

ADMINISTRATIVE COMPLAINT

Office for Civil Rights
U.S. Department of Health and Human Services
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Federal Emergency Management Agency
Office of Equal Rights
C Street, SW, Room 4SW-0915
Washington, DC 20472-3505

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
2707 Martin Luther King, Jr. Avenue, SE
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**RE: Discriminatory provision of COVID-19 services to persons
with limited English proficiency**

The National Health Law Program (NHeLP) protects and advances the health rights of low-income and underserved individuals through advocacy, education, and litigation at the federal and state levels. For more than 20 years, NHeLP has worked with our national, state, and local partners to improve access to care for individuals who have limited English proficiency (LEP).

Informed by the organizations and individuals listed in Appendix A, NHeLP files this complaint pursuant to 45 C.F.R. § 80.7(b); 6 C.F.R. §21.5(b)(2). We file this complaint because, as described below, individuals with LEP do not have meaningful access to COVID services (*e.g.*, testing, vaccines, treatment, contact tracing) during this ongoing public health emergency.

Legal Background

According to Title VI of the Civil Rights Act of 1964, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d.

Executive Order 13166 seeks to avoid discrimination on the basis of national origin by improving access to federally conducted and assisted programs for persons with LEP. *See* Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50121 (Aug. 11, 2000). EO 13166 requires federal agencies to draft and implement plans to ensure meaningful access to their federally conducted services, and it requires

federal agencies that provide federal financial assistance to issue guidance to their recipients regarding their obligations under Title VI and its implementing regulations to provide meaningful access to LEP persons. *Id.*

HHS Implementation

Department of Health and Human Services regulations implementing Title VI make it illegal for a recipient of federal financial assistance to

[d]eny an individual an opportunity to participate in the [federally funded] program through the provision of services ... [or] utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

45 C.F.R. §§ 80.3(b)(1)(vi), (2).

HHS has issued guidance requiring fund recipients, including state agencies and health care entities (*e.g.*, Medicaid-participating health plans and providers), to ensure the availability of services from qualified interpreters and translation of written materials into the most frequently spoken languages in the area. *See* U.S. Dep't of Health & Human Servs., *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 68 Fed. Reg. 47311 (Aug. 8, 2003).

HHS also enforces Section 1557 of the Affordable Care Act (Section 1557). Section 1557 expressly extends the protections of Title VI (and other federal protections against discrimination) to “any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title.” 42 U.S.C. § 18116; *see also* 42 C.F.R. part 92. Regulations implementing the statute expressly address language services, requiring all regulated entities to “take reasonable steps to ensure meaningful access to such programs or activities by limited English proficient individuals.” 42 C.F.R. § 92.101; *see also id.* (describing specific actions fund recipients must take).

FEMA implementation

Similarly, Department of Homeland Security (DHS) regulations implementing Title VI make it illegal for a recipient of federal financial assistance to

utilize[e] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

6 C.F.R. §21.5(b)(2).

FEMA is also governed by the Robert T. Stafford Disaster Relief and Emergency Act. The Stafford Act provides that FEMA, State, Local, Tribal, and Territorial partners, and non-governmental relief and disaster assistance organizations engaged in the “distribution of supplies, the processing of applications, and other relief and assistance activities shall [accomplish these activities] in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.” 42 U.S.C. § 5151; *see* 44 C.F.R. § 206.11 (implementing regulation).

DHS and FEMA have issued guidance to their funding recipients to ensure the availability of interpreter services from qualified interpreters and translation of written materials into the most frequently spoken languages in the area. *See* U.S. Dep’t of Homeland Security Federal Emergency Management Agency, *Language Access Plan* (Oct. 1, 2016); 42 C.F.R. pt. 92; U.S. Dep’t of Homeland Security, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* 76 Fed. Reg. 21755 (Apr. 19, 2011).

Contractual Obligations

The Department of Health and Human Services (HHS) and FEMA both require applicants for and recipients of their financial assistance to sign assurances to comply with federal nondiscrimination statutes, including the requirement to ensure access to their programs to persons with limited English proficiency. HHS grant policies, applicable to all recipients of HHS grants, provide that “[r]ecipients of Federal financial assistance [FFA] must take reasonable steps to ensure that people with limited English proficiency have meaningful access to health and social services and that there is effective communication between the service provider and individuals with limited English proficiency.” U.S. Dep’t of Health & Human Servs. Off. of the Assist. Sec. for Resources & Tech. Off. of Grants, *HHS Grants Policy Statement* (Jan. 1, 2007). The CMS Standard Grant Agreement Terms and Conditions echo: “Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency.” CMS, *Standard Grant/Cooperative Agreement Terms and Conditions* (Apr. 14, 2020). FEMA requires all applicants for federal financial assistance to certify that they will comply with federal nondiscrimination statutes, including Title VI. *See* FEMA, *Assurances—Nonconstruction Programs* (Form FF-20-16A).

