STATE OF NEW YORK

2339

2017-2018 Regular Sessions

IN SENATE

January 13, 2017

Introduced by Sen. ALCANTARA -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to ensuring equal access to health and human services for limited English speaking individuals

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

Section 1. Declaration of legislative findings and intent. Title VI of the civil rights act of 1964 provides in pertinent part that "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 assistance." The United States department of justice and the department of health and human services have stated that failure to provide language assistance to limited English speaking individuals seeking assistance in federally funded, state supervised or administered programs amounts to a violation of Title VI by discriminating against such individuals based upon their national origin.

It is and has been the policy of the state of New York to oppose all forms of discrimination, particularly when it relates to the provision of state services, or locally provided services under state supervision. However, the department of health and human services office of civil rights, the office responsible for enforcing Title VI in department of health and human services programs, found that the New York state office of temporary and disability assistance, the New York state department of health, the New York City human resources administration, and the departments of social services in Nassau and Suffolk counties were in violation of Title VI based upon the state and counties' failure to provide interpretation services for limited English proficient individuals. Specifically, the office of civil rights found that limited English proficient clients seeking and/or applying for subsistence benefits such as food stamps and public assistance for children and Medicaid

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

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benefits were routinely unable to access such benefits due to their inability to speak English.

A legislative hearing on immigrant child welfare issues also found that the lack of interpreters in child welfare cases resulted in children in families who were limited English proficient being unnecessarily removed from their parents. In addition, limited English proficient residents of New York have been unable to access unemployment and other services from the department of labor due to the lack of translated materials and interpreters. The New York language barrier elimination act serves a twofold purpose: first, the act will ensure that the state is in compliance with federal law in ensuring access to benefits and opportunities to participate in any program or activity receiving federal assistance; second, and more importantly, the act will ensure that all those in need of health and human services receive them, and that no one attempting to access such services will be discriminated against based upon the language they speak.

§ 2. The executive law is amended by adding a new article 14-A to read as follows:

ARTICLE 14-A

LANGUAGE BARRIER ELIMINATION ACT

Section 275. Short title.
276. Definitions.
277. Agencies.
278. Language assistance services.
279. Notices.
280. Records.
281. Language assistance services required.
282. Screening and training.
283. Miscellaneous.
284. Comptroller audits.
285. Civil cause of action.
286. Limitations.
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288. Severability.

§ 275. Short title. This act shall be known and may be cited as the "language barrier elimination act".

§ 276. Definitions. When used in this article, the following terms shall have the following meanings:

1. "Agency" shall mean those entities, including any part, subdivision, field office or satellite facility, including offices operated by county governments, required to provide language assistance services pursuant to this article.

2. "Agency contractor" shall mean any individual, sole proprietorship, partnership, community based organization, joint venture or corporate entity, including any part, subdivision, field office or satellite facility, which enters into a contract or contracts with an agency to provide agency-related services to the public, and which receives a total of one million dollars or more in payment for such services on an annualized basis pursuant to the terms of such contract or contracts.

3. "Bilingual personnel" shall mean agency or agency contractor employees, excluding participants in work experience programs, who provide language assistance services in addition to their duties.

4. "Contract" shall mean any written agreement, purchase order or instrument whereby the agency is committed to expend or does expend

funds in return for work, labor, services, or any combination of the foregoing.

5. "Documents" shall mean written material, whether electronic or printed, including but not limited to, forms, applications, notices and correspondence, that require a response or affect benefits levels and/or services.

6. "Interpreter personnel" shall mean agency or agency contractor employees whose sole responsibility is to provide language assistance services. Such definition shall not include Work Experience Program participants.

7. "Interpretation services" shall mean oral, contemporaneous interpretation of oral conversations.

8. "Language assistance services" shall mean Level I and Level II language assistance services as defined in this section.

9. "Level I language assistance services" shall mean interpretation services and translation services provided by bilingual personnel or interpreter personnel to limited English proficient individuals that ensures their ability to communicate effectively with agency or agency contractor personnel, access benefits and services, participate equally in all substantive programs and understand documents; provided, however, that such services may not be provided by volunteers, relatives, spouses or domestic partners of an individual in need of such services, or by a client of the agency or agency contractor from which such individual is seeking assistance.

