

State & Federal Requirements for Language Access

Language Access Advocacy Project
California 2004

Updated by CPEHN May 2011

APIA**HF**

California Pan-Ethnic Health Network



NHeLP
NATIONAL HEALTH LAW PROGRAM



ASIAN PACIFIC
AMERICAN
LEGAL CENTER
OF
SOUTHERN CALIFORNIA

CPCA

California Primary
Care Association

Health Care Access for All



Latino Coalition for a Healthy California



THE HEALTH CONSUMER
ALLIANCE

Purpose

- To help you understand national, California state, and local laws and policies on **language rights and responsibilities** in health care settings
- To introduce national standards on **cultural competency**

Overview

Who is Limited-English Proficient (LEP)?

Federal Laws & Guidance

- Title VI of the 1964 Civil Rights Act
- Executive Order 13166
- Health and Human Services' (HHS) Office for Civil Rights (OCR) LEP Guidance
- Office of Minority Health Culturally and Linguistically Appropriate Standards (OMH CLAS)
- Federal Medicaid/SCHIP Managed Care Contracts

California Laws & Regulations

- State Title VI look-alike
- Dymally-Alatorre
- Kopp Act
- Medi-Cal Contracts
- Healthy Family Contracts
- SB 853 (Escutia): Health Plans
- SB 472 (Corbett): Prescription Drug Labels

What is an Limited English Proficient (LEP) individual?

- Individuals who **do not speak English as their primary language** and who have a limited ability to read, write, speak, or understand English.
- Anyone who answers **less than “very well”** to the question on the U.S. Census Survey:
How well do you speak English?

Federal Laws and Guidance

- ❑ Title VI of the 1964 Civil Rights Act
- ❑ Executive Order 13166
- ❑ Department of Health and Human Services (HHS) Office for Civil Rights (OCR) Guidance
- ❑ Office of Minority Health (OMH) Culturally and Linguistically Appropriate Standards (CLAS)
- ❑ Federal Medicaid/SCHIP Managed Care Contracts



Title VI of the 1964 Civil Rights Act

“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



* Language = “national origin”

Title VI: What is it?

- It is a law that says programs that receive federal funds must not discriminate against people based on race, color or national origin.

The Good News...

- Language = National origin
- LEP individuals have the right to language services
- It protects every LEP individual

The Bad News...