HHS, FEMA, & COVID-19

The COVID-19 public health emergency does not exempt federal fund recipients of either HHS or FEMA from complying with the non-discrimination laws and standards discussed above. *See* HHS Office for Civil Rights in Action, *Bulletin: Civil Rights Protections Prohibiting Race, Color and National Origin Discrimination During COVID-19 Application of Title VI of the Civil Rights Act of 1964* (July 20, 2020); FEMA, *Civil Rights Bulletin, Ensuring Civil Rights During the COVID-19 Response* (Apr. 9, 2020) (“Civil rights laws and legal authorities remain in effect, and

cannot be waived, during emergencies.”). The Administration has announced that the COVID-19 emergency is expected to last at least through 2021. *See* Letter from Norris Cochran, Acting Sec’y, Health & Hum. Servs., to Governors (Jan. 22, 2021), <https://bit.ly/3ddBVmG>; *see* Sec. Xavier Becerra, *Renewal of Determination That A Public Health Emergency Exists* (Apr. 15, 2021), <https://bit.ly/3gKyWDW> (extending public health emergency for another 90 days).

HHS and FEMA have placed their federal fund recipients on clear notice that they must provide language services during the pandemic. Recipients that are providing public health information, testing, vaccination, and treatment include state and local emergency and public health agencies, community health centers, hospitals, and pharmacies.

OCR has instructed fund recipients to ensure they are able to serve individuals with LEP during the COVID pandemic. *See* HHS Office for Civil Rights in Action, *Bulletin: Ensuring the Rights of Persons with Limited English Proficiency in Health Care During COVID-19* (May 15, 2020). OCR has stressed the need to verify and record an individual’s written and spoken language preference *at the first point of contact*. *Id.* OCR has also said that fund recipients should ensure meaningful access to COVID services by, for example:

- Contracting with entities qualified to provide interpreting services, including through multiple types of media (*e.g.*, telephonic interpretation, video remote interpreting);
- Providing information about COVID services in the non-English languages prevalent in the area, using all forms of media and posting COVID-19 documents in multiple languages in multiple locations;
- Offering services in multiple languages and providing notices of language access services online, in advertisements, and at points of service.

Id.

FEMA, which is supporting COVID vaccination sites by providing expedited financial assistance, federal equipment and supplies, and federal personnel, has instructed fund recipients to ensure they are able to serve individuals with LEP during the COVID pandemic. *See* FEMA Civil Rights Bulletin, *Ensuring Civil Rights During the COVID-19 Response* (Apr. 9, 2020); *see also* FEMA Advisory, *Civil Rights Considerations During COVID-19 Vaccine Distribution Efforts* (Feb. 2021) (checklist for vaccine distribution, addressing among other things, language access).

Finally, the Department of Justice recently emphasized the importance of providing information, including public messaging on pandemic safety measures and recovery, in languages other than English. *See* U.S. Dep’t of Justice, *Statement by the Principal Dep. Assist. Attorney Gen’l for Civil Rights* (Apr. 2, 2021), <https://bit.ly/2Sf9P25>.

Clearly, federal fund recipients have more than sufficient notice that they are obligated to ensure access to their programs for LEP persons and that those obligations are in full force and effect during the COVID-19 pandemic.

Statement of Problems

The need for language services is significant. More than eight percent of the U.S. population is limited English proficient. *See* American Community Survey, *Language Spoken at Home, Table S1601 -- 2019: ACS 5-Year Estimates Subject Tables*, <https://bit.ly/3nBFPci> (last visited Apr. 29, 2021). The Department of Justice defines LEP as those five years of age or older who identify as speaking English less than “very well.” U.S. Dep’t of Justice, *Commonly Asked Questions Regarding Limited English Proficient (LEP) Data and Mapping Tools*, <https://bit.ly/3u8McWI> (last visited Apr. 29, 2021).

In the early months of the pandemic, OCR was already voicing concern over disparities in the provision of COVID-19 services and the need to ensure federal fund recipients and covered health entities were able to serve individuals with LEP. *See* HHS Office for Civil Rights in Action, *Bulletin: Ensuring the Rights of Persons with Limited English Proficiency in Health Care During COVID-19* (May 15, 2020); OCR, *Bulletin: Civil Rights Protections Prohibiting Race, Color and National Origin Discrimination During COVID-19 Application of Title VI of the Civil Rights Act of 1964* (July 20, 2020).