10. "Level II language assistance services" shall mean language assistance services provided to limited English proficient individuals by means other than interpreter personnel or bilingual personnel that ensures their ability to communicate effectively with agency or agency contractor personnel, access benefits and services, participate equally in all substantive programs and understand documents; provided, however, that such services may not be provided by volunteers, relatives, spouses or domestic partners of an individual in need of such services, or by a client of the agency or agency contractor from which such individual is seeking assistance.

11. "Limited English proficient individual" shall mean an individual who identifies as being, or is evidently, unable to speak, read or write the English language at a level that permits him or her to interact effectively with agency or agency contractor personnel.

12. "Primary language" shall mean the language chosen by a limited English proficient individual as the language to be used in communicating with such individual.

13. "Primary language group" shall mean a group of individuals sharing the same primary language.

14. "Translation services" shall mean the translation of written matter either orally or in writing.

§ 277. Agencies. The following entities shall provide language assistance services for services directly provided by such agency and shall be responsible for ensuring that county agencies and agency contractors providing services under state supervision provide language assistance services, as required under this article: the New York state department of family assistance, the New York state department of health, and the New York state department of labor.

§ 278. Language assistance services. 1. Each agency and agency contractor shall provide language assistance services as required under this article free of charge to limited English proficient individuals.

2. Agency contractors shall provide language assistance services as required under this article for programs and/or services offered pursuant to a contract or contracts with an agency.

§ 279. Notices. 1. Upon initial contact, whether by telephone or in person, with an individual seeking benefits and/or services offered by an agency or agency contractor, such agency or agency contractor shall notify such individual of the right to free language assistance services. Immediately following such notification, the agency or agency contractor shall determine the primary language of such individual. Such determination shall be made by asking the individual to indicate his or her primary language. If it is determined that such individual's primary language is not English, then upon such determination the agency or agency contractor shall inform such individual in his or her primary language of the right to free language assistance services.

2. Within one hundred eighty days after the effective date of this article, each agency and agency contractor shall determine the primary language of each individual currently receiving benefits and/or services provided by such agencies and agency contractors. If it is determined that any such individual's primary language is not English, then upon such determination the agency or agency contractor shall inform such individual in his or her primary language of the right to free language assistance services.

3. Each agency and agency contractor shall post conspicuous signs for each primary language group constituting ten percent or more of the individuals eligible to be served or likely to be directly affected by the agency or agency contractor at all agency and agency contractor offices in which services are provided to the public, informing limited English proficient individuals of their right to free language assistance services.

§ 280. Records. Each agency and agency contractor shall maintain a record of the primary language of individuals seeking or receiving agency or agency contractor services. Primary language determinations regarding individuals seeking agency or agency contractor services shall be recorded whether or not such individual actually obtains such services.

§ 281. Language assistance services required. 1. If, on an annual basis, ten percent or more limited English proficient individuals belonging to the same primary language group seek or receive services or benefits at an agency or agency contractor, then such agency or agency contractor shall provide Level I language assistance services immediately in all interactions with a member of such primary language group, whether such interaction is by telephone or in person, and all correspondence from such agency or agency contractor to any member of such primary language group shall be written in such member's primary language.

2. If, on an annual basis, at least two percent but less than ten percent limited English proficient individuals belonging to the same primary language group seek or receive services or benefits at an agency or agency contractor, then such agency or agency contractor shall provide Level I language assistance services within twenty-four hours of a request for such services by a member of such primary language group.

3. If, on an annual basis, fewer than two percent limited English proficient individuals belonging to the same primary language group seek or receive services or benefits at an agency or agency contractor, then such agency or agency contractor shall provide Level I language assistance services or Level II language assistance services within twenty-

four hours of a request for language assistance by a member of such primary language group.

