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Language Access Issues in Social Security and Medicare

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The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at www.NSCLC.org.

Number of older immigrants in the United States is increasing.

- Nationally, for adults 65+:
 - Number of older adult immigrants has doubled between 1990 and 2010, from 2.7 million to nearly 5 million.
 - 13.9% speak a “language other than English” at home
 - Rises to 60% for Hispanic and Asian elders

Language access in public benefits is particularly important for low-income seniors

- Approximately 4.1 million Medicare beneficiaries are LEP.
- Immigrant seniors are more likely to live in low-income families.
- Rates are particularly high for low-income seniors: 38% of SSI applicants 65+ asked to be interviewed in a non-English language

LEP Definitions

- Limited English Proficient (LEP)
 - DOJ/HHS Guidance definition
 - Individuals who do not speak English as their primary language and whose ability to read, write, speak or understand English is not fluent.
 - Using census data, 8% of the U.S population speak English less than “very well.” (i.e. “well” or “not well or not at all”).
- Very important for clients to fully understand key health and income benefits!

Federal Language Access Requirements: Overview

- Title VI of Civil Rights Act and federal regulations:
 - DOJ: 28 C.F.R. § 42.405(d)(1)
 - HHS: 45 C.F.R. § 80.3
- Executive Order 13166
 - Federal agencies need to examine the services they provide, identify any need for LEP services, and develop and implement a system to provide meaningful access.
 - Federal agencies must ensure that federal funding recipients provide meaningful access.

Federal Language Access Requirements: Overview

- Agency LEP guidance (result of EO 13166).
 - DOJ's meant to be uniform model.
 - 67 Fed. Reg. 41455 (2002).
 - HHS OCR guidance,
<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/hhslepguidancepdf.pdf>
 - Office of Minority Health, National Cultural and Linguistically Appropriate Services (CLAS) Standards in Health and Health Care,
<http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=2&lvlID=15>

Title VI of Civil Rights Act of 1964

- Prohibits discrimination by federal fund recipients based on race, color, or national origin
 - “National origin” covers limited English proficiency (LEP) by case law (*Lau*) and Guidance
 - Medicare Part A, Medicare Advantage (Part C), and Medicare Part D is considered federal fund assistance.
 - Medicare Part B providers not considered federal fund recipients.

Title VI of Civil Rights Act of 1964

- Discrimination includes:
 - Providing services more limited in scope or lower in quality
 - Unreasonable delays in the delivery of services
 - Limiting participation in a program
 - Requiring LEP persons to provide their own interpreters or pay for interpreters

DOJ Guidance: “Four Factor Analysis”

1. The number or proportion of LEP persons served or encountered in the eligible service population
2. The frequency with which LEP individuals come in contact with the program. Higher frequency requires more service
3. The nature and importance of the program, activity, or service offered by the provider
4. The resources available to the provider and the costs

DOJ Guidance: Oral Interpretation

- Cannot require use of friends, family or minor children
- Make sure client knows of availability of free interpretation
- At a minimum, all LEP persons should receive oral interpretation through bilingual staff or staff, contract, volunteer, telephone or video medical interpreters
- Interpreters should demonstrate:
 - Proficiency in English and the non-English language
 - To the extent necessary, knowledge of specialized terminology
 - Understanding of confidentiality & impartiality rules, and role of interpreter (i.e.. ethics and practices)

DOJ Guidance: Written Translation

- Written materials routinely available in English should be translated into regularly encountered non-English languages
- Information in “vital documents” must be translated or communicated
 - Vital documents = affect legal rights or obligations, i.e., application and enrollment forms; letters or notices re eligibility or changes in benefits; anything requiring a response consent forms
- Safe harbor: 5% or 1000 or if 5% & <50, provide notice of right to oral interpretation of materials .

OMH- CLAS Standards

- Standards include:
 - Providing language access during all business hours.
 - Providing verbal offers and written notices of rights to language access services.
 - Assuring competence of language assistance provided by staff.
 - Providing written materials and signage translated into appropriate languages.

OMH- CLAS Standards

- 2010 OIG report found:
 - 98% of Medicare providers report offering some language access services.

