

# DHMH POLICY

<http://dhmh.maryland.gov/Pages/op02.aspx>

OFFICE OF THE SECRETARY — Office of Equal Opportunity Programs

DHMH POLICY 01.02.05

Version Effective: March 22, 2016

## LIMITED ENGLISH PROFICIENCY (LEP) POLICY

### I. EXECUTIVE SUMMARY

In accordance with applicable State and Federal law, the Department of Health and Mental Hygiene (DHMH) seeks to make programs, services, and benefits accessible to eligible individuals who, as a result of national origin and/or ancestry, are limited in their English proficiency. The Department's ongoing efforts to make these programs, services and benefits accessible to persons with limited English proficiency (LEP) is consistent with the obligations imposed under Title VI of the Civil Rights Act of 1964 and State Government Article, §§10-1101—10-1105, Annotated Code of Maryland,. Failure to comply with these laws may result in the loss of State and/or Federal funding.

This policy applies to those programs operated or funded by DHMH that provide services or benefits directly to the public, to grant-in-aid programs and providers of health services, contractors and sub-contractors that receive Federal or State funds, which are collectively referred to as "covered entities" in this policy.

Each covered entity that provides services or benefits to the public shall develop language assistance procedures for (1) assessing the language needs of the population served; (2) translating both oral and written communications and documentation; (3) training staff in the language assistance program requirements; and (4) monitoring to assure that LEP persons are receiving equal access to services and are not treated in a discriminatory manner.

The Fair Practices Officer or designee, in the DHMH Office of Equal Opportunity Programs (OEOP), shall monitor the LEP Policy compliance efforts of covered entities and will, with the assistance of program designees, enforce this policy.

### II. BACKGROUND

Title VI of the Civil Rights Act of 1964 states that "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The Federal government has promulgated policies prohibiting national origin discrimination against persons with limited English proficiency. See Presidential Executive Order 13166, issued August 11, 2000, and U.S. Department of Health and Human Services – Office of Civil Rights Policy Guidance published in the Federal Register on August 30, 2000 [pp. 52762 - 52774] and August 8, 2002 [pp. 47311 - 47323].

**Department of Health & Mental Hygiene**

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In essence, these policies require recipients and sub-recipients of Federal funds to take reasonable steps to create meaningful access to information and services provided at the State and local level. “What constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered is the number or proportion of LEP persons in the eligible service population, the frequency with which LEP persons come in contact with the program, the importance of the service provided by the program and the resources available to the recipient.” US Department of Justice’s Policy Guidance Document dated August 16, 2000 (Federal Register Vol. 65, No. 159, Page 50123).

State Government Article, §§10-1101—10-1105, Annotated Code of Maryland, also mandates that State departments, agencies and programs take reasonable steps to provide equal access to public services for individuals with limited English proficiency. The law also requires certain “vital documents” to be translated into any language spoken by a LEP group that constitutes 3% or more of the overall population within the geographic area served by a local office of a State program as measured by the United States Census.

This version of DHMH Policy 01.02.05, effective March 22, 2016, supersedes an earlier version dated March 9, 2011. In addition to minor clarification changes and updating references and hyperlinks, the version also makes the following changes:

- 1) Adds a definition of “covered entity staff” and requires that covered entity staff utilize effective translation and interpretation services as defined in this policy;
- 2) In addition to each DHMH Chief Administrative Officer, each Program Director and/or Manager of each DHMH unit is now responsible for implementing this policy;
- 3) Each employee of a DHMH covered entity that interacts with LEP persons is also responsible for ensuring LEP persons have equal access to all services, programs or benefits for which they are qualified;
- 4) Bilingual pay may be designated by an appointing authority to an employee who provides translation services in accordance with this policy; and
- 5) In addition to complaints filed with OEOP, the Fair Practices Officer or designee shall investigate LEP complaints filed with an external agency and/or commission.

