

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:

1 Section 1. Declaration of legislative findings and intent. Title VI of
2 the civil rights act of 1964 provides in pertinent part that "no person
3 in the United States shall on the ground of race, color or national
4 origin, be excluded from participation in, be denied the benefits of, or
5 be subjected to discrimination under any program or activity receiving
6 federal assistance." The United States department of justice and the
7 department of health and human services have stated that failure to
8 provide language assistance to limited English speaking individuals
9 seeking assistance in federally funded, state supervised or administered
10 programs amounts to a violation of Title VI by discriminating against
11 such individuals based upon their national origin.

12 It is and has been the policy of the state of New York to oppose all
13 forms of discrimination, particularly when it relates to the provision
14 of state services, or locally provided services under state supervision.
15 However, the department of health and human services office of civil
16 rights, the office responsible for enforcing Title VI in department of
17 health and human services programs, found that the New York state office
18 of temporary and disability assistance, the New York state department of
19 health, the New York City human resources administration, and the
20 departments of social services in Nassau and Suffolk counties were in
21 violation of Title VI based upon the state and counties' failure to
22 provide interpretation services for limited English proficient individ-
23 uals. Specifically, the office of civil rights found that limited
24 English proficient clients seeking and/or applying for subsistence bene-
25 fits 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.

287. Rules.

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

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

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

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

11 7. "Interpretation services" shall mean oral, contemporaneous inter-
12 pretation of oral conversations.

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

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

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

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

39 12. "Primary language" shall mean the language chosen by a limited
40 English proficient individual as the language to be used in communicat-
41 ing with such individual.

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

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

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

53 § 278. Language assistance services. 1. Each agency and agency
54 contractor shall provide language assistance services as required under
55 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-

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

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

14 5. Where an application or form requires completion in English by a
15 limited English proficient individual for submission to a state authori-
16 ty, the agency or agency contractor shall provide oral translation of
17 such application or form as well as certification by the limited English
18 proficient individual that the form was translated and completed by an
19 interpreter.

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

30 § 282. Screening and training. 1. Before bilingual personnel or inter-
31 preter personnel may provide language assistance services, such person-
32 nel must be screened by the agency or agency contractor employing such
33 personnel to ensure that they are capable of providing such services
34 effectively. In addition, each agency and agency contractor shall
35 provide annual training for such personnel to ensure that such personnel
36 are providing language assistance services effectively.

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

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

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

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

49 4. This article shall not apply to any contract with an agency
50 contractor entered into prior to the effective date of this article,
51 except that renewal, amendment or modification of such contract occur-
52 ring on or after such effective date shall be subject to the provisions
53 of this article.

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

1 shall generally determine the effectiveness of the language assistance
2 services provided by each agency and agency contractor. Specifically,
3 such audits shall include, but not be limited to, the following informa-
4 tion: (a) The number of requests for language assistance services,
5 disaggregated by agency and agency contractor, type of language assist-
6 ance requested and primary language;

7 (b) The number of limited English proficient individuals served,
8 disaggregated by agency and agency contractor, type of language assist-
9 ance requested and primary language;

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

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

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

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

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

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

31 (a) compensatory and punitive damages;

32 (b) injunctive and declaratory relief;

33 (c) attorneys' fees and costs; and

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

35 § 286. Limitations. A civil action under this article must be
36 commenced within one year after the alleged violation of the require-
37 ments of this article. If, however, due to injury or disability result-
38 ing from an act or acts giving rise to a cause of action under this
39 article, or due to infancy as defined in the civil practice law and
40 rules, a person entitled to commence an action under this article is
41 unable to do so at the time such cause of action accrues, then the time
42 within which the action must be commenced shall be extended to one year
43 after the inability to commence the action ceases.

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

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

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