BUT

- Only 33% offered services consistent with all four CLAS language access standards.

Medicare: Translations Available

- Medicare & You – Spanish
- Medicare.gov – Spanish
 - <http://es.medicare.gov/>
- Information in other languages.
 - <http://www.medicare.gov/about-us/other-languages/information-in-other-languages.html>

Medicare: Interpretation Available

- 1-800-MEDICARE– primary government interface with beneficiaries.
 - Spanish prompt available.
 - For other languages, must say, “agent” when you get a live person, then ask for an interpreter.

Medicare: Low Income Subsidy

- Social Security website has LIS forms in multiple languages.
 - http://www.ssa.gov/prescriptionhelp/eh_other_languages.htm
- Application can only be submitted in English or Spanish, but models available in 15 languages.

Medicare: Private Plans Translation Requirements

- Plans must translate: marketing materials, application, summary of benefits, plan rating information, annual notice of change, drug list, pharmacy list, provider directory.
- CMS has created model notices.
- Applies when 5% of the population in the service area of the plan reports speaking English less than “very well.”
 - Original proposed rule was 10%-- would have covered only Spanish in only 10 states.

Medicare: Private Plans Translation Requirements

- Current 5% standard is insufficient.
 - Problem is that means only English and Spanish except for a few MA-PDs. Huge numbers of individuals, especially in large states, do not get translations they need.
 - Important to have numerical threshold combines with percentage threshold.
- Cites: 42 C.F.R. 422.2264(e) (Medicare Advantage) and 423.2264(e) (Part D).

Medicare: Private Plans Interpretation Requirements

- Interpreter services required.
 - Plan call centers must provide interpretation, must inform callers that interpreter services are free.
 - Interpreter availability is a performance measure used in Star ratings of plans.
 - CMS conducts secret shopper surveys to test availability.

Medicare: Language Access Advocacy

- Very important to ask for interpretation, with plans and 1-800-MEDICARE!
 - Plans report use of interpretation is low.
 - Many LEP seniors were turned off early on by long wait times, poor interpreters.
 - “Please Hold” report.
 - Interpretation has improved since then; latest OIG report shows 67% meet four CLAS standards on language access.

Medicare: Language Access Advocacy

- File complaints with CMS about 1-800-MEDICARE, plans.
 - Get details into Complaint Tracking Module, <https://www.medicare.gov/MedicareComplaintForm/home.aspx>
- HHS Office of Civil Rights will also accept complaints.
 - www.hhs.gov/ocr/civilrights/complaints/index.html
- Contact NSCLC.

SOCIAL SECURITY & SSI

- Benefits provided directly by federal gov't
- Thus Title VI does not apply since SSA is not a recipient of federal financial assistance.
- SSA is subject to Exec. Order 13166
- EO 13166 does not create enforceable rights or benefits

SOCIAL SECURITY & SSI

- SSA has re-established LEP Workgroup with representation from all SSA components
- Workgroup is headed by Stacy Rodgers, Senior Advisor to Acting Comm. Colvin
- Idea is to introduce LEP considerations into all areas of agency decision making



Multilanguage Gateway

Social Security Information in Other Languages

 - American Sign Language	Italiano - Italian
العربية - Arabic	한국어 - Korean
Հայերի - Armenian	Polski - Polish
中文 - Chinese	Português - Portuguese
فارسی - Farsi	Русский - Russian
Français - French	Español-Spanish
Ελληνικά - Greek	Tagalog
Kreyòl Ayisyen - Haitian Creole	Tiếng Việt - Vietnamese

Related Information

[Persons with Limited English Proficiency \(LEP\)](#)

[Free Interpreter Services](#)

[Your Payments While You Are Outside The United States](#) , Publication No. 05-10137 ([English](#) , [French](#) , [German](#) , [Greek](#) , [Italian](#) , & [Spanish](#) )

SOCIAL SECURITY & SSI

- Informational materials available in 15 languages on SSA Multilanguage Gateway
- Informational materials no longer available in print format
- Older LEP population has lower levels of internet access

SOCIAL SECURITY & SSI

- A few years ago SSA started a system of check-in kiosks at local offices which were usually programmed in English only and were major barrier to LEP access
- All kiosks are now available at least in English and Spanish and nine other languages are available
- Check your local office to see what languages are available

SOCIAL SECURITY & SSI

- TV monitors in waiting rooms of local SSA offices will soon be broadcasting messages on availability of free interpreter services.
- Message will be broadcast in English, Spanish, Chinese, Korean, Vietnamese and Russian.

