

# STATE OF NEW YORK

3502

2017-2018 Regular Sessions

## IN ASSEMBLY

January 27, 2017

Introduced by M. of A. KIM, SEPULVEDA, ROZIC -- Multi-Sponsored by -- M. of A. ABBATE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to requiring state agencies that directly serve the public to enact policies to ensure that people who do not speak English well receive the interpretation and translation services they need in order to access vital government programs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 301 of the executive law is renumbered section 302 and a new section 301 is added to read as follows:

§ 301. Agency language interpretation. 1. Definitions. As used in this section: (a) "Agency covered language" shall mean every non-English language used by a limited English proficient population that constitutes five percent or one thousand individuals, whichever is less, of the population served or encountered, or likely to be served or encountered, by the agency.

(b) "Agency" shall mean any statewide government agency, department, or program that furnishes information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services, or activities, and all political subdivisions and local entities of such statewide government agency, department, or program. Agencies include, but are not limited to: the office for the aging; the office of alcoholism and substance abuse services; the office of attorney general; the office of children and family services; the city university of New York; the department of corrections and community supervision; the office of court administration; the division of criminal justice services; the department of education; the board of elections; department of family assistance; the department of health; the division of housing and community

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 renewal; the division of human rights; the department of financial  
2 services; the department of labor; the metropolitan transportation  
3 authority; the department of motor vehicles; the office of parks, recre-  
4 ation and historic preservation; the port authority of New York and New  
5 Jersey; office for the prevention of domestic violence; office of  
6 probation and correctional alternatives; the division of state police;  
7 the state university of New York; the office of temporary and disability  
8 assistance; and the division of veteran's affairs.

9 (c) "Competent interpretation" shall mean a trans-language rendition  
10 of a spoken message in which the interpreter comprehends the source  
11 language and can speak comprehensively in the target language to convey  
12 the meaning intended in the source language. The interpreter knows rele-  
13 vant terminology and provides accurate interpretations by choosing  
14 equivalent expressions that convey the best matching and meaning to the  
15 source language and captures, to the greatest possible extent, all  
16 nuances intended in the source message.

17 (d) "Competent translation" shall mean a trans-language rendition of a  
18 written message in which the translator comprehends the source language  
19 and can write comprehensively in the target language to convey the mean-  
20 ing intended in the source language. The translator knows relevant  
21 terminology and provides accurate translations by choosing equivalent  
22 expressions that convey the best matching and meaning to the source  
23 language and captures, to the greatest possible extent, all nuances  
24 intended in the source message. Competent translation shall not include  
25 online translation tools such as Google Translate, Yahoo! Babel Fish,  
26 and comparable services.

27 (e) "Language assistance services" shall mean competent interpretation  
28 and translation services.

29 (f) "Limited English proficient individual" or "LEP individual" shall  
30 mean an individual who does not read, write, speak, and/or understand  
31 the English language at a level that permits him or her to communicate  
32 effectively with the agency.

33 (g) "Primary language" shall mean the language in which a limited  
34 English proficient individual prefers to communicate.

35 (h) "Vital documents" shall mean printed and online documents that  
36 provide information necessary to access or participate in services,  
37 programs, and activities of an agency, including but not limited to  
38 applications, corresponding instructional materials, legal contracts,  
39 stipulations, outreach materials, and written notices or letters that  
40 affect or relate to the legal rights or benefits of an individual or the  
41 agency's services, programs or benefits and which are used or intended  
42 to be used for communicating with individuals or the public.

43 2. Interpretation services. (a) Every agency shall provide competent  
44 interpretation at all stages of the LEP individual's interaction with  
45 the agency and at no cost to the LEP individual. Such competent inter-  
46 pretation must be provided promptly but need not be provided in person  
47 or face-to-face in order to meet the requirements of this section.

48 (b) Minor children shall not be used to interpret at any time, except  
49 in an extreme emergency. If minor children are used to interpret, a  
50 record shall be kept of the incident in the individual's case file, if  
51 one exists.

52 (c) The agency is prohibited from requiring that an LEP individual  
53 provide his or her own interpretation services.

54 (d) Use of untrained or informal interpreters such as the family or  
55 friends of an LEP individual shall be actively discouraged. If an LEP  
56 individual chooses to use an informal interpreter after being notified

1 of the availability of free, timely and competent interpretation, he or  
2 she must complete a waiver that is signed by a manager at the agency and  
3 by the LEP individual.

4 3. Language access plan. (a) Each agency shall publish, and update  
5 every two years, with the first plan being developed within one hundred  
6 eighty days of the effective date of this section, a language access  
7 plan that will reflect how the agency will comply with the provisions of  
8 this section and all progress made since the agency last submitted a  
9 language access plan.

10 (b) Each language access plan shall be written in consultation with  
11 the state chief diversity officer, the statewide language access direc-  
12 tor, the agency's language access coordinator, the local subdivisions'  
13 language access coordinators, and the directors that conduct outreach to  
14 limited English proficient populations.

