

Title VI Compliance Plans and Latino Health

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TITLE VI OF THE CIVIL RIGHTS Act of 1964¹ and its implementing regulations 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. The courts have held that Title VI prohibits recipients of Federal funding from denying persons with limited English proficiency (LEP) access to programs on the basis of their national origin.

The North Carolina Department of Health and Human Services (DHHS), the second largest state agency in the state, receives a large part of its funding from the Federal government. The most well known source is that of Medicaid, which totals over 4.5 billion dollars.² As a result of receiving these Federal funds, Title VI protection extends to all of NC DHHS's programs and activities, whether or not the particular program at issue has received or benefited from those funds,³ either directly or indirectly, through a grant, contract, or subcontract. Included within the Department's oversight are all county social services, health departments, and area mental health agencies throughout North Carolina's 100 counties. Hospitals, nursing homes, home health agencies, HMO's, health services providers, and human services organizations are also subject to Title VI if they receive federal funds (such as Medicaid or Medicare). DHHS has an obligation to ensure that LEP persons have meaningful and equal access to the benefits and services it offers as well as to services offered by other agencies or providers who receive federal funds through the Department.

Prior to the 90s, discrimination by national origin under Title VI was not an issue in North Carolina. In 1994, the Department and the Office of Civil Rights (OCR), United States Department of Health and Human Services (USDHHS), Region IV signed a voluntary compliance agreement (VCA) which included the monitoring of Title VI within the Department.⁴ The primary purpose of this agreement was to monitor the Department's compliance with the Americans with Disabilities Act of 1990.⁵ Title VI held a secondary position, which was focused on racial discrimination in facilities licensed by DHHS.

Discrimination by national origin, while not ignored in North Carolina's Department of Health and Human Services, was not an issue because of the state's population demographics. North Carolina, until the last decade, was almost exclusively English speaking. North Carolina now leads the country in its rate of Latino/Hispanic growth. North Carolina's Mexican population grew by 655% between 1990 and 2000.⁶ Of that population, almost half have a limited English proficiency.⁷ It is this population—those who are potentially eligible for DHHS services—that is covered by the linguistic accessibility protections of Title VI. In 2000, the state underwent a compliance review conducted by the OCR, USDHHS, Region IV.⁸ The information and data request was coordinated through the Department's Office of General Counsel. Information from all of North Carolina's county social services and health departments was collected and forwarded to OCR. In addition, OCR conducted five on-site county visits in the state. The on-site visits were to social services and health departments in the following counties: Wake, Johnston, Randolph, Chatham, and Forsyth. In May 2002, a preliminary assessment was issued by the OCR, which stated that, based upon the five on-site visits, the state of North Carolina would most likely be found out of compliance with Title VI.⁹

In response to the 2000 compliance review and prior to the preliminary assessment, the Department organized a Title VI committee, headed by the Department's compliance attorney and composed of representatives from legal services offices in Charlotte and Raleigh and representatives from the Department's Office of Minority Health and Health Disparities. This committee drafted a Title VI Language Access Policy, which could be used by the Department and all of its divisions. It could also be used as a template for its contractors and subcontractors, specifically the county agencies to address and ensure compliance with Title VI.

In April of 2003, the Department signed a voluntary compliance agreement with OCR.¹¹ As part of this agreement, the Department agreed to adopt the final draft of its Title VI Language Access Policy¹² and implement it state-

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wide within one year of the date of the VCA. The Department's Title VI policy consists of five basic elements: assessment, provision of bilingual/interpreter services and translated materials, development of a comprehensive written policy on language access, training of staff, and monitoring.¹³

Assessment: Each local entity must assess the language needs of the population to be served by identifying, for example, the language needs of each LEP applicant/recipient; determining the language needs of the population to be served; and determining the language needs of each applicant/recipient. The NC State Center for Health Statistics will assist local communities by analyzing census and program utilization data at the county level. The Department and local data systems should be able to examine the Health Services Information System (HSIS) and other state data systems to identify numbers of LEP individuals who use services.

Providing bilingual/interpreter services and translated materials: As a result of the state and local assessment efforts, local entities shall ensure that effective bilingual/interpretive services are provided to those LEP individuals free of charge. The Department has introduced several bills in the General Assembly requesting funds for interpreter services. The Department has taken the responsibility of translating vital documents in each of its divisions and will make them available to local entities; however, some local agencies may have responsibility to translate materials for other (non-Spanish-speaking) LEP that are unique to their communities.

Comprehensive written policy: Each local entity that falls within the Department's oversight will be responsible for developing a comprehensive written LEP policy. DHHS will assist and approve each plan separately and then sign a compliance agreement with that specific entity. Each plan will take into consideration the number of LEP individuals in the entity's service area, types of services offered, degree of urgency of those services, and, to some extent, their budget. This method will enable the local entities to have some flexibility in their plans, especially useful in such hard budgeting times.

Training: Each entity will be responsible for training its own staff. The Department is currently exploring options on how to expand its current Title VI training curriculum for interpreters to include other staff.

Monitoring: Monitoring is always key to effective compliance. The policy includes procedures for quarterly self-monitoring by the local entities, with annual reports due to the Department. Special reviews may be necessary and can be initiated by the DHHS Secretary, DHHS Office of General Counsel, OCR, or at the request of advocacy groups that show cause. There will be a standardized compliance reporting system developed by the state within one year of the VCA signing date.

Our state system is currently geared toward English-speaking clients only. However, the Department recognizes the need to make its services accessible to all eligible individuals, regardless of their native tongue. Implementing the Title VI Language Access Policy will move the state forward in these efforts.

REFERENCES

- 1 42 USC §2000(a); 45 CFR Part 80
- 2 NCDHHS briefing booklet, published by the NCDHHS Office of Public Affairs, Budget Section, 2003 Edition
- 3 42 USC §2000d-4a
- 4 1994 Voluntary Compliance Agreement between NCDHHS and OCR, USDHHS, Region IV
- 5 Americans with Disabilities Act of 1990; Public Law 101-336
- 6 NCDHHS briefing booklet, published by the NCDHHS Office of Public Affairs, Overview Section, 2003
- 7 US Census. 2000 Supplementary Survey Summary Tables, PCT 020
- 8 OCR Compliance Review letter of October 2000 to NCDHHS Secretary, Dr. David Bruton from Roosevelt Freeman, Regional Manager of OCR, USDHHS, Region IV
- 9 Preliminary assessment letter dated May 24, 2002 from Roosevelt Freeman, Regional Manager of OCR, USDHHS, Region IV to Secretary Carmen Hooker Odom, NCDHHS. The state of North Carolina refers only to the NCDHHS and the local social services and health departments.
- 10 Preliminary assessment response letter dated August 8, 2002 from Secretary Carmen Hooker Odom, NCDHHS to Roosevelt Freeman, Regional Manager of OCR, USDHHS, Region IV
- 11 Voluntary Compliance Agreement, Transactional No: 01-60542 (OCR Reference No: 04-04-01-700) April, 2003
- 12 NCDHHS Title VI Language Access Policy
- 13 US Department of Health and Human Services, Office for Civil Rights, Title VI of the Civil Rights Act of 1964: Policy Guidance on the Prohibitions Against National Origin Discrimination as it Affects Persons with Limited English Proficiency, 65 Fed. Reg. 52762 (August 30, 2000)