

WHITE PAPER

# Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons



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### Compliance Summary

The Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons is rooted in Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance. Courts and federal agencies have interpreted this to include language-based discrimination, meaning that failure to provide meaningful access to LEP individuals can constitute national origin discrimination.

## Key Requirements for Compliance

- **Meaningful Access.** Recipients of federal funds must take reasonable steps to ensure that LEP persons have meaningful access to their programs and services.
- **Four-Factor Analysis.** Agencies and recipients are encouraged to use the following four factors to determine the extent of their language access obligations.
  - Number or proportion of LEP persons served or encountered.
  - Frequency of contact with LEP individuals.
  - Nature and importance of the program, activity or service.
  - Resources available and the costs of providing language services.
- **Language Assistance Services.** These may include oral interpretation and written translation of “vital” documents. Services must be timely and free of charge to the LEP individual.
- **Use of Family or Friends as Interpreters.** Generally discouraged, especially for important communications. May be used in emergencies or if the LEP person requests it, but the agency must still ensure accurate interpretation.
- **Development of a Language Access Plan.** Agencies are encouraged to develop a written plan outlining how they will provide language assistance services.
- **Monitoring and Training.** Staff should be trained on policies and procedures for serving LEP individuals. Agencies should regularly assess and update their language access services.



## Individual State Law & Regulations Regarding LEP

Various state and local governments have legislated requirements regarding LEP. These individual state requirements are in addition to the federal requirements. The state and/or local government requirements do not replace the federal requirements.

Failure to meet federal requirements may result in the loss of federal funding or reimbursement. State penalties may vary but often result in fines or other penalties.

## Title VI and Healthcare Providers

Healthcare providers that receive federal financial assistance — such as through Medicare, Medicaid, or other HHS programs — are required under Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act (ACA), as enhanced by regulations effective July 5, 2024, to ensure meaningful access to services for individuals with LEP.

In addition to the requirements summarized above, healthcare providers have specific compliance requirements as defined in both Title VI and Section 1557 of the ACA. The requirements include:

- **Provide Free Language Assistance Services.** Providers must offer qualified interpreters and translated materials at no cost to LEP patients. Services must be timely and accurate, ensuring effective communication.
- **Avoid Use of Unqualified Interpreters.** Family members, especially children, should not be used as interpreters unless explicitly requested by the patient and after being informed of the availability of free services. Providers must ensure that interpreters are competent in medical terminology and confidentiality.

- **Translate Vital Documents.** Important documents such as consent forms, discharge instructions, and notices of rights must be translated into the primary languages of commonly encountered LEP groups.
- **Staff Training.** All staff should be trained on how to access and provide language assistance services. Training should include cultural competency and awareness of civil rights obligations.
- **Notification of Rights.** LEP individuals must be informed of their right to free language assistance services in a language they understand.

These requirements are enforced by the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services. Noncompliance can result in investigations, corrective actions, or loss of federal funding.

## DOJ Safe Harbor for Title VI Compliance

The DOJ Safe Harbor for Title VI compliance with Limited English Proficiency (LEP) requirements is part of the Department of Justice's guidance to help recipients of federal financial assistance meet their obligations under Title VI of the Civil Rights Act of 1964. This guidance was issued under Executive Order 13166, which mandates meaningful access to services for individuals with LEP.

On March 1, 2025, an Executive Order "Designating English as the Official Language of the United States" revoked Executive Order 13166 and directed the Attorney General to rescind any policy guidance documents issued pursuant to EO 13166 and provide updated guidance consistent with applicable law. The Department of Justice is currently reviewing guidance documents for compliance with the new Executive Order. The new Executive Order does not "require or direct any change in the services provided by any agency."

# DOJ Safe Harbor Provisions for LEP Compliance

The safe harbor provisions are found in the DOJ's Final LEP Guidance (2002) and apply specifically to the written translation of vital documents. These provisions offer a presumption of compliance with Title VI when followed.

- **Written Translation Safe Harbor.** Recipients can be considered in compliance if they provide written translations of vital documents for each eligible LEP language group that constitutes:
  - 5% or 1,000 individuals, whichever is less, of the population eligible to be served or likely to be affected or encountered.
  - “Encountered” is key to understanding the safe harbor and supporting decision-making regarding Title VI compliance. Patient encounters by primary language spoken is a more accurate representation and measure for LEP compliance than the general LEP demographic for a region as determined by the U.S. Census or other survey.
- **Smaller Language Groups.** For LEP groups that make up less than 5% or fewer than 1,000 individuals, the recipient should provide written notice in the primary language of those groups about the right to receive free oral interpretation of documents.
- **Vital Documents.** These include documents that are critical for accessing services, such as:
  - Consent and complaint forms.
  - Intake forms with potential consequences.
  - Notices of rights or eligibility.
  - Notices of denials, losses, or decreases in benefits or services.

- **Four-Factor Analysis.** Even outside the Safe Harbor, recipients must conduct a Four-Factor Analysis to determine the extent of their language assistance obligations.
  - Number or proportion of LEP persons served or encountered.
  - Frequency of contact with LEP individuals.
  - Nature and importance of the program or service.
  - Resources available and costs.

These safe harbor provisions are **not mandatory** but following them provides strong evidence of compliance with Title VI.

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For more information, contact:

**Scott Wallace**

Vice President Sales Operations  
[scott.wallace@taylor.com](mailto:scott.wallace@taylor.com)

**Pete Franklin**

Director Healthcare Compliance  
[pete.franklin@taylor.com](mailto:pete.franklin@taylor.com)