15 (c) Each language access plan shall set forth, at minimum, the follow-  
16 ing:

17 (1) when and by what means the agency will provide language assistance  
18 services and an explanation as to how this determination was reached;

19 (2) the titles of all available translated documents and the corre-  
20 sponding languages into which they have been translated;

21 (3) the number of public contact positions in the agency and the  
22 number of bilingual employees in public contact positions, including the  
23 languages they speak;

24 (4) documentation of the language needs of the population served and  
25 the population eligible to be served by the agency;

26 (5) for agencies that provide individualized programs and services, a  
27 system for tracking the primary language of every individual who seeks  
28 or receives services from the agency;

29 (6) a training plan for agency employees which includes, at minimum,  
30 annual training on the language access policies of the agency and how to  
31 provide language assistance services;

32 (7) a language access coordinator at the agency, who shall be publicly  
33 identified;

34 (8) if outreach is conducted by the agency, a multi-lingual outreach  
35 plan to LEP communities regarding the benefits and services offered by  
36 the agency and the language services provided;

37 (9) a description of the funding and budgetary sources upon which the  
38 agency intends to rely to implement its language access plan;

39 (10) a detailed plan for annual internal monitoring of the agency's  
40 compliance with this order; and

41 (11) an explanation of any areas of current non-compliance, including  
42 complaints received and their disposition, the reasons for non-compli-  
43 ance and steps to be taken to remedy areas of non-compliance, and a  
44 request for approval of expected future non-compliance, to which the  
45 statewide language access director shall respond within sixty days of  
46 the request.

47 (d) At a minimum each agency shall maintain records of all information  
48 necessary to complete and verify the information set forth in the  
49 language access plan.

50 4. Agency's language access coordinator. Each agency shall designate a  
51 language access coordinator, who shall report directly to the director  
52 of the agency. The responsibilities of the agency's language access  
53 coordinator shall include:

54 (a) general oversight of the agency's language access plan;

1 (b) for statewide agencies, oversight, central coordination, and tech-  
2 nical assistance to the agency's political subdivision and local enti-  
3 ties in their implementation of the provisions of this section;

4 (c) ensuring that the provision of language assistance services by the  
5 agency meets acceptable standards of translation or interpretation;

6 (d) procurement of contract language services where appropriate and  
7 management of the relationship with all language service contractors;

8 (e) tracking, monitoring and investigating public complaints regarding  
9 language access services at the agency;

10 (f) overseeing staff training on the language access plan, language  
11 policy, and how to obtain language services for LEP individuals;

12 (g) ensuring that recordkeeping and monitoring requirements of this  
13 section are complied with;

14 (h) compiling, maintaining, and disseminating all translated documents  
15 to be used by other agency entities, including all local offices and  
16 political subdivisions; and

17 (i) overseeing and coordinating the agency's annual internal monitor-  
18 ing, testing and training activities.

19 5. Monitoring and complaints. (a) The agency shall monitor its own  
20 compliance with the requirements of this section by annually collecting  
21 data on the provision of language assistance services, the availability  
22 of translated materials, whether signage is properly posted, and any  
23 other relevant measures. This information and any other collected during  
24 the internal monitoring process shall be made available to the statewide  
25 language access director. The monitoring plan shall include feedback  
26 from the public, community groups and other stakeholders.

27 (b) The agency shall establish a system whereby LEP individuals may  
28 submit complaints to the agency regarding language access services  
29 provision or lack thereof, and all such complaints shall be investigated  
30 by the agency language access coordinator and/or such individuals within  
31 the agency as the language access coordinator shall determine. The agen-  
32 cy must provide all LEP individuals submitting complaints written  
33 notification of the results of any investigations resulting from such  
34 complaints, including a description of the corrective action to be taken  
35 in response to the complaint, if such corrective action is required.

36 6. Good cause. It shall be good cause for an individual's failure to  
37 respond to an agency inquiry or requirement, failure to certify or  
38 re-certify for benefits, failure to attend mandatory appointments or for  
39 an untimely response, if the LEP individual is denied language services  
40 as required under this section.

41 7. Statewide oversight, coordination and assistance. (a) The director  
42 of state operations shall provide oversight, central coordination and  
43 technical assistance to agencies in their implementation of the  
44 provisions of this order and ensure that the provision of services by  
45 agencies meets acceptable standards of translation or interpretation.

46 (b) There shall be a statewide language access director within the  
47 office of the director of state operations, who is charged with over-  
48 sight with all agencies' compliance with the provisions of this section.  
49 The statewide language access director shall:

50 (1) review and monitor each agency's language access plan for compli-  
51 ance with this section and Title VI of the Civil Rights Act of 1964;

52 (2) track and monitor public complaints regarding language access  
53 violations at each agency and, where necessary, issue written findings  
54 of noncompliance to the agency regarding failures to provide language  
55 access;

1     (3) review and monitor the language access coordinators with respect  
2     to their performance of responsibilities under this section; and

3     (4) facilitate sharing of best practices and interagency collaboration  
4     to improve compliance with the provisions of this section.

5     (c) Every agency shall cooperate with the statewide language access  
6     director and shall furnish such information and assistance as the state-  
7     wide language access director determines is reasonably necessary to  
8     fulfill these duties.

9     8. Private right of action; complaints. Individuals shall have a  
10    private right of action to enforce the rights granted under this section  
11    as set forth under subdivisions one through six of this section.

12    § 2. This act shall take effect on the ninetieth day after it shall  
13    have become a law.