- Individuals' right to sue is very limited

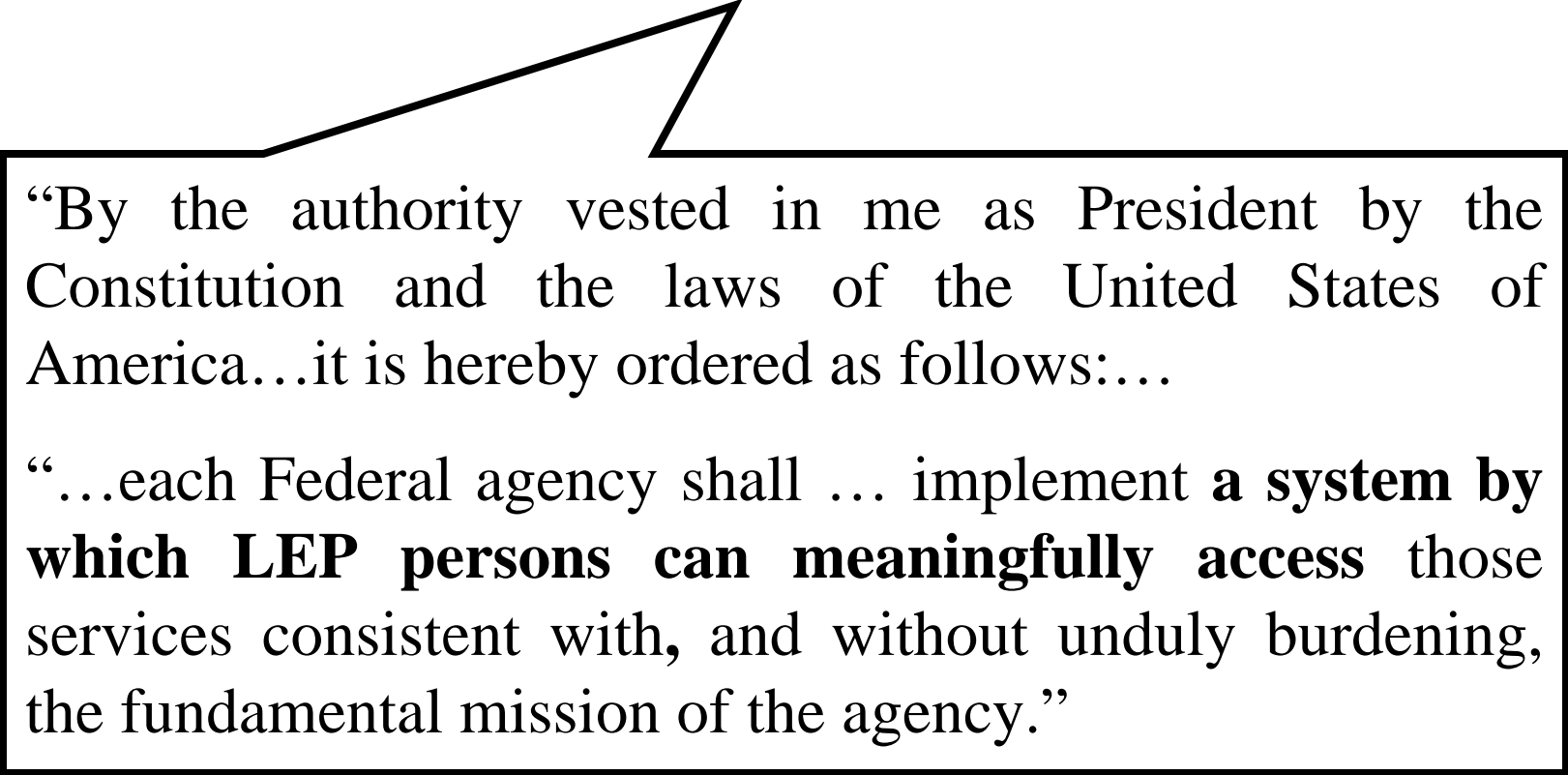
Language = National Origin

- Federal courts and agencies have interpreted **discrimination by national origin** to include **language**.

In other words: If someone discriminates against you because you can't speak English, then it is a violation of your civil rights.

Executive Order 13166:

Improving Access to Services for Persons with Limited English Proficiency



“By the authority vested in me as President by the Constitution and the laws of the United States of America...it is hereby ordered as follows:...

“...each Federal agency shall ... implement **a system by which LEP persons can meaningfully access** those services consistent with, and without unduly burdening, the fundamental mission of the agency.”

E.O. 13166: What is it?

- This “order” from the Executive Branch is meant to improve the internal management of federal agencies. These agencies report to the President.
- President Clinton issued it in August 2000. President Bush re-affirmed it during his administration.
- The text of the “order” refers to the Department of Justice’s LEP guidance

E.O. 13166:

How does it address language needs?

It makes federal agencies plan for meaningful language access to their programs and activities.

Federal agencies **must**:

- Plan for their own **programs** to meet Title VI standards
- Issue LEP guidances to their **grantees**

E.O.13166:

What else must federal agencies do?

It makes the federal agencies and federally-funded programs accountable to the public.

Federal agencies **must** make sure that:

- Federal fund grantees meet Title VI standards
- Community members and organizations get a chance to speak to what the language access needs are

Federal LEP Guidances

- As a result of E.O. 13166, many federal agencies have issued their own LEP guidances
- All existing federal LEP guidances follow DOJ's LEP guidance model. Each explains:
 - Title VI
 - Who is covered
 - The “4 factors” that are used to “test” how well a program or agency complies with Title VI
 - Elements of an effective language assistance plan


Who enforces E.O. 13166?