In March 2021—a year into the pandemic—the National Health Law Program began collecting information to assess the extent to which federal fund recipients’ COVID-related activities are addressing the needs of LEP people. We found pervasive problems, including:

- Overreliance on the internet for communicating information and for finding and scheduling available vaccine appointments;
- Lack of translated information on webpages and at vaccine sites;¹
- Inaccurate translations using automated machine translation software and applications such as Google Translate;²
- Lack of qualified interpreters at testing and vaccination sites;

¹ In addition to state-by-state information below, a 50-state report finds that, in 11 states, the health department’s website homepage is English-only and lacks an option to machine-translate; in three states, the COVID websites are English-only and lack a translate option; another 18 states’ COVID websites advertise availability of language services only in English; and 68 of 113 state public health websites use automated translation, *see* Richard Salame, typeinvestigations, *Where limited English skills mean limited access to the COVID-19 vaccine* (forthcoming Apr. 30, 2021), <https://www.typeinvestigations.org/investigation/2021/04/30/COVID-language-access-LEP/>.

² In addition to state-by-state information below, *see, e.g.*, U.S. Gen’l Servs. Admin., *Lost in Translation* (Feb. 15, 2020), <https://bit.ly/3eVVfUT>.

- Over-reliance on remote interpreting without ensuring effective and timely assistance;³
- Improper demands for Social Security Numbers and insurance information; Improper reliance on community based organizations; and
- Lack of accurate sources of information causing individuals to make decisions based on misinformation.⁴

This action and inaction by federal fund recipients has consequences. Lacking information, people do not get vaccines—particularly troubling as the vaccination rates in the United States are now declining. *See* CDC, *Trends in Number of COVID-19 Vaccinations in the U.S.* (Apr. 29, 2021), <https://bit.ly/2QG7mgw>. For those LEP individuals who do go to vaccine sites, the fact that a shot can be administered quickly does not mean that language services are not needed. Prior to administering the vaccine, providers need to ask each person questions about their health history—allergies, prior vaccines, possible pregnancy, and existing health conditions. The answers to these questions are important, affecting, for instance, how long a person should be monitored on site for side effects from the shot. And before being released, people need information about what side effects they might experience, which symptoms are severe enough to call a doctor, and the need to schedule a second shot. And of course, they need to be able to call and speak with a provider in a language they understand if they do have concerns about side effects. In sum, absence of language services at any point of interaction can result in adverse health outcomes.

Below, we provide information about experiences of LEP individuals, organized on a state-by-state basis and covering the time period up through April 20, 2021:

- In **California**, much of the COVID assistance in the City and County of Los Angeles has been provided only in English or using Google Translate (which is proving to be as much as 50% inaccurate). Quality control is missing.

Many community members are relying on community-based organizations to connect them to resources. This reliance extends to government entities. The City and County of Los Angeles have asked CBOs, such as the Southeast Asian Community Alliance and Asian

³ In addition to state-by-state information below, *see, e.g.,* Jorge A. Rodriguez et al., *Differences in the Use of Telephone and Video Telemedicine Visits During the COVID-19 Pandemic*, 27 AM. J. OF MANAGED CARE (Jan. 14, 2021), <https://bit.ly/3vtWmlg>.

⁴ In addition to state-by-state information below, *see, e.g.,* VotoLatino, *LADL: Nationwide Poll on COVID Vaccine* (Apr. 21, 2021), <https://bit.ly/2QFOZZ7> (majority of Latinx respondents who have not been vaccinated said they would not take the vaccine or are not sure; of these, 67% reported Spanish as their primary language at home; about half of respondents think misinformation about the vaccine is a serious problem, with Facebook and messaging apps the top reported platforms for misinformation).

Pacific Islander Forward Movement, to help with vaccinations. The City and County have asked them to contact Chinese-speaking individuals to schedule appointments (an action that raises HIPAA concerns if the CBO does not have a formal agreement with the local health department addressing adherence to privacy laws). Samoan and Tongan community health workers have had to help make appointments and interpret at vaccination sites due to a lack of translation and interpreting services.

Entities are using email to schedule appointments and provide appointment reminders, which creates barriers for community members who do not use computers and rely, instead, on the telephone (*e.g.*, older adults). Entities are also only providing appointment information in English or a limited number of additional languages, not including Asian and Pacific Islander languages. For example, retail pharmacy chains are a known source for vaccines, but their websites are often only in English. At these sites, interpreters are frequently not offered, either verbally or through written signage. Without notification that interpreters are available, many individuals do not know that they can ask for one. Also, at vaccine sites, community members are given a COVID-19 vaccination card once they have received a shot. But the card is in English, and individuals are not told what the card means. This is creating problems; for example, the card is required for the second shot of some vaccines but community members do not know this and do not keep the card. These cards either need to be provided in-language, or vaccine administrators should explain and/or find interpreters as needed to relay this information. However, as noted, skilled interpreters are unavailable at vaccine sites, including for people whose preferred spoken language is Cantonese, Mandarin, Hmong, Lao, Mien, Khmer, or Vietnamese.

Our investigation found that call centers for vaccine scheduling are inaccessible to Spanish speakers. A Spanish interpreter also reported vaccine call center agents were rude with Spanish-speaking patients requesting scheduling assistance. In one call to a Los Angeles county hospital, call center staff demanded immigration status and insurance information from the patient. Staff declined to schedule an appointment until the patient shared their immigration status.

