

Limited English Proficiency
Training Material for Trainer

To The Trainer:

This is introductory material, expected to take 20-30 minutes to present.

This material includes legal advice and should be approved by your agency's legal counsel before you use it. The focus of the legal information is to emphasize the fact that LEP requirements are not only internal policies, they are legal obligations. You should probably consider including a representative from your Recipient Rights office in the training.

Conceptually, it is important to understand that in this case "equal treatment" is not only not equal, but illegal. We must look for equal results, regardless of whether or not our behavior or policies were equal.

Documenting the training is a necessary component of compliance. Use the provided quiz – or a quiz of your own design.

Objective:

This training is designed to make the participants familiar with accommodating persons with Limited English Proficiency. These are usually referred to as simple "LEP" programs. Limited English Proficiency is defined as the inability to speak, read, write, or understand English at a level that permits effective interaction with health care providers. This training is designed to be applicable to all employees and will provide an initial understanding of the topic. You will cover four basic areas with the participants:

- Our intent
- Our legal responsibility
- Our agency's policies on LEP
- Our agency's procedures with respect to LEP

You can use the following material as a handout for the training.

Note:

C. Legal Basis: the key is that the legal basis has been around for a long time and comes from several laws and sets of regulations. There is no single LEP law you can look up. LEP is a legal obligation. Legal citations, specific dates, and specific requirements are not within the scope of this session.

LIMITED ENGLISH PROFICIENCY Training for All Staff

Objective:

This training is designed to make you familiar with accommodating persons with Limited English Proficiency. These are usually referred to as simple “LEP” programs. Limited English Proficiency is defined as the inability to speak, read, write, or understand English at a level that permits effective interaction with health care providers. This training is designed to be applicable to all employees and will provide an initial understanding of the topic. We will go over four basic areas:

- Our intent
- Our legal responsibility
- Our agency’s policies on LEP
- Our agency’s procedures with respect to LEP

A. Dos and Don’ts

Do treat every client as a client, regardless of his or her ability to speak English.

Don’t get caught up in trying to assess whether they could speak English if they wanted to – we are not in the foreign language assessment field. If and when this may be appropriate, it should be a planned clinical test.

B. Our Intent

Our intent is to set and implement all of our access standards, conduct all of our programs, and run our business in a manner that recognizes the language limitations our clients and potential clients may have.

We don’t treat clients equally, some need more help in one area than another – some can be expected to need more help with communications than others.

It is our intent to be both willing and prepared to help those to whom language may be a barrier to obtaining necessary treatment and support.

C. Legal Basis

English is NOT the “official” language of the United States. This is commonly misunderstood. It is very common, but it is not the standard.

There is no official language of the United States.

There is no Limited English Proficiency law. It is the combination of several existing laws.

Title VI of the Civil Rights Act of 1964 provide that no person shall be subjected to discrimination on the basis of race, color or national origin under any program or activity that receives federal financial assistance.

We receive federal financial assistance. The courts have determined that discriminating against a person based on language is the same as discriminating against them based on nationality.

The American's with Disabilities Act (ADA) provides the legal basis for LE [standards applying to those with poor eyesight or hearing impairments. Additionally, many other federal laws recognize the need for language assistance, such as: The Older Americans Act, The Substance Abuse and Mental Health Administration Reorganization Act, The Disadvantaged Minority Health Improvement Act, The Equal Education Opportunities Act of 1974 are some examples.

Our responsibilities are further clarified by a wide variety of federal regulations including those issued by the Center for Medicare and Medicaid Services.

D. Who is covered?

The law says "persons", which is obviously rather all encompassing and specifically includes illegal immigrants.

E. Basic Requirements under Title VI

Practices/Procedures cannot have the effect of restricting meaningful participation by LEP persons. "Meaningful participation" goes beyond allowing them to attend functions. Think about being allowed to sit in on a class given in Russian.

This requires examining practices to assure that they are not creating unintended barriers to access for LEP persons.

Provide language assistance at no cost to LEP persons.

Language assistance, to whatever extent it is provided, must be at no cost to the individual.

It must be competent assistance. Interpreters must be competent in both the language spoken by the client and English. Additionally, the interpreter must be competent in the terminology appropriate for the occasion. Interpreters must also be knowledgeable of, and committed to, confidentiality (42 CFR and HIPAA) requirements.

Title VI of the Civil Rights Act is the legal basis for LEP regulations covering "foreign" languages. The ADA is the legal basis for equivalent protections applied to clients needing assistance due to limited hearing or eyesight.

DON'T suggest, expect, or even allow minors to act as interpreters.

DON'T suggest, expect, or even allow other clients to act as interpreters. Even for setting appointments – the fact that someone is a client is protected healthcare information under HIPAA and cannot be discussed without the client's permission – which you can't get unless you communicated with him or her first.

DO clearly document any instance when you believe the circumstances warranted the use of an interpreter whose qualifications you are not familiar.

DO clearly document, every time, any occasion when a friend of the client or a family member is used as an interpreter. Did the client make the decision, after being clearly informed that they have a right to free language assistance?

F. Safe Harbors

There has been a lot written on the thresholds related to how many people must need assistance in a specific language before an agency must supply the assistance. The key is that the one standing in front of you does! The rest is a legal standard and will be interpreted by agency management.

G. Background Reading

McArthur, Worried About Something Else, 60 International Journal of Social Language, 84, 90-91 – includes some interesting perspectives on why discriminating against someone based on language is the same as discriminating against them based on nationality.

<http://www.hhs.gov/ocr/civilrights/understanding/race/laws/> - web site for the Health and Human Services, Office of Civil Rights, Title VI Guidance. Not light reading, but an excellent reference. The guidance paper may also be found as 65 FR 52762-52774, 30 Aug 2000, although the formatting doesn't make it any easier to read.

65 FR 50121 – Executive Order 13166

65 FR – Background on enforcement standards for the LEP