The Department of Justice (DOJ)

The DOJ:

- **Approves guidances for Title VI.**
- **Heads** the DOJ Coordination and Review (COR) section, which helps federal agencies implement LEP policies consistently.
- **Investigates** DOJ grantees (i.e., law enforcement and corrections agencies, some courts)
- **Litigates** Title VI cases for federal agencies

HHS OCR LEP Guidance



“No person may be subjected to discrimination on the basis of national origin in health and human services programs because they have a primary language other than English.”

- Notice regarding language (1980)

HHS OCR LEP Guidance: What is it?

- The Guidance is a document that sets a standard for how to comply with Title VI.
- It does not establish any new requirements or mandates.

Why focus on the HHS OCR LEP Guidance?

- The U.S. Department of Health & Human Services (**HHS**) administers federal funds for many traditional health and welfare programs.
- HHS has an Office for Civil Rights (**OCR**), which is supposed to enforce Title VI.

HHS OCR LEP Guidance: What is a “recipient”?

A recipient* is **any public and private entity receiving federal funds**, including:

- State, county, and local health and welfare agencies
- Hospitals and clinics
- Nursing homes
- Senior Citizen Centers
- Managed care organizations
- Mental Health Centers
- Other programs that receive federal funds



*When the Guidance says, “recipient” , it means a “recipient of federal funds”.

HHS OCR LEP Guidance: How does it address language needs?

A recipient must:

- **Provide language assistance** to LEP persons, to make sure that they have equal access to programs and services.
- Apply the LEP guidance **to all the programs** in the recipient's organization (even if HHS funds only directly support one program).

HHS OCR LEP Guidance: What can't recipients do?

A recipient **cannot** do the following towards LEP persons:

- Limit the scope or lower the quality of their services
- Delay the delivery of their services unreasonably
- Limit their participation in a program
- Require them to provide their own interpreters or pay for interpreters.

How does HHS OCR determine compliance with Title VI?

- OCR uses a 4 factor analysis to “test” if a recipient is complying with Title VI. The factors are:
 - **Number or proportion** - How many LEP persons are eligible to be served, or likely to be encountered?
 - **Frequency** – How often do LEP persons come in contact with the program?
 - **Nature and importance** – How important is the program, activity, or service to people's lives?
 - **Resources** – What resources are available to the recipient? What will the costs be?
- Based on the 4-factor test, a recipient that does not meet certain parts of the Guidance may still be “in compliance” with Title VI.

What does the LEP Guidance say about interpreting (spoken)?

- Recipients should make sure patient knows that an interpreter is **available for free**.
- Possible options for interpreting services include:
 - Bilingual staff
 - Contract interpreters
 - Use of telephone
 - Staff interpreters
 - Volunteer interpreters
 - Use of video equipment
- Recipients must not require a patient to use friends, family or minor children for interpretation

HHS OCR LEP Guidance: Competence of interpreters

Interpreters should:

- Be proficient in English and the non-English language.
- Know special terms (such as medical terms or jargon), as necessary
- Respect a patient's rights to confidentiality and to impartial interpreters
- Understand the role of interpreter (such as ethics and practices).

What does the LEP Guidance say about translations (written)?

- If the recipient repeatedly uses a written material with LEP persons, it should translate that material into non-English languages that are regularly encountered.
- Recipients should translate or communicate information in **vital documents**.

HHS OCR LEP Guidance: Vital documents

- **Vital documents** are those that affect one's legal rights or obligations. For example:
 - Application and enrollment forms
 - Letters or notices re eligibility or changes in benefits
 - Anything requiring a response
 - Patient consent forms

HHS OCR LEP Guidance: “Safe Harbors”

What are “safe harbors” for translated documents?

- If a recipient meet the “safe harbor” requirements, the organization will be safe, but...
- “Safe harbors” are not hard-line thresholds.
- A recipient may still be complying with Title VI if it does not meet these requirements.