The lack of translated materials and information regarding vaccination and testing extends beyond Los Angeles County to other Southern California counties, including Orange County, San Bernardino County, and Riverside County.

There are similar problems in the Bay Area. In San Francisco, the website for finding testing sites continues to be English-only (<https://datasf.org/covid19-testing-locations/>). Individuals in the community who speak Amharic and Tigrinya have received little accessible information. There are inadequate numbers of Arabic-speaking COVID health workers and contact tracers. As in Southern California, CBOs are being asked to provide

volunteers to help, rather than the City investing in these critical positions. There is at least one instance of a Spanish speaker being asked for their Social Security Number at a hospital and as a result being deterred from getting the vaccine.

An advocate who supports monolingual clients and family members in Alameda County has been unsuccessful getting vaccine appointments through the State Department of Public Health scheduling website, <http://myturn.ca.gov>. Even though the website collects contact information, individuals have not received follow-up information on available slots. There are very few translated resources for high priority and vulnerable Cambodian community members who, without help navigating the vaccination process, are being lost. Further complicating the situation, as vaccine site staff are often in a hurry, they frequently use family members as interpreters for the vaccine registration process. On many occasions, the family members fill out the form out themselves, instead of asking the questions to the person getting the vaccine. As these questions include critical information, such as a history of allergic reactions, this practice could lead to dangerous medical errors. In addition to using family members as interpreters, these vaccine sites also use other not qualified interpreters. Further, the County's COVID-19 website uses only Google Translate, which produces significant inaccuracies (<https://covid-19.acgov.org/index>).

In Lafayette, a certified interpreter and translator reports that Spanish-speaking patients ask their doctors—mostly specialists—about vaccines. These doctors refer the patients back to primary care physicians and/or county health departments. This patient juggling could be addressed by having greater Spanish language outreach, such as radio, television, or door-to-door information.

- In many rural counties in **Colorado**, while Spanish-language interpreters are generally available or on-call, there are typically no interpreters available in languages such as Navajo/Diné Bizaad, Pueblo, Zapotec, and Mixtec. There are also typically no public-facing COVID-19 resources for individuals who speak languages other than English and Spanish.

A qualified Spanish interpreter in Glenwood Springs reported there is no information available in Spanish. Spanish speakers represent 40 percent of the local population. Yet the hospital websites used for scheduling vaccines are not translated in Spanish, and the hospital call centers do not have Spanish interpreters to answer the phone. The information sheet given to people after they receive their vaccine is not available in Spanish. Vaccine sites do not have enough interpreters.

- The pandemic is worsening language access barriers in Atlanta, **Georgia**. With limited sources of in-language information about COVID, there has been misinformation. For

example, many adults who speak Korean rely on news sources from Korea; however, the range of information provided about COVID services in Korean in the United States and, even more so, in Atlanta, is quite limited. In addition, community members rely on churches/mosques, other ethnic media, community leaders/influencers, and community-based organizations. Unfortunately, these sites are receiving mixed, and sometimes conflicting, information from federal, state, and county authorities.

- A medical interpreter at a community health center in **Hawaii** noted that translated materials are not culturally accurate or sensitive. For example, there is no translation for “PCR test,” and the concept of a “positive” and “negative” test results is specific to Western medicine. Other words such as “quarantine” and “isolation” are difficult concepts to translate into Asian and Pacific Islander languages including Chuukese, Korean, Marshallese, Chamorro, Palauan, Tongan, Tagalog, and Laotian. Interpreters were not a part of the State Department of Health contact tracing efforts for most of 2020. In addition, proper and quick testing was delayed because of the lack of adequate information in multiple languages.
- In Chicago, **Illinois**, a certified interpreter reports that Arabic translations contain mistakes, are unclear, or are not provided. There is a serious lack of Arabic interpreters. Additionally, it is often unclear to Chinese-speaking community members that they can make appointments via phone in Chinese.
- In Allen County, **Indiana**, there are not enough materials in the most common languages in the area, which include Burmese, Arabic, French, Bosnian, and Vietnamese. Interpreting services are generally not available at vaccination sites. Information is not available in languages other than English.
- In **Maryland**, the landing page of one of the State’s main Coronavirus websites does not contain language access information or taglines in any languages. An “Accessibility and Resources” icon sometimes does not work, and when it does, it does not contain language access information (<https://coronavirus.maryland.gov/pages/vaccine#access>). This webpage contains an icon that, if one hovers over it, says “translate” and seems to use Google Translate. However, there is not a universally accepted icon to indicate language services or translation, and its likely many LEP individuals will not know to click on this icon (as we did not initially).

