

July 17, 2012

Ronald Marlow  
Assistant Secretary, Access and Opportunity  
Executive Office for Administration and Finance  
State House, Room 373  
Boston, MA 02133

Dear Ron,

Thank you for coming to meet with legal services' Language Access Coalition on 6/4/12 to discuss language access at the Commonwealth's executive agencies. We appreciate the critical role that the Executive Office for Administration and Finance's Administrative Bulletin #16 has played in promoting access to state programs, benefits, and services by requiring agencies to develop Language Access Plans (LAPs).

We understand that the Office of Access and Opportunity (OAO) is now working to revise the guidance in Bulletin #16 to help agencies update their LAPs, as they are required to do every two years. On behalf of the Coalition, I write to offer our recommendations for updating and strengthening the guidance even further in order to help agencies continue improving language access in Massachusetts.

1) Lowering the threshold; Updating data and deepening analysis of LEP populations

While many agencies are subject to stricter federal standards, Bulletin #16 creates a baseline for all Massachusetts executive agencies to identify when language services must be provided. In order to ensure that significant LEP populations in Massachusetts receive the services they need, we recommend the following adjustments.

- The threshold percentage of LEP speakers of a single language that will trigger language access obligations should be lowered. When looking at the population statewide, only Spanish meets the current threshold of 5%. However, there are significant populations speaking other languages – such as Portuguese, Haitian Creole, Chinese (both Mandarin and Cantonese), and Vietnamese – living in Massachusetts who should not be left out.
- LAPs should use updated information (i.e., not the 2000 Census), starting with the Census Bureau's American Community Survey. The Migration Policy Institute has used ACS data to compile a data brief (see <http://www.migrationinformation.org/datahub/state2.cfm?ID=MA#1>) for the state as a whole, but further geographical breakdowns are also possible. The Massachusetts Department of Public Health's Office of Health Equity also

maintains useful data on LEP populations, as do many cities and school districts. We anticipate that it would be very helpful for the OAO to provide current and tailored data (as discussed in the next bullet points) for state agencies to use in developing their LAPs. The Coalition would be happy to further discuss ways of obtaining the desired data with OAO.

- Agencies should be required to measure the LEP populations who are *eligible* for their programs (for example, based on age or income) and not just their current caseloads. Given that many agencies have yet to fully implement language access services, many LEP individuals are unaware of or deterred from seeking their services. Thus, looking only at existing customers results in vastly undercounting the need and could have the unintended effect of rewarding an agency (with lesser costs for language services) for failing to provide language access. Moreover, for many means-tested programs, the percentage of the eligible population who are LEP may be much higher than the percentage of the population as a whole that is LEP. Finally, some agencies do not yet have systems established to capture data on clients' languages, making reliance on current caseload information impossible.
- In order to accurately identify language needs for their programs, agency LAPs should include an analysis of the eligible LEP populations in the agency's different regions or service areas, rather than using statewide figures. While many LAPs that we reviewed do identify regional offices or geographical service areas, they do not break down data on LEP populations by service area in order to determine which languages meet the threshold for interpretation and translation. Doing so would be consistent with guidance from federal agencies, such as the U.S. Department of Health and Human Services and the U.S. Department of Agriculture, that specify that recipients of their funding must analyze language needs based on the breakdown of their service areas.
- We urge that the thresholds discussed above be applied *only to the translation of written materials*, whereas oral interpretation should be provided to anyone who needs it regardless of how uncommon the language is. While the translation of large quantities of forms, notices and program information can be time-consuming and expensive, there is no such barrier to using telephone interpreters for languages that are less frequently encountered. The guarantee of interpreter services regardless of which language is spoken is also consistent with guidance from various federal agencies.

## 2) Detailing basic expectations for language services

Once the population to be served has been identified, some agencies could benefit from more detailed instructions about basic expectations for adequate language services. For agencies without much experience providing language services, staff may not be aware that meaningful language access extends beyond providing oral interpretation for scheduled appointments with clients who speak no English at all. We recommend that the new guidance explain in detail that meaningful language access includes language services in a broad range of circumstances where LEP clients need it, including

- unscheduled interaction with the agency, such as walk-ins or phone calls
- hearings or other legal proceedings, in which interpreters are necessary to ensure that LEP persons can fully understand, participate, and exercise their rights
- interpretation for clients who are able to conduct basic conversations in English, but are unable to understand or communicate about more complicated matters
- in-person interpretation for in-person interactions with clients when reasonably possible, rather than relying exclusively on telephone interpreters
- sight translation of important documents that are not available in the client's language, especially if the client is asked to sign them
- reading documents aloud so that they may be interpreted, or at least explaining the content in detail, when using a phone interpreter and sight translation is not possible.

The guidance should also make explicit that the cost of language services must always be born by the agency and not imposed on the LEP party.

### 3) Emphasizing federal requirements for agencies subject to them

We recommend that the updated guidance further emphasize that the many Massachusetts agencies receiving federal funds are subject to more rigorous requirements, citing Title VI of the Civil Rights Act of 1964, Executive Order 13166, and the extensive guidance available from the Department of Justice and other federal agencies. As is already provided in Bulletin #16, any agency that has an LAP that complies with more rigorous federal requirements should not have to do a new one. But in our experience, some agencies are less aware of their obligations under federal law than others. While not undertaking to enforce federal requirements, the guidance should still articulate the expectation that all agencies with federal funding be in compliance with applicable federal law.