HHS OCR LEP Guidance: What are the “Safe Harbors”?

A recipient should have available written translations of vital documents for each LEP language that meets the following “**safe harbor**”:

- **5% percent or 1,000, people** of the population eligible to be served, or likely to be affected or encountered.

HHS OCR LEP Guidance: More on safe harbors

Can a recipient orally interpret a written material?

- YES.

OR

- If there are **less than 50 people** in a language group, recipients should provide in-language written notices of the right to receive oral interpretation of written materials

How do we enforce Title VI and the HHS OCR LEP Guidance?

- Individuals may file complaints with HHS OCR.
- HHS OCR:
 - May review any agency or program that receives HHS funds.
 - Must provide technical assistance/training prior to imposing any sanctions.
- There are limits on a private individual's ability to sue for enforcement (*Alexander v. Sandoval*).

How to File an OCR Complaint

Remember that you must:

- File the complaint within 180 days of incident
 - The time limit may be waived if "good cause" shown
- Put it in writing – Can use complaint form or write a letter. Complaint form available at:

<http://www.hhs.gov/ocr/disform.html>

- Mail or fax the complaint to your regional OCR office

How to File an OCR Complaint

(continued)

You must also include:

- Your or your client's name, address, telephone and signature;
- Name and location of hospital or county welfare office;
- How (e.g., denied interpreter), why and when incident occurred;
- Any other relevant information.

The complaint can be filed anonymously.

The LEP person does not have to provide his or her name as long as the advocate uses his or her name.

OMH CLAS Standards

The standards regarding language access services (numbers 4 through 7) are based on Title VI!



OMH CLAS =

Office of

Minority

Health

Culturally and

Linguistically

Appropriate

Services

What are the OMH CLAS Standards?

- The Office of Minority Health (OMH) issued these standards in 2000, and are currently revising them.
- They are the first national standards for culturally and linguistically appropriate services (CLAS) in health care.
- OMH designed the standards to help organizations provide culturally and linguistically accessible services for all.
- All patients should receive fair and effective CLAS and treatment

OMH CLAS Standards: Key Themes

The 14 Standards are mix of mandates, guidelines, and recommendations. Key themes include:

- Culturally competent care
- Language Access Services
 - Competent bilingual staff and interpreter services
 - Posted and verbal offers of language services in one's preferred language
- Organizational Infrastructure for Cultural Competence
 - Diverse staff and ongoing trainings
 - Written plans assigning accountability and oversight
 - Public participatory processes, to include community voices

OMH CLAS Standards

Focused on Language Access

Health care organizations should...

Offer and provide language assistance services, including bilingual staff and interpreter services.

Provide these services:

- at no cost to each LEP patient/consumer,
- at all points of contact,
- in a timely manner, during all hours of operation.

Make sure interpreters and bilingual staff are competently providing language assistance to LEP patients/consumers.

Not use family and friends to provide interpreting services (unless the patient/consumer makes a specific request).

OMH CLAS Standards

Focused on Language Access

(continued)

Health care organizations should...

Provide both **verbal offers** and **written notices** to patients/consumers in their preferred language.

These notices should inform patients/consumers of their right to receive language assistance services.

Make available easy-to-understand patient-related materials.

Post signs in the languages of the commonly encountered groups, and/or groups represented in the service area.

Federal Managed Care Contracts

42 Code of Federal Regulations Part 438.109(c), 67 Federal Register 40989 (2002)

Federal Medicaid and the State Children's Health Insurance Program (SCHIP):

- Comply with Title VI of the Civil Rights Act of 1964 (42 Code of Federal Regulations Part 438.109(c), 67 Federal Register 40989 (2002))
- Require:
 - Oral interpretation for all
 - Written translation for “prevalent” languages

Federal Medicaid/SCHIP Managed Care Contracts

Contracts between each state and its Medicaid managed care organizations often have language access requirements. (**see next section - California**)