Other websites are organized under the State’s “CovidLink” theme. But pages here, addressing matters such as information about scheduling vaccines (<https://onestop.md.gov/preregistration>) and contact tracing (<https://covidlink.maryland.gov/content/mdcovidalert>), provide information only in

English. There is concern that LEP persons who go to the primary webpage will not get to other webpages because they will assume all links are the same and, therefore, are not linguistically accessible.

- Nearly one in ten individuals in **Massachusetts** are LEP, with 9.41% of the overall population speaking Spanish; 3.13% speaking Portuguese; and 2.18% speaking Chinese languages. The state COVID vaccine website uses Google Translate, which produces errors. Additionally, Google Translate does not include Cape Verdean Creole, which is the sixth most-requested language in acute care hospitals in Massachusetts (<https://www.mass.gov/files/documents/2016/07/ot/appendix-f-languageaudience-guides.pdf>). To schedule a vaccine appointment, an individual must go to the main COVID vaccine website and click on a separate link. The only language options on the appointment scheduling website are English and Spanish. Even after selecting Spanish, the link brings you to the English version of the scheduling website. Finally, a Google search in Spanish for Massachusetts COVID vaccine does not include the State vaccine website in the search results. We believe this is because the website does not exist in Spanish—a person must go to the English version and then click on Language. So, it appears that you would have to know the English word for vaccine to search for the State vaccine website.
- **Michigan** is home to many immigrants and refugees, some of whom do not read, write or speak English or have access to Wi-Fi or a computer. Language barriers have left individuals without vital COVID-19 information. CBOs are left to fill the gap. Many gathering places, such as churches and mosques, have closed their doors to keep the community safe. These places, ordinarily vital hubs to share information, are being replaced with social media videos and posts. Countering misinformation is a problem. Also a problem—fund recipients are using automated translation services, which are inaccurate. The Michigan government website, where many community members go for updated information, includes materials that were clearly translated using machine translation software. This is problematic because culturally tailored messaging is lost. Many public health concepts, such as “social distancing” or “flattening the curve,” are not readily understandable across cultures using automated word-for-word translation. In the Arabic language, for example, one word can mean many different things depending on where the diacritics are placed. Their addition and position make the word versatile. There are also many English words that do not translate easily or at all into Arabic. For instance, the word “access” in English is difficult to translate, with the best equivalent being “wusul,” which means “arrival.”
- In the St. Louis, **Missouri** area, there are reports of no translated materials and inaccessible vaccine registration systems, call centers, testing sites, or vaccination sites for individuals whose primary language is Korean. Meanwhile, Spanish speakers have experienced

problems with translated websites and call center interpretation in Saint Louis and surrounding rural areas, a lack of dissemination of available translated materials, and a lack of outreach to Spanish language media.

- Advocates in **Nebraska** report that some Spanish-language consent forms require the provision of a Social Security Number, while consent forms in English do not. Advocates and an interpreter (in Omaha) report problems with inadequate language services at vaccine sites. Some sites provide interpreters if the person calls ahead; other sites do not make interpreters available. In addition, there are no or inadequate interpreter services available to individuals when calling for contact tracing and vaccine registration and appointments.
- A **New York** City hospital-based provider and an interpreter both cited problems with the lack of translations into Chinese languages. Some documents that are being translated are using automated word-for-word translation that produces inaccuracies. There are also insufficient numbers of interpreters—a problem that is particularly affecting geriatric patients who are having difficulty understanding information about COVID tests and vaccines. Medicare advocates point out that, while New York City has developed multi-lingual flyers addressing vaccine availability and a hotline offering interpreting in different languages, most of the critical information is available only online. If the person is LEP and does not use the internet, it is incredibly difficult to find reliable information about where to go for, and how to book, an appointment. At a visit to a Department of Health vaccination site in Chinatown, signage and intake questions were not available in Chinese. No one was available to interpret in Chinese until the moment of vaccination, where one nurse administering the vaccine spoke elementary Cantonese.

In the White Plains area, there is no mechanism to request an interpreter, no signage at sites, and no on-site interpreters. There is no explanation about what to expect during the vaccination process. Scheduling a vaccine and finding information about vaccinations is especially difficult for deaf and hard-of-hearing people who are also LEP. These issues have been brought to the attention of the New York Department of Health, FEMA, and other sources, but advocates have not seen any changes thus far.

- In Western **North Carolina**, an interpreter reports that, while Spanish-language materials may be available, these have numerous errors and are not released in a timely manner. There is very limited demographic research conducted to address areas with higher demand for services. This is reflected in a sometimes abundance of interpreters with very few people with LEP and at other times a lack of interpreters despite a high number of people with LEP.

