

WVDHHR LIMITED ENGLISH PROFICIENCY LANGUAGE ACCESS PLAN

June 12, 2023

TABLE OF CONTENTS

- I. Limited English Proficient Language Access
- II. Legal Authority
- III. WVDHHR Approach
- IV. WVDHHR Program Assessment
  - a. Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered
  - b. Factor 2: The frequency of contact with LEP individuals
  - c. Factor 3: The nature and importance of the program
  - d. Factor 4: The resources available
- V. LEP Plan
  - a. Identifying LEP Individuals Who Need Language Assistance
  - b. Language Assistance Measures
  - c. Training of WVDHHR Staff
  - d. Providing Notice to LEP Persons
  - e. Monitoring and Updating the LEP Plan
- VI. References: Federal LEP Guidance Documents

## I. Limited English Proficient Language Access

Individuals who have a limited ability to read, write, speak, or understand English are considered limited English proficient (LEP). This document seeks to provide employees at the West Virginia Department of Health and Human Resources (WVDHHR) with resources and a protocol for interacting with identified LEP individuals or communities. It is WVDHHR's policy that when communities need language assistance to meaningfully participate in WVDHHR's programs or events, opportunities for such assistance will be identified and pursued when deemed appropriate through the guidelines of this Plan.

## II. Legal Authority

The WVDHHR is a recipient of financial assistance from multiple federal agencies, including U.S. EPA. As a recipient of federal funding, WVDHHR must comply with applicable provisions of federal civil rights laws and policies prohibiting discrimination including Title VI of the Civil Rights Act of 1964 ("Title VI"). Title VI specifically prohibits recipients from discriminating on the basis of race, color, or national origin. The U.S. Supreme Court held in *Lau v. Nichols*, 414 U.S. 563 (1974), that actions by a federally funded program that have a disproportionate effect on LEP persons are barred by the Title VI prohibition against national origin discrimination. Thus, recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to government services.

Additionally, Executive Order 13166 (August 11, 2000), Improving Access to Services for Persons with Limited English Proficiency, requires each federal agency that provides financial assistance to recipients to develop guidance regarding their obligations under Title VI to provide meaningful access to LEP persons. The U.S. Department of Justice (DOJ) simultaneously issued general guidance (DOJ Guidance) to federal agencies on implementation of the Executive Order. 65 FR 50123 (August 16, 2000). Subsequently, U.S. EPA issued its own guidance (EPA Guidance) to federal funding recipients on the Title VI prohibition against national origin discrimination affecting LEP persons. (69 FR 35602, June 25, 2004)

## III. WVDHHR Approach

In developing this LEP Plan, WVDHHR has generally followed the recommendations provided in the EPA Guidance. The EPA Guidance makes clear that recipients like WVDHHR "have considerable flexibility in determining how to comply with their Title VI legal obligation in the LEP setting." (69 FR 35613). Therefore, WVDHHR has elected to adopt the following two-step framework from the EPA Guidance:

- Step One: Program Assessment
- Step Two: Developing an Effective LEP Plan With the Following Elements:
  - Identifying LEP Individuals Who Need Language Assistance
  - Language Assistance Measures
  - Training Staff
  - Providing Notice to LEP Persons

- Monitoring and Updating the LEP Plan

#### IV. WVDHHR Program Assessment

Title VI and its implementing regulations require federal recipients like WVDHHR to take reasonable steps to ensure meaningful access to agency programs and activities for LEP persons. There is no prescriptive method for accomplishing this goal. Instead, agencies are encouraged to determine the extent of their Title VI LEP obligations by performing an individualized assessment in accordance with a four-factor analysis described in the DOJ Guidance. The ultimate purpose of the assessment is to achieve an appropriate balance of the four factors. The full guidance document can be found at <https://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf>

As set forth below, WVDHHR has performed a preliminary analysis following the four factors presented in the DOJ Guidance.

Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered

The DOJ Guidance indicates that determining reasonable steps for providing meaningful access depends on the number or proportion of people who would be excluded due to language barriers. The greater the number or proportion of LEP persons in an area, the more likely language services are needed. WVDHHR's service area extends across the state of West Virginia, where approximately 2.3% percent of the population speaks a language other than English. Thus, there is reason to expect that LEP persons may be encountered by WVDHHR programs. Information related to site-specific LEP needs may be available from the following sources: WVDHHR employees with experience in the community, local government, community organizations, and census data. These sources may assist in identifying populations for whom additional language services are needed and for which populations translation services would be most beneficial.

Factor 2: The frequency of contact with LEP individuals

According to the DOJ Guidance, the LEP obligations of a recipient such as WVDHHR are greater if there is more frequent contact with LEP individuals when compared to unpredictable or infrequent contact. The EPA Guidance further indicates that the frequency of LEP contact and the resulting need for agency assistance can be assessed on a language-specific basis. In other words, the more frequent contact that WVDHHR has with a particular language group, the more likely that enhanced language services in that language are needed. WVDHHR's interaction with the public encompasses a wide range of programs and activities, from the provision of social services to performing vital public health functions.

In the 2017-18 school year, West Virginia had 2,131 K-12 students identified with Limited English Proficiency. The four counties with student LEP enrollment in the "triple digits" were Berkeley, Jefferson, Kanawha and Cabell; 39 counties identified 10 or fewer students with LEP. The top five languages or language groups spoken by English Language Learners in West Virginia are Spanish, Vietnamese, French, German, and Persian (EPE, 2009). (WVSystemofCare.org)

The frequency of contact with LEP individuals may vary significantly across the WVDHHR programs and the specific locations where they conduct activities. As this Plan is implemented, it will provide WVDHHR programs with more relevant data on this issue.

#### Factor 3: The nature and importance of the program

The EPA Guidance indicates that the need for language services is related to the importance of the action by a recipient like WVDHHR. With this guidance in mind, the need for LEP services could vary significantly, as actions by WVDHHR programs cover a broad spectrum in terms of urgency and potential consequences. As this Plan is implemented, it will provide WVDHHR programs with more relevant data on this issue.

#### Factor 4: The resources available

The DOJ Guidance discusses the potential impact of available agency resources in determining what would constitute reasonable steps to address LEP concerns. In summary, DOJ states that agencies with larger budgets would be expected to provide more language services than those with smaller budgets. In addition, the EPA Guidance states that “reasonable steps” may cease to be reasonable where the costs substantially exceed the benefits. WVDHHR will seek cost-effective options, such as technology-based solutions, to promote effective LEP programs and services.

WVDHHR has already been exploring effective language service options that are appropriate with the agency’s available resources, and will work to improve collaboration with sister agencies and programs to ensure public resources are accessible to all West Virginia residents and guests.

### V. LEP Plan

Based on the four-factor assessment above, WVDHHR has developed an initial plan for implementation of reasonable steps to achieve its LEP goals. WVDHHR anticipates that the plan will be subject to further evaluation and revision over time based on WVDHHR’s actual experience and feedback from the public on this initiative. WVDHHR’s goal is to implement steps based on its best judgment, and then to refine those steps to advance the success of its LEP assistance program. This approach is consistent with the requirements of Title VI. The EPA Guidance states: “While all recipients should work toward building systems that will ensure access for LEP individuals, EPA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated.” 69 FR 35612.

#### a. Identifying LEP Individuals Who Need Language Assistance

The analysis under the first and second factors above provides a preliminary view of individuals who may be eligible for language assistance. Because WVDHHR’s actions and public outreach are often community-based, the identification of LEP individuals will depend on the population in the specific community. Building on its past experience with numerous communities across the state, WVDHHR plans to take reasonable steps to enhance its awareness of the LEP individuals within the potentially-impacted communities. Achieving this often involves coordination between WVDHHR program staff, the WVDHHR Office of Environmental Advocate, and the WVDHHR Non-Discrimination Coordinator. Some of the resources utilized by WVDHHR staff to identify if

a community has potential LEP populations or individuals who need language assistance include: Census and American Community Survey data, interactions with community members and community organizations, and EJ Snapshots or Reports.

b. Language Assistance Measures

The EPA Guidance states that the two principal methods of serving LEP individuals are providing oral and written language services. Oral language services consist of interpretation by listening to something in one language and orally translating it into another language. This may include providing on-site interpreters when a high volume of LEP individuals are in or expected to be in attendance at a significant public event. Written language services consist of translation by replacing written text from one language into equivalent written text in another language. It may range from translation of an entire document to translation of a short descriptive summary of the document.

