

LANGUAGE ACCESS

“People’s lives are at risk when they can’t understand the medication that is supposed to save their lives. I wonder why pharmacies seem so hesitant to translate labels.”

—Carlos M., on having to translate for his elderly mother because of the lack of language access at the pharmacy.

THE PROBLEM

Over 25 million people in the United States are limited English proficient (LEP), which means that they are unable to read, write, or speak English well. Although federal civil rights laws require that most public and many private institutions provide interpretation and translation services to LEP individuals, often they do not.¹ As a result, it is difficult and sometimes impossible for millions of people to get and hold jobs, feed their families, vote in an election, be on a jury, make doctors’ appointments, take medication, use the courts, receive an education, get and keep a home—basically, participate in all of the ordinary and extraordinary features of American life—because they do not speak English.² Under the 2001 Supreme Court decision of *Alexander v. Sandoval*, private litigants no longer have a right to bring the kinds of disparate impact discrimination suits that were previously the vehicle for enforcing language access claims.³

THE SOLUTION

Local governments around the country have responded to language barriers and the weakening of federal enforcement by enacting stronger local language access policies, requiring city agencies, health care entities, and other service providers to ensure that interpretation and translation services are made available free of charge to LEP residents.

One important category of local language access

laws apply to city agencies themselves, and ensure that key public-serving local agencies are linguistically accessible. The cities of **San Francisco**, 2001 and 2009;⁴ **Oakland**, 2001;⁵ and **Washington, DC**, 2004⁶ all have statutes requiring city agencies to provide comprehensive language assistance services

to LEP residents at no cost. **New York City** enacted a language access ordinance covering human services in 2003 and a mayoral executive order covering other city agencies in 2008.⁷ The city of **Chicago** has created an Office of New Americans, which is responsible for the creation of a centralized language access policy.⁸

Following the release of studies documenting the gross lack of language access in chain pharmacies, as well as an Attorney General’s investigation, **New York City** passed legislation requiring chain pharmacies to provide interpretation and translation services to LEP patients.⁹

Although language access policies have traditionally been pursued in the historic immigrant-receiving cities and states, the demographics of the country are shifting rapidly, making language access relevant and important in many more parts of the country. For example, the southeast and southwest now have the highest rate of growth in the LEP population. In some states (**Connecticut, Rhode Island**), nearly one out of every ten residents is LEP, the majority concentrated in cities.

POLICY ISSUES

The following topics will likely come up when designing language access legislation for your city.

CONTENT: A basic language access policy has the following components: (1) interpretation (conversion of language during oral communication); (2) translation (conversion of language in written communication); (3)

notification to LEP individuals of their rights to free language services; (4) strong enforcement mechanisms; and (5) the creation of a language access plan/policy within the regulated entity. Both interpretation and translation services are required to ensure that LEP individuals are able to access the full range of city or health services, such as application materials, hotlines, counseling services, and consent forms. It is essential that these services be provided free of charge. Notification typically takes place through posted signs and multilingual taglines on printed materials.

COVERAGE: Language access policies for government agencies frequently focus on those agencies that provide direct service to the public – e.g. human services, police, housing, or transportation. San Francisco’s ordinance further separates agencies into “Tier 1” and “Tier 2” agencies, with the former having enhanced notification, translation and staffing requirements. Some policies, such as the ordinance in **Washington, DC**, also impose language access requirements on sub-contracted entities. With respect to pharmacies, **New York City** opted to cover only chain pharmacies (groups of four or more establishments). Additional options for coverage could include mail order pharmacies and independent pharmacies.

LANGUAGES: Most language access policies in both the government and health care sectors tend to require that interpretation services be provided to LEP persons regardless of language spoken: If an agency or health care provider does not have bilingual staff, telephone or in-person translation services are readily available.¹⁰ Translation is more complicated because of the need to balance time and cost with access. Some city policies, such as the NYC executive order, provide for translation in the top LEP languages spoken in city, whereas others set a population threshold above which translation should occur (e.g. **Oakland** sets a threshold of 10,000 or above).¹¹

ENFORCEMENT: Enforcement strategies for violations of language access laws include imposition of fines and the creation of private rights of action. Oversight is a critical factor in the successful implementation of language access policies for municipal agencies.

“I truly believe that the Language Access Act of 2004 is a clear demonstration of the successful efforts of the Mayor’s administration, District Council, and the LEP population working together to formulate and implement an innovative and groundbreaking plan. This plan... will ensure that all District of Columbia residents, including those who are limited English proficient, shall be able to access the services and programs that are available to them.” – Kenneth Saunders, former Director of the DC Office of Human Rights, on the DC Language Access Act

LANDSCAPE AND RESOURCES

Migration Policy Institute has robust data on LEP populations and trends, as well as research and reports relevant to language access. The **National Health Law Program** has comprehensive backgrounders and legal briefs on language access in a variety of health settings.

NOTES

- 1 Make the Road New York & New York Lawyers for the Public Interest, *Bad Medicine* (August 2008), available at http://www.nylpi.org/wp-content/uploads/bsk-pdf-manager/106_HEALTH_-_BAD_MEDICINE_-_REPORT_ON_NYC_PHARMACIES.PDF
- 2 American University Washington College of Law and DC Language Access Coalition, *Access Denied* (2012)
- 3 *Alexander v. Sandoval*, 532 U.S. 275 (2001)
- 4 San Francisco Ordinance No. 202-09 (2009), available at: <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances09/o0202-09.pdf>. Given the changing demographics of San Francisco, and the increasing linguistic diversity, the San Francisco ordinance was amended in 2009. The original 2001 law was the first of its kind in the country.
- 5 Oakland Ord. No. 12324 (2001), available at: <http://clerkwebsvr1.oaklandnet.com/attachments/21961.pdf>
- 6 DC Language Access Act, District of Columbia Act 15-414 (2004), available at: http://www.lep.gov/resources/2008_Conference_Materials/DCLanguageAccessActof2004.pdf
- 7 New York City Local Law 73, *Equal Access to Human Services* (2003), available at <http://www.nyc.gov/html/imm/downloads/pdf/ll-73.pdf> and New York City Executive Order 120 (2008), available at http://www.nyc.gov/html/om/pdf/2008/pr282-08_eo_120.pdf
- 8 Press Release, City of Chicago Mayor’s Office (July 19, 2011), available at <http://bit.ly/SWZHjX>
- 9 Language Access in Pharmacies Act, NYC Administrative Code Section 20-620 (2009).
- 10 See, e.g., Language Scientific, a company that provides competent translation and phone interpretation services for both government agencies and medical settings: <http://www.languagescientific.com/>. Language Scientific is only one example of the literally hundreds of companies, including local and MBWE businesses, in this sector: <http://www.common senseadvisory.com>.
- 11 It is important to target policies based on the languages spoken by the LEP population, and not the general population, as there may be sizable populations where a language other than English is spoken at home, but community members also speak English well.

Co-authored by the National Immigration Law Center