### **III. POLICY STATEMENTS**

#### **A. DEFINITIONS**

1. The definitions included in State Government Article, §10-1102, Annotated Code of Maryland, are hereby included by reference in this policy.
2. **“Appropriately trained”** means:
  - proficiency in both English and the language spoken by the LEP person;
  - orientation or training that includes the ethics of interpreting; and,
  - fundamental knowledge in both languages of specialized terms and concepts used in the subject program.
3. **“Covered entities”** means, to the extent that they provide services or benefits directly to the public:
  - all administrations and programs operated or funded by DHMH;
  - all grant-in-aid programs of DHMH; and,
  - all health service providers, contractors, or subcontractors of DHMH that receive Federal or State funds.

4. **“Covered Entity Staff”** means any employee who first encounters members of the LEP population. Examples of such employees, include but are not limited to, receptionists, intake officers, security guards, health care personnel, office secretaries, customer service representatives, greeters, etc.
5. **“Effective Translation and Interpretation Services”** includes telephonic, written and/or on-site vendors approved by DHMH, appropriately trained bilingual staff assigned to the specific unit providing services, and/or appropriately trained community volunteers assigned to a specific program providing services.
6. **“Fair Practices Officer”** means the Director, Office of Equal Opportunity Programs (OEOP), or his/her designee.
7. **“Limited English Proficiency (LEP)”** describes someone who, as a result of his/her national origin and/or ancestry cannot adequately understand or express oneself in a health care or social services setting using the spoken or written English language.
8. **“Vital Documents”** means documents that individuals applying for services or benefits from a covered entity must understand, respond to or complete in order to access the services/benefits or continue to receive the services or benefits. Vital documents also include documents that inform the participant of his/her rights under each covered entity.

**“Vital Documents”** does not include applications and examinations related to the licensure, certification, or registration under the Health Occupations Article, Financial Institutional Article, Business Occupation and Professions Article, and Business Regulation Article within the jurisdiction of the Department of Health and Mental Hygiene.

## **B. GENERAL POLICY STATEMENTS**

It is the policy of DHMH that eligible applicants and recipients having limited English proficiency shall be provided with equal access to public services in accordance with State and Federal law. Through the adoption of this policy, DHMH seeks to enhance the quality and efficacy of the services provided to persons with limited English proficiency.

## **C. RESPONSIBILITIES**

1. The Office of Equal Opportunity Programs (OEOP) is responsible for monitoring the ongoing efforts of all DHMH units to comply with this policy.
2. The Chief Administrative Officer, Program Director and/or Manager of each DHMH unit shall be responsible for implementing this policy, with respect to the programs operated by that unit.
3. Every employee of a DHMH covered entity that interacts with LEP persons is responsible for ensuring LEP persons have equal access to all services, programs or benefits for which they are qualified. All covered entity staff must utilize effective translation and interpretation services as defined by this policy.

4. The OEOP will provide technical assistance by cataloging translation and interpreter resources.
5. The OEOP will monitor the efforts of covered entities to implement this policy and offer recommendations to enhance the effectiveness of these programs.
6. Each principal DHMH unit and other covered entities identified by the Department will submit an annual LEP report for the fiscal year, to the OEOP, effective July 30, 2004. The LEP report shall include the following information:
  - a. A summary of efforts to fully implement and improve LEP services during the reporting period;
  - b. An outline of possible initiatives to enhance LEP services that might be implemented during the forthcoming reporting period;
  - c. A listing of vital documents translated in accordance with this LEP policy; and,
  - d. A description (i.e. agency name, language requested, total cost, county, client gender and age, etc.) of the number of individual interpretation and/or translation services provided to LEP persons and the process used to deliver such services (e.g., telephonic, written, on-site, staff interpretation, etc.).
7. Bilingual pay may be designated by an appointing authority to provide translation services when the appointing authority determines that these services are necessary to conduct the business of the unit. Unless bilingual skill is in the classification specification, an appointing authority may not require an employee to use bilingual skills to serve as a translator unless the employee is paid the minimum bilingual bonus as noted in the DHMH Office of Human Resources - Administration Division, Timekeeping Manual.