SOCIAL SECURITY & SSI

- SSA follows DOJ Guidance
- SSA policy is to always provide interpreter free of charge for any LEP individual no matter what language spoken
- Individual can provide own interpreter if qualified
- Generally no children under age 18

SOCIAL SECURITY & SSI

- Qualified Interpreter Sources in Order of Priority – POMS GN 00203.011D
 - SSA bilingual employees or bilingual consultative exam providers
 - Non-SSA interpreters who have agreement with SSA and do not charge fee
 - Vendors contracted by SSA including telephone interpreter services
 - Non-SSA interpreters who charge fee

SOCIAL SECURITY & SSI

- Notices affecting benefits available in English and most, but not all, in Spanish
- No notices in other languages
- Plans for Chinese language notices dropped several years ago

SOCIAL SECURITY & SSI DISABILITY DETERMINATIONS

- State agencies making disability determinations subject to SSA's LEP policy. POMS DI 23040.001
- This includes consultative exam providers
- Continuing reports of some state agencies telling LEP individuals they must bring someone who speaks English.
- SSA wants to know about these incidents

SOCIAL SECURITY & SSI DISABILITY DETERMINATIONS

- Consultative exams with no interpreter
- Consultative examiners with inadequate language skills
- Consultative examiners untrained in use of interpreters
- SSA needs to know about these problems

SOCIAL SECURITY & SSI APPEALS

- Good cause for missing deadline to appeal
 - Lack of facility with English language which prevents you from filing timely request or from understanding or knowing about need to file timely request may be basis for establishing good cause. 20 C.F.R. 404.911(a)(4) & 416.1411(a)(4).

SOCIAL SECURITY & SSI APPEALS

- Qualified interpreter even more important for appeals – both local office conferences and Administrative Law Judge hearings
- Interpreter required for testimony of LEP witnesses as well as LEP claimant. HALLEX I-2-6-10.
- Need to use short sentences and ask one question at a time and see to it that others do the same.

SOCIAL SECURITY & SSI APPEALS

- Interpreters generally provided at ALJ hearings when required
- Need to be sure interpreter provided in correct language when claimant speaks minority language in country of origin
- When claimant is LEP, qualified interpreter must be present throughout the hearing.

HALLEX I-2-6-10

SOCIAL SECURITY & SSI APPEALS

- If there is reason to believe interpretation is inadequate at either ALJ hearing or local office conference, it is important to object on record

SOCIAL SECURITY & SSI APPEALS

- Increasing use of telephone interpreter services (TIS). Chief Judge Bulletin CJB 12-02
- Increasing use of TIS is cause for concern
- Especially important for interpreter to be physically present with claimant when factual issues are involved

SOCIAL SECURITY & SSI APPEALS

- TIS interpreter whose next call is with an auto dealer not as likely to be as well informed about SSA terminology as veteran SSA employee
- TIS interpreter not as likely to take confidentiality as seriously as SSA staffer
- Need to know where TIS interpreter is located (reports have been received of interpreters in public places)

SOCIAL SECURITY & SSI

- SSA needs to know about problems with telephone interpreter service
- We would like to know too

Want to know more?

- Advocacy for clients – coordinate sharing
 - N-LAAN is a national listserv for language access advocates;
www.probono.net/nlaan/
- Contact us:
 - Anna Rich – arich@nsclc.org
 - Gerald McIntyre,
gmcintyre@nsclc.org
- www.lep.gov
- Office of Minority Health's Standards for Culturally and Linguistically Appropriate Services (CLAS) in health care (www.omhrc.gov/clas)