4. During the first ninety days after the effective date of this article, each agency and agency contractor shall determine the number of limited English proficient individuals for each primary language group seeking and/or receiving services from such agency or agency contractor during such period, and shall multiply each such number by four to determine a projected annual number of limited English proficient individuals in need of language assistance services. The result of such calculation shall determine the initial level of language assistance services required under this section. The determination of the level of language assistance services required under this article shall be made annually and based on annual data thereafter.

5. Where an application or form requires completion in English by a limited English proficient individual for submission to a state authority, the agency or agency contractor shall provide oral translation of such application or form as well as certification by the limited English proficient individual that the form was translated and completed by an interpreter.

6. At each office (serving the public) of each agency or agency contractor, there shall be posted conspicuously, in not less than twelve point, bold-faced type, in the appropriate language for each primary language group constituting ten percent or more of the individuals eligible to be served or likely to be directly affected by the agency or agency contractor, the following statement: "IMPORTANT: Documents in this office contain important information about your benefits. We will translate these documents for you free of charge." Following such statement shall be the name, telephone number and address of the agency or agency contractor to contact to request free translation of a document.

§ 282. Screening and training. 1. Before bilingual personnel or interpreter personnel may provide language assistance services, such personnel must be screened by the agency or agency contractor employing such personnel to ensure that they are capable of providing such services effectively. In addition, each agency and agency contractor shall provide annual training for such personnel to ensure that such personnel are providing language assistance services effectively.

2. Each agency or agency contractor providing Level II language assistance services shall ensure that such services are effective.

§ 283. Miscellaneous. 1. Nothing in this section shall preclude an agency or agency contractor from providing language services in addition to those required under this article.

2. Language assistance services required pursuant to this article to be provided by an agency shall be performed by employees of such agency.

3. If an agency contractor enters into an agreement with an entity to provide services to the public that such agency contractor is required to provide under a contract with an agency, then such entity shall be considered an agency contractor for purposes of this article and shall provide language assistance services as required in this article.

4. This article shall not apply to any contract with an agency contractor entered into prior to the effective date of this article, except that renewal, amendment or modification of such contract occurring on or after such effective date shall be subject to the provisions of this article.

§ 284. Comptroller audits. 1. The comptroller shall conduct annual audits of the agencies and agency contractors required to provide language assistance services pursuant to this article. Such audits

shall generally determine the effectiveness of the language assistance services provided by each agency and agency contractor. Specifically, such audits shall include, but not be limited to, the following information: (a) The number of requests for language assistance services, disaggregated by agency and agency contractor, type of language assistance requested and primary language;

(b) The number of limited English proficient individuals served, disaggregated by agency and agency contractor, type of language assistance requested and primary language;

(c) The number of bilingual personnel and the number of interpreter personnel, disaggregated by agency, agency contractor and language translated by such personnel;

(d) The average length of time to provide language assistance services to limited English proficient individuals, disaggregated by agency, agency contractor and primary language;

(e) Whether primary language determinations are properly recorded, disaggregated by agency and agency contractor; and

(f) Whether, as determined through a random sampling of translated documents, documents have been translated properly and in a timely manner and sent to the appropriate party, disaggregated by agency and agency contractor.

2. Whenever possible, the results of such audits shall be verified through direct contact with a statistically significant sample of agency and/or agency contractor clients.

§ 285. Civil cause of action. Except as otherwise provided by law, any person claiming to be injured by the failure of an agency or agency contractor to provide language assistance services as required under this article, shall have a cause of action against such agency or agency contractor in any court of competent jurisdiction for any or all of the following relief:

(a) compensatory and punitive damages;

(b) injunctive and declaratory relief;

(c) attorneys' fees and costs; and

(d) such other relief as a court may deem appropriate.

§ 286. Limitations. A civil action under this article must be commenced within one year after the alleged violation of the requirements of this article. If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this article, or due to infancy as defined in the civil practice law and rules, a person entitled to commence an action under this article is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to one year after the inability to commence the action ceases.

§ 287. Rules. Each agency shall promulgate such rules as are necessary for the purposes of implementing and carrying out the provisions of this article. Such rules shall be applicable to the agency that promulgated the rules as well as to agency contractors associated with such agency.

§ 288. Severability. If any section, subdivision, sentence, clause, phrase or other portion of this article is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.