- Until recently, the **Oregon** Health Authority was booking vaccine appointments for non-English, non-Spanish speakers through Chatbot, which provides only English and Spanish translation. Oregon now uses a website for signing up for vaccine appointments, which includes access in 12 languages. However, there are other problems. In Eugene, there is a lack of updated translated materials in languages not spoken by in-house staff. Resources for LEP individuals other than those who speak Spanish are therefore limited. McKenzie Willamette Center does significant vaccine testing in the area but does not consistently provide interpreters for those who need them.
- In Alleghany County, **Pennsylvania**, the vaccine information page and scheduling website are only available in English: <https://www.alleghenycounty.us/Health-Department/Resources/COVID-19/COVID-19-Vaccine-Information.aspx>. Likewise, many other vaccine providers in Alleghany County and surrounding counties, such as pharmacies and hospitals, do not provide vaccine information or online scheduling in non-English languages. Interpreting is also limited. For example, many people who speak Mandarin, Korean, and Japanese have been unable to make vaccine appointments due to a lack of interpreting at hospital call centers. For a period of time, a major hospital did not provide any qualified interpreters at vaccination sites, instead stating that they needed community group members to volunteer as interpreters. The hospital recently began to provide some interpreters, but only on a limited basis. Further, written materials at vaccination sites are not available in any Asian or Pacific Islander languages.
- In **South Carolina**, on-line provider portals for signing up for vaccines are not available in languages other than English. This runs from large providers, such as Walgreens, to smaller SC-based providers, almost none of whom have language access capacity on their websites or by their staff. Some of these sites have no idea or desire to utilize telephone interpreting services, especially for testing and vaccination purposes. Health care providers, statewide, are not providing interpreters at vaccine/testing sites.
- Individuals noted language barriers in vaccine scheduling websites, vaccine scheduling call centers, and vaccine sites in Houston, **Texas**.
- As of mid-March, **Virginia**'s vaccine preregistration website portal was only available in Spanish. Well into the pandemic, the State's website translates materials into only some languages but for others says, "translations pending" (<https://www.vdh.virginia.gov/coronavirus/resources-and-support/>).

In Fairfax County, 38.9% of residents age 5 or older speak a language other than English at home (<https://www.fairfaxcounty.gov/demographics/fairfax-county-general-overview>). However, most of the County's website uses Google Translate for all non-English

languages. Acknowledging the inadequacy of these translations, the County provides a notice that “the conversion is not context-sensitive and may not fully convert text into its intended meaning. Fairfax County Government cannot guarantee the accuracy of the converted text nor are we liable for any resulting issues.” (<https://www.fairfaxcounty.gov/topics/language/translation>). Limited COVID-19 information appears to have been professionally translated into certain top languages on a separate “COVID-19 Language Portal” (<https://www.fairfaxcounty.gov/covid19/language-portal>). However, these resources are difficult to find and are not linked to on the County’s main vaccine information page. Additionally, while the language portal links to a Spanish-language vaccine sign-up page that appears professionally translated, there are not similar vaccine sign-up pages for the other top languages listed.

- The **Washington** Department of Health has linked to translations on COVID vaccines: <https://www.doh.wa.gov/Emergencies/COVID19/VaccineInformation/HowToGettheVaccine/Languages>. However, using the link, the process to access the multilingual materials is not so clear: The DOH homepage contains a direct link to “Vaccine Phase Finder,” which goes to a page which displays only in English: <https://form.findyourphasewa.org/210118771253954>. The URL header for this page says Find Your Phase/Encuentra Tu Fase (the Spanish translation of “find your phase”). The Phase Finder page does not link to additional multilingual messages. There are COVID-related links that include taglines in 10 languages and a pull down menu for additional languages. But while a header on the new page implies that translations are available, the page links back to the main COVID-19 page, not to translations. A former Portuguese medical interpreter reviewed the website/translations in Portuguese and, while noting the absence of gross errors found that the information was not easy to read and appears to have been written by machine translation or someone unfamiliar with Portuguese grammar points. The meaning of certain health care terminology and colloquial expressions in English are literally (word-for-word) translated into Portuguese, which does not capture their actual meaning.

COVID-19 testing sites generally do not offer language services. While vaccination sites run by the State have recently added telephone interpreting services, this change has not applied to private vaccination sites, where most pharmacy and some hospital vaccination locations do not provide any interpretation or translated forms. There does not seem to be state or local oversight to ensure these providers properly serve LEP individuals.

In the Seattle area, at least as late as February 2021, the publicity for vaccination sites did not mention language assistance. At a site hosted by Seattle University and run by Swedish Medical Center, conversations were conducted only in English—even though SMC offers

language services in its own facilities. The observed exception was elderly Asian patients who had brought individuals with them to interpret (even though signs said access was for “patients only”). In addition, registration websites seem to be entirely in English. For example, there appears to be no online form translated into Vietnamese and no option to do so. Similarly, signage in Vietnamese has been absent from the testing and vaccination site in West Seattle. Translated materials were seemingly unavailable.

Meanwhile, in Yakima County, the vaccine website only includes Spanish professional translations. All other languages are translated using a Google Translate tool (<https://www.yakimacounty.us/2472/COVID-19-Vaccine>). Individuals who speak other languages largely have to rely on information from non-profits, instead of benefiting from the materials and coordinated outreach strategies from State and County officials.