**D. LANGUAGE ASSISTANCE PROCEDURE**

1. Language assistance procedures will be developed by each covered entity subject to this policy. These procedures will take into consideration:
  - a. The number or proportion of LEP persons eligible to be served or likely to be encountered by the covered entity;
  - b. The frequency with which LEP persons come in contact with the program;
  - c. Nature and importance of the program, activity or service provided by the program to people's lives; and,
  - d. Program resources available to the covered entity and costs associated.
2. Language assistance procedures shall be designed and implemented so that the covered entity has the affirmative capability to communicate with the LEP person.
3. Covered entities shall take appropriate steps to make LEP persons aware that they may request the services of an interpreter or have access to other appropriate

communication aids **free of charge**. In accordance with legal mandates, these services shall be supplied by the program at no cost to the LEP person. Notification may be given verbally by staff, posted at appropriate entry points throughout the DHMH program location and/or printed on forms and brochures.

4. Program staff will be instructed **not** to require/request that LEP persons utilize family members, especially minor children or friends as foreign language interpreters. The emotional involvement of family or friends with an LEP person can jeopardize interpretation and translation of critical information. Additionally, family or friends may not be adequately versed in the specialized terminology required for communication between the LEP person and the service provider.

5. A LEP person's own interpreter should only be used at the request of the LEP person, and when use of that interpreter would not compromise the effectiveness of services or violate the LEP person's confidentiality. An LEP person's request to use his/her own interpreter must be noted in the individual's record along with a notation indicating attempts were made to provide language access by program staff.

6. Program staff shall note the LEP person's preferred language in the record so that language services are arranged for future encounters, where possible.

7. Covered entities shall take appropriate steps to secure access to community or contractual interpreter resources. These resources may be utilized in the event that the program does not have sufficient and/or competent in-house interpreter resources or in the event that in-house interpreter resources are not available for a specific language or at a specific time. All costs incurred through the use of a contractual interpreter will be paid by the covered entity.

8. The procedures and information necessary for securing qualified foreign language interpreters, including contact information for both onsite interpreters and telephone service interpreters, shall be made available to employees, especially staff who are in direct contact with patients, family members and program clients (i.e., physicians, nurses, aides, billing clerks, admissions personnel, etc).

9. If the program utilizes in-house staff interpreters, these staff members will be appropriately trained to provide needed services.

10. The covered entity shall maintain appropriate records of requests for communication assistance.

11. Vital documents will be translated into appropriate languages and made available to LEP persons.

**EXCEPTIONS:** "Vital documents" does not include applications and examinations related to licensure, certification, or registration under the Annotated Code of Maryland: Health Occupation Article, Financial Institutions Article, and Business Regulation Article, within the jurisdiction of DHMH or Department of Labor, Licensing, and Regulation (DLLR).

12. Modifications to Language Assistance Procedures will be made whenever necessary to ensure that LEP persons have meaningful access to DHMH program services.

**E. COMPLIANCE**

The Fair Practices Officer shall monitor the LEP Policy compliance efforts of each covered entity and will, with the assistance of program designees, enforce this policy. The Fair Practices Officer or designee, where applicable, shall investigate LEP complaints filed with OEOP or an external agency and/or commission.

**IV. REFERENCES**

- Title VI, Civil Rights Act of 1964, as amended.  
<http://www.gpo.gov/fdsys/pkg/CFR-2011-title28-vol1/pdf/CFR-2011-title28-vol1-part42-subpartC.pdf>
- *Lau v. Nichols*, 414 U.S. 563 (1974).  
<http://laws.findlaw.com/us/414/563.htm>
- Federal Executive Order No. 13166 signed on August 11, 2000.  
<http://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/eolep.pdf>
- U.S. Department of Health and Human Services, -Office of Civil Rights, Fact Sheet on Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons.  
<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/factsheetguidanceforlep.html>
- State Government Article, §§10-1101—10-1105. Annotated Code of Maryland,  
<http://law.justia.com/codes/maryland/2013/article-gsg>
- US Department of Justice's Policy Guidance Document dated August 16, 2000 (Federal Register Vol. 65, No. 159, Page #50123).  
<http://www.gpo.gov/fdsys/pkg/FR-2000-08-16/pdf/00-20867.pdf>
- DHMH Office of Human Resources - Administration Division, Timekeeping Manual.  
<http://dhmh.maryland.gov/ohr/Documents/timekeeping/DHMHTimekeepingManual.pdf>

**APPROVED:**



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**Van T. Mitchell, Secretary**

**March 22, 2016**  
**Effective Date**