California Laws and Regulations

- State Title VI look-alike
- Dymally-Alatorre
- Kopp Act
- Medi-Cal Contracts
- Healthy Family Contracts
- SB 853 (Escutia): Health Plans
- SB 472 (Corbett): Prescription Drug Labels



State Title VI Look-Alike

CA GOVT. CODE §§ 11135,11139

22 C.C.R. §§ 982100 et seq.

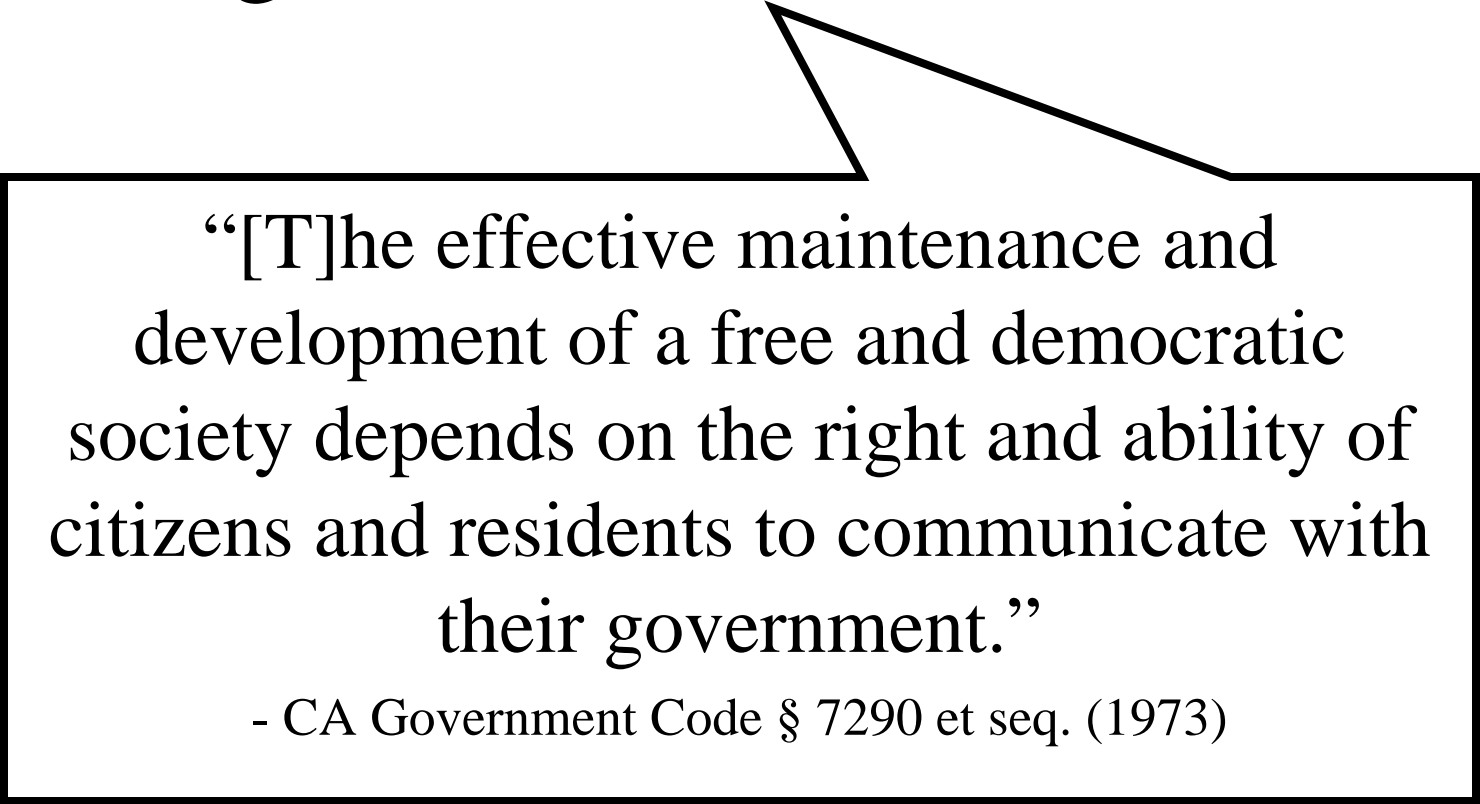
California has a state law that “looks like” Title VI. It is similar to Title VI but is broader, in that:

- Individuals have the right to sue, in discrimination cases based on race, national origin, ethnic group identification or color.
- Unlike in Title VI, individuals may sue in “disparate impact” cases. This means that even when an agency didn’t mean to hurt a group of people, it did so in its normal practices. In this case, an individual may sue that agency.
- Applies to “any program or activity that is conducted, operated or administered by the state or any state agency directly or receives any financial assistance from the state”

Threshold Languages

- “Threshold” is the minimum number of individuals (usually defined as patients, members, enrollees, or the service population) that identify a non-English language as their primary language.
- Threshold languages are the list of languages in which an agency must translate their documents.
- Threshold languages **only** apply to translated documents, **not** to the availability of oral interpretation services.
- Oral interpretation must be provided for **ALL** LEP persons.

Dymally-Alatorre (Bilingual Services Act of 1973)



“[T]he effective maintenance and development of a free and democratic society depends on the right and ability of citizens and residents to communicate with their government.”

- CA Government Code § 7290 et seq. (1973)

Dymally-Alatorre

- **Who must comply?**

All state and local agencies.

- **Threshold**

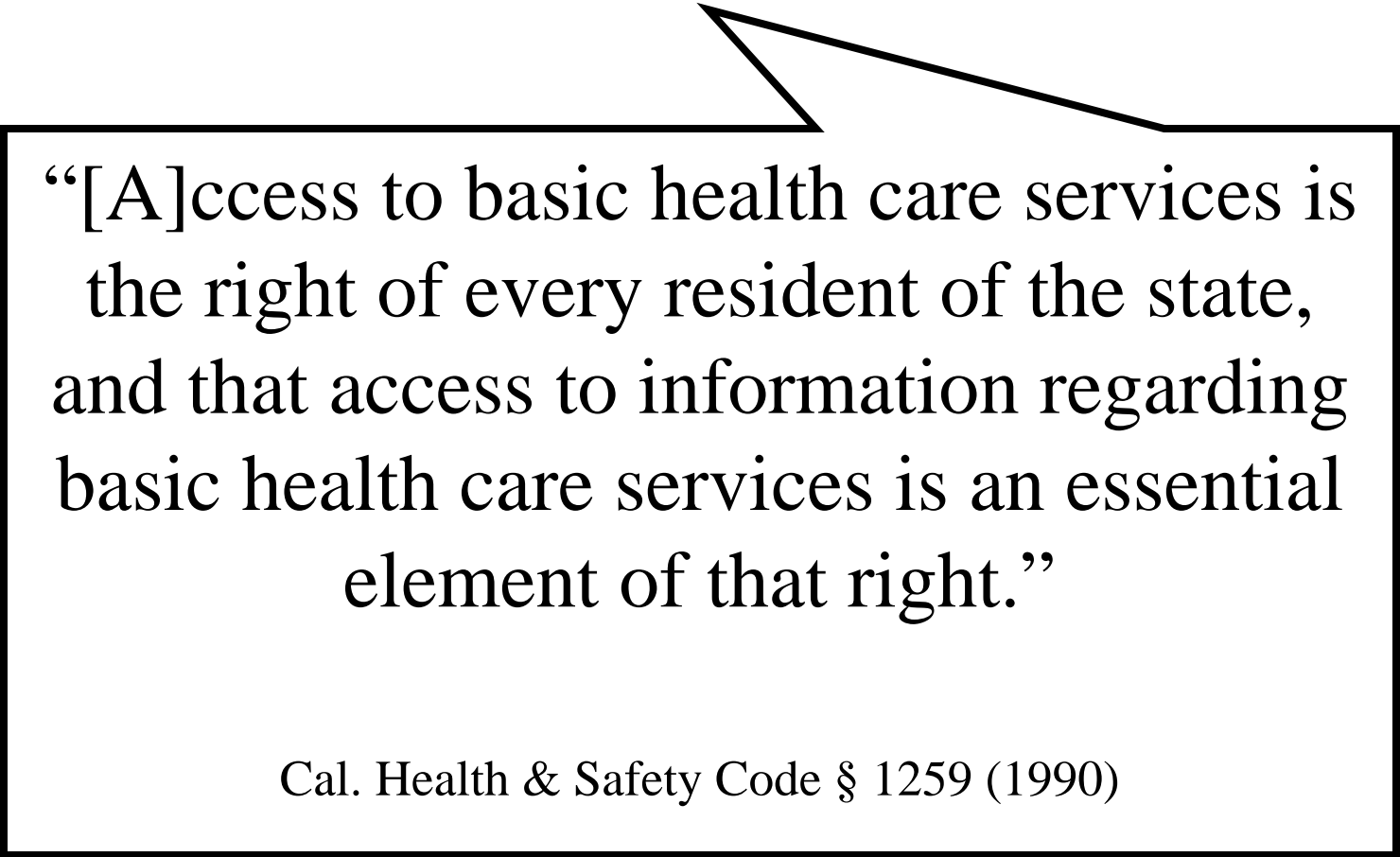
LEP groups that equal 5% or more of the population served by a local office of the state agency (e.g., county health department).