Requests

We appreciate that OCR and FEMA have made efforts to address barriers to COVID information and services for individual who are LEP. We thank you for those efforts and ask you to consider the following:

Translated materials: With respect to written materials/information, there are problems with the quality and extent of translation. OCR and FEMA could help address these problems in a cost-effective and efficient manner if they prepared and made available a wider array of translated materials in more languages for all federal fund recipients to use. If the federal government provided information in the top fifteen languages, recipients could use their limited resources to focus on less frequently encountered languages. Examples from the FDA are here: <https://bit.ly/3aPm2ko>.

OCR and FEMA should provide guidance to federal fund recipients about how to provide translated materials including: what resources are available to obtain translated materials; how to select qualified translation services if recipients are translating their own materials; that translated materials must be provided in a timely manner to ensure meaningful access; and that federal funds can be used to pay for translations or creation of materials directly in non-English languages.

According to a February 9, 2021 news release, FEMA is working to provide translations of outreach and public awareness information related to COVID-19 response. Please provide us with any updates on these efforts and if the translations will be available minimally in the 19 languages identified in FEMA’s Language Access Plan. See U.S. Dep’t of Homeland Security Federal Emergency Management Agency, *Language Access Plan* (Oct. 1, 2016). State should also be encouraged to maximize use of centrally translated information.

Competency of Interpreters and Translators: HHS and FEMA should reinforce existing requirements for utilizing qualified and competent interpreters and translators. Individuals who self-identify as bilingual often do not have the training, knowledge, skills or abilities to serve as qualified interpreters and translators; thus, HHS and FEMA should educate recipients about how to identify and appropriately utilize qualified interpreters and translators.

Web-based information: OCR and FEMA could improve access to and uptake of COVID services by providing guidance to and monitoring/enforcement regarding the development of websites, web-based applications and call centers.

Automated Translation Software: Providing wrong or misleading information can be as harmful as lack of information. OCR and FEMA should educate recipients about the problems with automated translation software and that using it could result in cognizable errors. They should take immediate steps to address this overreliance because it does not comply with requirements for using competent translators. As OCR has recognized:

Machine translation, which is one type of automated translation technology, translates text by performing simple substitution of words using statistical techniques. Given differences across languages in syntax, figures of speech, and vocabulary, the simple substitution of words using statistical techniques may produce highly unreliable translations for certain languages and written content. A quality check performed by a qualified translator, such as reviewing the translation for accuracy and editing the translation if needed, would likely be necessary. OCR encourages covered entities to understand the strengths and weaknesses of the technology and software programs that qualified translators use.

See OCR, Section 1557: Frequently Asked Questions, Q. 42, <https://bit.ly/331QNY7> (citations omitted) (last visited Apr. 30, 2021). OCR and FEMA should make it clear that recipients should not use automated translation software, including Google Translate, without first having a qualified translator verify its accuracy.

Web-based Chat Options: OCR and FEMA should educate recipients on how to make telephonic and website chat systems accessible for LEP individuals. This could include a dedicated phone line for LEP individuals so that they do not have to navigate an English or Spanish only integrated voice prompt (IVP) system. Or if an entity is going to use an IVP system, an individual's non-response (failure to press a button or respond verbally) should trigger an immediate connection to call center staff who would have ready access to telephonic interpreter services to help identify what language a caller speaks and obtain an appropriate interpreter. Requiring LEP individuals to navigate multiple IVP prompts in English deters them from obtaining information. If a website's chat feature cannot assist LEP individuals, it should provide prominent links to taglines or information in non-English languages that guide LEP individuals to other resources.

Taglines. OCR and FEMA should educate recipients of the importance of including in-language taglines or other in-language identifying information on *all* COVID-related websites to help LEP individuals understand that language services are available and how to access them. Having the term “language services” in English is insufficient. Using an icon or symbol to indicate translated materials, as some sites have done, is also insufficient because there is not an agreed upon icon/symbol that LEP individuals would recognize as indicating the availability of translated materials. Preferably, websites would include prominent taglines on a homepage indicating the availability of language services. At a minimum, websites should include the name of the language in the language (*e.g.* ESPAÑOL for Spanish) so that an LEP individual would see a word/phrase in their language to click on. For example, see the footer on healthcare.gov. OCR developed model taglines as part of its implementation of Section 1557 and these could and should be widely distributed.

Payment for Interpreters: HHS should take action to enhance payment for interpreter services as providers continue to struggle during the pandemic. *See* Shivani A. Shah et al., *Reconsidering Reimbursement for Medical Interpreters in the Era of COVID-19*, JAMA NETWORK (Oct. 12, 2020), <https://bit.ly/32WEe7k>. HHS and FEMA should specifically inform federal fund recipients that, when CBOs are being called upon, they should be appropriately recognized and compensated, particularly smaller CBOs and those led by BIPOC (which have a long history of being tapped for assistance without receiving compensation).

