

2015 Language Access Plan

Appendix C:

Department of Justice Guidance Memorandum

Section on safe harbors Federal Register Doc 0320179 HHS revised guidance for LEP (August 8, 2003)

“Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of “meaningful access.” Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. In determining what outreach materials may be most useful to translate, such recipients may want to consider consulting with appropriate community organizations. Sometimes a document includes both vital and nonvital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision [[Page 47319]] of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Given the foregoing considerations, vital written materials could include, for example:

- Consent and complaint forms;
- Intake forms with the potential for important 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; and
- Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Nonvital written materials could include:

- Hospital menus;
- Third party documents, forms, or pamphlets distributed by a recipient as a public service;

- For a non-governmental recipient, government documents and forms;
- Large documents such as enrollment handbooks (although vital information contained in large documents may need to be translated); and
- General information about the program intended for informational purposes only.

Into What Languages Should Documents be Translated?

The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Some recipients may serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is usually a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.”