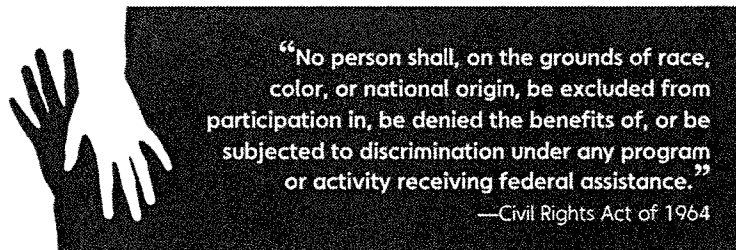


# Access to Health and Human Services Program for Individuals with Limited English Proficiency

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## Failure to Provide Language Access Where Required is Discrimination Based on National Origin

Agencies providing services through federal funds must ensure meaningful access to their programs and activities by persons who do not speak English as their primary language. The basis of this law is Title VI of the Civil Rights Act, which states:



In interpreting Title VI, the United States Supreme court has treated discrimination based on language as equivalent to national origin discrimination. See *Lau v. Nichols*, 414 U.S. 563 (1974). Numerous regulations have been issued to implement Title VI. The federal Department of Health and Human Services ("DHHS") has indicated that agencies which receive federal funding 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..." 45 C.F.R. 80.3(b)(2). The DHHS prohibits recipients of federal funds from "deny[ing] an individual any service or the opportunity to participate in the program..." based on that individual's national origin. *Id.* Moreover, Executive Order 13166 reiterates the requirement that federal fund recipients must ensure that their program provides equal access to LEP clients.

## **2 Steps: Assessment of Need and Plan for LEP Services**

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- 1) **Assessment:** The most current guidance issued by the DHHS<sup>1</sup> describes the analysis that state agencies should take to assess the need for language services, including:
  - ✓ The number or proportion of LEP persons served or eligible to be served.
  - ✓ The frequency of contact.
  - ✓ The nature and importance of services provided
  - ✓ Costs and resources available.
- 2) **Implementation Plan for LEP Service:** After assessing the four factors above, federal recipients are to develop an implementation plan incorporating five elements:
  - ✓ Identify LEP individuals who need assistance
  - ✓ Decide on the ways in which language access will be provided
  - ✓ Train staff
  - ✓ Provide notice to LEP persons of the available LEP services; and
  - ✓ Monitor and update the LEP program.

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<sup>1</sup> Guidance is available at <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/>

# **LHHS Should Take Action to Determine the Status of Language Access in Health and Human Services Agencies**



## **Language Access Task Force Established by Senate Joint Memorial 10**

During the 52<sup>nd</sup>, Senator Mimi Stewart worked with New Mexico Asian Family Center and other community based organizations to draft Senate Joint Memorial 10, which passed unanimously in both the House and Senate. SJM010 requests that the Department of Health to convene a language access taskforce that includes representatives from the Human Services Department (HSD), The

Children, Youth and Families Department (CYFD), the Aging and Long-Term Services Department (ALTSD), The Department of Public Safety (DPS), the Department of Finance and Administration (DFA), and community based organizations representing diverse populations. The task force will develop a model for language access in state health and human services agencies, to ensure that individuals with limited English proficiency have full and meaningful access to state programs and services, as required under Title 6 of the Civil Rights Act of 1964 and reinforced in the president's Executive Order 13166.

## **LHHS Should Request Key Data to Determine the Status of Language Access**

To determine the status of service provision to New Mexicans with limited English proficiency, LHHS should request the following data from all agencies listed in SJM010 to be provided within 60 days of the request:

1. All policies, procedures or other similar documents regarding Limited English proficiency (LEP), including, but not limited to, agency plans, policies, or procedures governing usage of translation or interpreter services;
2. All training materials relating to the support of LEP persons; and
3. The agency's most recent analyses of New Mexico language demographics and the populations accessing their services

## **LHHS Should Endorse Renewal of SJM010 Next Session**

The objective in SJM010 require continued work by the task force to review language access plans, the allocation of state agency resources to LEP related services and to create a model language access plan.