Longer term, HHS should evaluate ways to ensure federally funded programs and activities can pay for language services. One option could be to consider allowing recipients to utilize the same vendor that FEMA uses for its vaccination sites (perhaps even with the federal government paying the costs to fully ensure access). At a minimum, bulk purchasing of interpreting services could significantly reduce costs and provide access to a wider array of languages.

Data Collection: DOJ notes that “complete, consistent, and accurate data collection and reporting on race, ethnicity, disability and limited English proficiency status are essential to our ability to recognize and address disparities and inequality.” *See* DOJ, *Statement by the Principal Deputy Assistant Attorney General for Civil Rights* (Apr. 2, 2021), <https://bit.ly/3eF1jkd>; *see also* FEMA, *FEMA Advisory: Civil Rights Data Collection* (Feb. 6, 2021), <https://bit.ly/3xDdo2i> (though we note that none of the states listed as having model vaccine data dashboards displayed data on LEP). OCR and FEMA should ensure that data on primary language is collected from recipients for monitoring/enforcement and planning purposes, They should work closely with the Office of Minority Health COVID-19 Health Equity Task Force to ensure that their recommendations are integrated at the federal, state, and local levels as quickly as possible. We appreciate your consideration and are available if you have questions.

Language Access Plans: OCR and FEMA should encourage recipients to develop language access plans outlining how they will provide oral and written language services. OCR and FEMA should also provide information to recipients about how to identify the top languages in their service areas so that the recipient can predict the needs (while at the same time reinforcing that the recipient must provide meaningful access to *all* LEP individuals regardless of what languages are most frequently encountered). Language access plans should also include in-language outreach strategies through ethnic print media, radio, and other communication platforms to reach LEP populations. FEMA has produced a checklist; its existence should be emphasized, monitored, and reproduced by other federal agencies. See FEMA, *Civil Rights Considerations During COVID-19 Vaccine Distribution Efforts* (Feb. 2021), <https://bit.ly/3eIo6vr>.

Conclusion

We recognize that many of our requests are detailed, but it is the details that are being ignored by those creating websites, IVP systems, website chat features, scheduling systems, and vaccination administration settings. And while detailed, these requests are not trivial because the problems they identify are significant barriers to providing crucial services to people who are LEP. Reiterating existing requirements under federal law is important but providing specific information and services to ensure effective communication is essential. If you have questions, please contact Mara Youdelman, youdelman@healthlaw.org or me.

Dated: April 30, 2021

Respectfully submitted,



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Appendix A: Organizations and Individuals Providing Information for this Complaint⁵

Organizations

California

Asian Pacific Islander Forward Movement
South East Asia Resource Action Center (SEARAC)
South Asian Network
Southeast Asian Community Alliance

Colorado

Servicios De La Raza

Georgia

Center for Pan Asian Community Services

Indiana

Language Services Network

Kentucky

American World Community Center

Massachusetts

Health Law Advocates

Michigan

The Arab Community Center for Economic and Social Services (ACCESS)

Missouri

Hispanic Leaders Group of Greater St. Louis
Missouri Asian American Youth Foundation

New York

Center for Medicare Rights

Oregon

The Giving Tree

South Carolina

SC Appleseed Legal Justice Center

Washington

OCA – Greater Seattle

⁵ The National Health Law Program's survey was distributed between March 29, 2021 and April 20, 2021. Some respondents asked that their identifying information not be used.

Individuals

California

Lourdes Cerna, Interpreter
Edgardo Juarez, Advocate for Hispanic Community
Lissett Samaniego, Spanish interpreter and translator

Colorado

Julissa Soto, Community leader for Spanish-speaking community
Carreon Ayes, Spanish interpreter
Olivia Thomas, Community organizer
Elizabeth Velasco, Spanish medical interpreter

Hawaii

Erendira Aldana, Administrator at a community health center

Illinois

David Li, Advocate for Mandarin Chinese-Speaking community members
Vivian Zhang, Nonprofit organization for Chinese civic engagement

Missouri

Nancy Inn, Korean interpreter
Jane Kim, Interpreter

New York

Yoke Loon Chong, Cantonese and Mandarin interpreter
Anna Krakowski, Health care provider
Jody Prysock, Sign Language interpreter and advocate
Antony Wong, College staff

North Carolina

Mariela Solano, Advocate and Spanish interpreter

Oregon

Katherine Gladhart-Hayes, Spanish health care interpreter and public health worker

Pennsylvania

Sabrina Liu, Mandarin advocate, interpreter and translator
Sonia Schlamowitz, Interpreter and translator

Texas

Tram Ho, Health care provider

Utah

Chikako Koga, Interpreter/translator

Washington

Joana Ramos, Advocate