Dymally-Alatorre

What must state and local agencies do? (highlights)

- Employ enough **bilingual workers**. The workers should be proficient in both English, and the non-English language spoken by clients.
- **Conduct surveys of local offices, every two years**. The surveys are supposed to gather, **by language** group:
 - the number of bilingual employees.
 - the number and percentage of non-English speaking people served by each office.

Kopp Act of 1983



“[A]ccess to basic health care services is the right of every resident of the state, and that access to information regarding basic health care services is an essential element of that right.”

Cal. Health & Safety Code § 1259 (1990)

Kopp Act

- **Who must comply?**

All general acute care hospitals

- **Thresholds:**

LEP groups that equal 5% or more of:

- the population of the geographic area served by the hospital

OR

- the actual patient population of the hospital.

Kopp Act:

What must a hospital do?

- Develop and annually review its language assistance policies.
- **Make sure interpreters are available on a 24-hour basis.**
- Develop and post notices to patients about 1) the availability of interpreters and 2) how to complain to state authorities.
- **Tell its employees of the hospital's requirement to provide an interpreter when a patient requests one.**
- Identify and record each patient's primary language in his/her records.
- **Consider creating community advisory groups.**
- Review all patient materials, and identify which need to be translated in the threshold languages.

Medi-Cal Managed Care Contracts

- The state Department of Care Health Services (DCHS) sent policy letters to their managed care plans about language services in April 1999.

- **Who must comply?**

All managed care plans that contract with Medi-Cal (the state version of Medicaid).

- **Thresholds**

- 3,000 beneficiaries in a county
- 1,000 in a single zip code
- 1,500 in two contiguous zip codes

Medi-Cal Managed Care Contracts

What must a managed care plan do? (highlights)

- Make sure interpreters are available to all LEP members on a 24-hour basis.
- Translate signs and written materials, including the member services guide, form letters and reminder letters.
- Assess and report on the language capabilities of its contracted staff.
- Inform its members that language assistance is available.
- Maintain its community links by forming community advisory committees.
- Develop and implement:
 - A Cultural and Linguistic Services Plan.
 - Linguistic standards to monitor performance of its interpreters.
 - The coordination of its interpreter services.

Healthy Families Managed Care Contracts

- The state Managed Risk Medical Insurance Board (MRMIB) issued its requirements in 1999.

- **Who must comply?**

Managed care plans that contract with Healthy Families (the state version of SCHIP).

- **Thresholds**

LEP groups that equal 5% of contractor's enrollment or 3,000 members, whichever is less.