For significant agency decisions, WVDHHR will determine whether there are LEP communities and individuals who will be affected. If an affected community has a large percentage of LEP individuals, the agency will implement appropriate LEP measures. These measures may include: having a bilingual WVDHHR staff member or translation provider present at public hearings or information sessions, disseminating agency information sheets or public notices in multiple languages, distributing media notices in different languages, or communicating with community organizations and leaders to determine other appropriate measures to reach LEP individuals.

WVDHHR is developing methods for providing language assistance in various ways. Written Spanish translation or interpretation services from WVDHHR bilingual staff are available to WVDHHR programs. WVDHHR also uses third-party translation and interpretation services when appropriate. These services can be tailored to meet community-specific LEP needs that are identified under item 1 above.

WVDHHR staff may be contacted directly by LEP individuals seeking assistance. This may occur through in-person contact, by phone, or by written communication. For the purpose of responding to in-person contact, WVDHHR intends to provide its offices and vehicles with a supply of language assistance flashcards and materials translated into the languages of the five most commonly needed languages (Spanish, Vietnamese, French, German, and Persian). When approached by an LEP person, WVDHHR staff can present the individual with a flashcard to facilitate the choice of the appropriate language. Once the language has been identified, WVDHHR will attempt to provide language assistance on site, using bilingual staff or web-based translation, as well as materials that have already been translated by the agency. If onsite language assistance does not adequately address concerns, contact information will be collected and WVDHHR staff will work offsite to provide appropriate support.

c. Training of DEP Staff

Training will be offered to WVDHHR staff, with particular focus on employees who are likely to encounter LEP individuals. The training will include information about the LEP Plan and the related resources, policies and procedures. Staff who routinely encounter LEP persons will be offered refresher training and the opportunity to provide feedback on the agency's LEP Plan.

d. Providing Notice to LEP Persons

WVDHHR seeks to be proactive and inform LEP individuals that language services are available. WVDHHR will also explore cost effective technological solutions to enhance our website and better reach the LEP population. WVDHHR is also exploring other options for communicating with LEP persons. These options include providing notice of available language assistance services in public announcements, media releases, and communications with community groups. WVDHHR will also seek the support of bilingual staff, as well as online and third-party translation services, when possible.

e. Monitoring and Updating the LEP Plan

WVDHHR intends to periodically review this LEP Plan to determine if language assistance measures and staff training are effective. In accordance with EPA guidance that acknowledges that creating systems to serve LEP individuals is an evolving process, WVDHHR commits to reviewing this plan every 2 years. In evaluating the effectiveness of the Plan and the need for additional measures, WVDHHR will assess the feedback from agency staff and the public, including LEP individuals. WVDHHR may also consider the availability of its own resources, and ways to deliver language services in a more cost effective or impactful way.

References: Federal LEP Guidance Documents

Environmental Protection Agency (EPA): <https://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf>

Department of the Interior (DOI): <https://www.gpo.gov/fdsys/pkg/FR-2003-12-24/pdf/03-31693.pdf>

Department of Commerce (DOC): <https://www.gpo.gov/fdsys/pkg/FR-2003-03-24/pdf/03-6835.pdf>

Department of Justice (DOJ): <https://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf>

Department of Homeland Security (DHS): <https://www.gpo.gov/fdsys/pkg/FR-2011-04-18/pdf/2011-9336.pdf>

Department of Energy (DOE): <https://www.gpo.gov/fdsys/pkg/FR-2004-08-16/pdf/04-18636.pdf>

AMERICAN COMMUNITY SURVEY [https://www.prb.org/wp-content/uploads/2017/04/PRB\\_ARC\\_Chartbook\\_ACS\\_2011-2015\\_FINAL\\_2017-03-1.pdf](https://www.prb.org/wp-content/uploads/2017/04/PRB_ARC_Chartbook_ACS_2011-2015_FINAL_2017-03-1.pdf)

WV System of Care: <https://wvsystemofcare.org/>