website, education outreach.

4. Language Services: What type of language support will be available?

After an agency determines the appropriate language services based on the Four Factor analysis, the agency must provide language services in a timely and competent manner. This element of the LAP should describe how the agency will:

- Select and Provide oral interpretation services; and
- Select and Provide written translation services.

Oral language services mean 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. [HRS 321C-3].

The LAP should outline the type of oral language services the agency will provide such as an in-person, telephone interpreter, or video interpreter. An agency has flexibility in determining the appropriate mix of oral language services provided such as the use of internal staff, volunteer, or contract person/company, but must ensure the quality and accuracy of such services.

The LAP should also address the use of **highly discouraging** the use of family members or friends as interpreters.

Written language services mean 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. [HRS 321C-3].

The LAP should identify the vital documents to be translated and the languages to be translated into. Sections 321C-2, HRS, defines Vital documents as 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.

It is important to note that Sections 321C-3(c), HRS, provides a safe harbor provision where an agency shall provide:

- 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 [321C-3(c)(1)] ; or
- 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. [321C-3(c)(2)]

5. Training: Is the agency staff (current/future) trained to manage LEP clients?

An effective LAP should have a competent staff trained in working effectively with the LEP client. The agency must determine how staff (current and future) will be trained on policies and procedures for providing language services, including who and how often. It is important that all staff receive refresher courses as policies, process and resources are updated and revised.

6. Compliance: Is the agency compliant with LEP requirements?

To demonstrate implementation of the LAP, the agency must show evidence of compliance. The agency should monitor and control on a regular basis the language access process to assure the effectiveness and efficiency of the LAP. This monitoring and controlling may include, but need not be limited to:

- Comparing plan versus implemented process and updating the related documents.
- Documenting policies and procedures created for language access.
- Creating a process to manage and record complaints.
- Compiling language access usage, refusal, and relevant demographics.
- Informing and monitoring its subcontractors/ sub-recipients of their legal obligation to provide language assistance to LEP individuals.

Should you have any questions or suggestions regarding this memo, please do not hesitate to contact our office via email at DOH.OLA@doh.hawaii.gov or at (808) 586-8730.