Healthy Families Managed Care Contracts

What must the managed care plans do? (highlights)

- Provide 24-hour access to interpreters for all LEP persons.
- Make sure that providers who list their bilingual capabilities are bilingually proficient.
- Assess cultural and linguistic group needs.
- Annually report on cultural and linguistic services.
- Make sure that people under age 18 years are not used as interpreters, except in extraordinary circumstances, like emergency care.

On data collection: Healthy Families has committed to include race, ethnicity, and primary language as core data elements in all standard measures for assessment.

SB 853 (Escutia): Language services by commercial health plans and insurers

Health & Safety Code § 1367, 1367.04 and 1367.07 and Insurance Code § 10133.8 and 10133.9

- **California requires all health plans and insurers to provides language services.**
- **Who must comply?**
 - All health plans regulated by the Department of Managed Health Care (DMHC).
 - All insurance companies that are regulated by the California Department of Insurance (CDI).
- Fully implemented in January 1, 2009.

SB 853 (Escutia)

What must all health plans and insurers do?

- **Needs Assessment:** Assess the language needs and demographic profile (race/ethnicity) of their enrollee population one year after initial implementation, and every 3 years afterwards.
- **Oral interpreting services:** Provide oral interpretation services for all members and enrollees.
- **Written translation:** Translate specific vital documents in threshold languages.
- **Accountability:**
 - Report to DMHC on their policies and procedures designed to improve culturally-appropriate care.
 - Submit to a DMHC audit of compliance to regulations.

SB 853 (Escutia)

Thresholds for Translation of Written Materials

Number of members in a health plan	Top non-English languages into which materials must be translated (minimum)	Thresholds (whichever number is less)	
		Percent of members that belong to one LEP group	Total number of members in an LEP group
1 million + members	2 languages	0.75 %	15,000 people
300,000 - one million	1	1	6,000
0 - 599,999	--	5	3,000

Monitoring and Enforcement

- All health plans (Medi-Cal managed care and Healthy Families plans and commercial health plans) are monitored by the Department of Managed Health Care (DMHC)
 - DMHC must report to the legislature every two years on the health plans' compliance
- Medi-Cal managed care plans are also monitored by the Department of Health Care Services (DHCS), in coordination with DMHC
- Healthy Families health plans must submit an annual report to the Managed Risk Medical Insurance Board on compliance with the cultural and linguistic requirements

SB 472 (Corbett): Prescription Drug Labels

- Labels will be in at least 10 point font, and if requested by patient, 12 point font.
- By October 2011, the Board of Pharmacy will publish on its website a list of standardized directions translated in five languages
- Pharmacy shall have policies to help LEP patients to understand the directions on the labels. Policies shall include:
 - How pharmacy will identify patients' language
 - How pharmacy will provide interpreter services, if interpretive services in the language is available

What You Can Do

- Educate your clients about their right to language services.
- Help monitor compliance of laws and regulations.
- Report noncompliance to appropriate regulatory agency.
- Participate in advocacy efforts to strengthen language services laws.

Questions?

Resources

- Title VI of the Civil Rights Act of 1964:
 - <http://www.usdoj.gov/crt/split/42usc2000d.htm>
- U.S. Department of Justice <http://www.usdoj.gov/crt/cor/>
- Executive Order 13166:
 - <http://www.usdoj.gov/crt/cor/13166.htm> (text)
 - <http://www.usdoj.gov/crt/cor/Pubs/eolep.htm> (background)
 - Official U.S. Executive Branch offices <http://www.loc.gov/global/executive/fed.html>
- For the entire OMH CLAS Standards report, please see:
<http://www.omhrc.gov>
- Language Access, California Department of Health Services:
<http://www.dhs.ca.gov/director/omh/html/language.htm>
- To find United States laws (i.e., US code), executive orders and regulations, please see: <http://www.gpoaccess.gov/>
- To find California state laws, please see: <http://www.leginfo.ca.gov/calaw.html>