### 4) Promoting Best Practices and Collaboration

To help agencies improve their language access services beyond basic expectations, it would be helpful if OAO could disseminate and encourage the adoption of some "best practices." Whether or not agencies are recipients of federal funds, the guidance should encourage them to use the resources offered by the U.S. Department of Justice, including:

- Language Access Assessment and Planning Tool for Federally Assisted Programs ([http://www.lep.gov/resources/2011\\_Language\\_Access\\_Assessment\\_and\\_Planning\\_Tool.pdf](http://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf))
- Promising Practices for Language Access in Federal Administrative Hearings and Proceedings (<http://www.justice.gov/atj/acus-doj-language-access-rpt.pdf>)

These and many other resources are available at [www.lep.gov](http://www.lep.gov).

We also recommend that OAO convene regular meetings (semi-annually or quarterly) of agency language access coordinators, as originally proposed in Bulletin #16, in order for agencies to efficiently share best practices and potentially – where appropriate – pool resources for providing language services. Finally, each agency should be encouraged to form an internal working group, led by the Language Access Coordinator, to address ongoing implementation issues.

#### 5) Training for all agency staff

Although Bulletin #16 calls for staff training, advocates have found that staff at some agencies are unaware either that they have an LAP or that they are obligated to provide any language services. We therefore recommend that updated LAPs be required to provide greater detail on how agencies will train their staff regarding language access responsibilities.

Training is also needed regarding the role of interpreters and how to work with them appropriately and effectively. For example, we have reports of untrained agency staff pressing interpreters to take on tasks which are really the responsibility of the staff themselves, such as explaining program rules or filling out forms with clients (as opposed to interpreting for the staff person who is performing these tasks with the client).

#### 6) Ensuring qualifications and training of language service providers

Advocates have significant concerns about the qualifications of people who are not trained professional interpreters or translators, but who are nevertheless called upon by agencies to provide language services to LEP clients. For example, while bilingual agency staff may be ideal for providing direct services in a client's language, they should not be presumed competent to interpret for others without first being tested. Agencies should be guided to test staff for fluency and competency before having them communicate directly, or be used as an interpreter, with LEP clients. Testing is available through a number of the companies that provide phone interpreter services.

Moreover, the guidance should make clear that volunteers may only be used to provide language services if they have been assessed for competence and briefed on matters of confidentiality. If an agency is able to recruit and adequately train community members who wish to volunteer as interpreters, this could be a legitimate way to save money on the cost of language services, but it must be undertaken with great caution. In light of competency and confidentiality concerns, it is not appropriate to rely on the friends or helpers – including staff of community organizations unless they are trained and qualified interpreters – who accompany clients to agency offices except in cases of true emergencies.

## 7) Budget Constraints

Some agency LAPs state that they will only be implemented subject to budget constraints. While recognizing the real costs involved in providing language services, we are concerned that, in these difficult economic times, agencies could too easily seek exemption from language access obligations. In particular, we have observed that some agencies are not making use of any of the cheaper alternatives to the Qwest language line.

We appreciate the provision addressing this issue on p. 4 of Bulletin #16, but recommend that it be strengthened to ensure that budget constraints can be an excuse *only* when the cost burden is severe and can be proven by a detailed cost analysis. Ideally, the guidance would instruct agencies to have a specific provision for language services built into their budgets.

## 8) Dissemination of and public access to LAPs

In some cases, advocates have found it difficult to obtain agency LAPs directly from the agencies. Moreover, in talking with clients and community groups, we find that few are aware of the LAPs' existence. We therefore recommend that the guidance specify minimum measures that agencies must take to inform the public about their LAPs, including posting them prominently on the agencies' websites. If a particular electronic document format (e.g., Microsoft Word or pdf) is needed to enable posting LAPs on state-administered websites, then agencies should be required to submit their LAPs in that format.

## 9) Website Content

While machine translation programs, including web-based translation services, have improved dramatically in recent years, they still produce unreliable results that are inadequate to properly inform LEP populations about critical programs and services or about their rights. Moreover, the availability of an on-demand online translation option does not result in an agency's website coming up in response to a web search initiated in another language. We strongly recommend that agencies be guided to translate the content of their websites in accordance with the same standards used for all written materials.

## 10) Timeline for Implementation

Although creating LAPs was an important first step, some agencies have taken few measures to implement them. We recognize that agency staff are busy, making it hard to prioritize work toward goals that they view as merely aspirational. Despite the instruction on p. 3 of Bulletin #16 regarding the establishment of deadlines, few of the LAPs seem to incorporate them. We recommend that the updated guidance require agencies to establish reasonable timelines, with interim deadlines if appropriate, for accomplishing each major step toward achieving language access – e.g., the identification and translation of vital documents, establishment of protocols for the use of interpreters, comprehensive staff training, etc.

Thank you for your consideration of these recommendations, based on coalition members' experience, for updated guidance to state executive agencies regarding language access plans. Please do not hesitate to contact me at (617) 603-1621 or nmeyer@gbls.org to discuss any of our comments, recommendations, or available resources.

We are grateful for the work of OAO to promote meaningful access to Massachusetts programs and services for all.

Sincerely,



Naomi Meyer, Greater Boston Legal Services  
On behalf of the Language Access Coalition