

**[CHAPTER 321C]**  
**OFFICE OF LANGUAGE ACCESS**

Section

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## Note

Former language access provisions, §§371-31 to 371-37, were repealed by L 2012, c 201, §3.

Multilingual website pilot project (ends June 30, 2017); report to 2017 legislature. L 2013, c 217, §2.

" **[§321C-1] General purpose; purpose of the office of language access.** Many individuals living in Hawaii read, write, speak, and understand English. There are many individuals, however, who are limited English proficient. Language for limited English proficient persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.

The purpose of this chapter is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons. It is the intent of the legislature that these services be guided by Executive Order No. 13166 and succeeding provisions of federal law, regulation, or guidance.

The purpose of the office of language access is to address the language access needs of limited English proficient persons and ensure meaningful access to services, programs, and activities offered by the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies, and all covered entities, for limited English proficient persons. [L 2012, c 201, pt of §2]

" **[§321C-2] Definitions.** As used in this chapter, unless a different meaning clearly appears from the context:

"Access" or "participate" means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

"Covered entity" means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services to the public. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

"Executive director" means the executive director of the office of language access.

"Language" means human speech or the expression of ideas by written characters and includes systems used by nations, people, or other distinct communities.

"Limited English proficient person" means an individual who, on account of national origin, does not speak English as the person's primary language and self identifies as having a limited ability to read, write, speak, or understand the English language.

"Oral language services" means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity.

"Purchase-of-service contract" means any and all types of formal written agreements, regardless of what they may be called, between the State and any person, to purchase or otherwise acquire any service for the purpose of rendering services to the public.

"State" or "state agency" means the executive, legislative, or judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

"Vital documents" means printed documents that provide important information necessary to access or participate in services, programs, and activities of a state agency or covered entity, including but not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

"Written language services" means the free provision of written information necessary to enable limited English proficient persons to access or participate in services, programs, or activities of a state agency or covered entity. [L 2012, c 201, pt of §2]

" **[\$321C-3] Oral and written language services.** (a) Each state agency and all covered entities shall take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons, which will be determined by a totality of circumstances, including the following factors:

- (1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;
- (2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The nature and importance of the services, programs, or activities; and

(4) The resources available to the State or covered entity and the costs.

(b) Subject to subsection (a), each state agency and covered entity shall provide competent, timely oral language services to limited English proficient persons who seek to access services, programs, or activities.

(c) Subject to subsection (a), each state agency and covered entity shall provide written translations of vital documents to limited English proficient persons who seek to access services, programs, or activities, as follows:

(1) Written translations of vital documents for each eligible limited English proficient group that constitutes five per cent or one thousand, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered; or

(2) If there are fewer than fifty persons in a limited English proficient group that reaches the five per cent threshold in paragraph (1), written notice in the primary language to the limited English proficient language group of the right to receive competent oral interpretation of those written materials, free of cost.

(d) To the extent that the State requires additional personnel to provide language services based on the determination set forth in this section, the State shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions. [L 2012, c 201, pt of §2]

" **[§321C-4] Additional obligations.** (a) Each state agency and covered entity shall establish a plan for language access.

(b) Each state agency's plan for language access shall be established in consultation with the executive director and the state agency's coordinator for language access. State agencies receiving federal financial assistance that did not file an initial language access plan pursuant to former section 371-34(b) by July 1, 2007, shall file an initial language access plan with the executive director no later than July 1, 2013, and every two years thereafter. All other state agencies that did not file a language access plan pursuant to former section 371-34(b) by July 1, 2008, shall file a language access plan with the executive director no later than July 1, 2014, and every two years thereafter. Agencies that filed initial language access plans pursuant to former section 371-34(b) by July 1, 2007, and July 1, 2008, shall continue to file their plans with the executive director every two years thereafter.

(c) Each state agency shall designate a language access coordinator who shall establish and implement the plan for

language access in consultation with the executive director and the language access advisory council. [L 2012, c 201, pt of §2]

#### **Note**

Section 371-34, referred to in subsection (b), is repealed.

" **[§321C-5] Public meetings and public hearings.** (a) State agencies to which this chapter applies shall not be required to translate meeting notices, agendas, or minutes.

(b) Subject to section 321C-3, oral language services for public meetings or public hearings held by the legislature shall be provided if requested at least forty-eight hours in advance of the meeting or hearing. When the notice of any public meeting or public hearing is posted less than forty-eight hours in advance of the meeting or hearing, oral language services shall be provided if requested at least twenty-four hours in advance of the meeting or hearing. [L 2012, c 201, pt of §2]

" **§321C-6 Office of language access; established.** There is established within the department of health, for administrative purposes only, the office of language access. The head of the office shall be known as the executive director of the office of language access. The executive director shall be appointed by the governor without regard to chapter 76. The executive director shall:

- (1) Provide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements under this chapter or under any other law, regulation, or guidance;
- (2) Provide technical assistance to covered entities in their implementation of this chapter;
- (3) Review and monitor each state agency's language access plan for compliance with this chapter;
- (4) Where reasonable access is not provided, endeavor to eliminate the language access barrier using informal methods, including conference, conciliation, mediation, or persuasion. Where the language access barrier cannot be eliminated by informal methods, the executive director shall submit a written report with the executive director's opinion and recommendation to the state agency or the covered entity. The executive director may request the state agency or the covered entity to notify the executive director, within a specified time, of any action taken on the executive director's recommendation;

- (5) Consult with language access coordinators, the language access advisory council, and state department directors or their equivalent;
- (6) Subject to section 321C-3, create, distribute to the State, and make available to covered entities, multilingual signage in the more frequently encountered languages in the State, and other languages as needed, informing individuals of their right to free oral language services and inviting them to identify themselves as persons needing services;
- (7) Adopt rules pursuant to chapter 91 to address the language needs of limited English proficient persons;
- (8) Administer a statewide language access resource center that shall:
  - (A) Maintain a publicly available roster of language interpreters and translators, listing their qualifications and credentials based upon guidelines established by the office of language access in consultation with the language access advisory council;
  - (B) Train state and state-funded agencies on how to effectively obtain and utilize the services of language interpreters and translators;
  - (C) Support the recruitment and retention of language interpreters and translators providing services to state and state-funded agencies;
  - (D) Provide, coordinate, and publicize training opportunities to increase the number and availability of qualified language interpreters and translators and further develop their language interpretation and translation skills; and
  - (E) Work toward identifying or creating a process to test and certify language interpreters and translators and promote use of the process to ensure the quality and accuracy of the language interpretation and translation services; and
- (9) Have the authority to hire personnel necessary to staff the statewide language access resource center and to administer its multilingual website. The staff, at a minimum, shall consist of one full-time project coordinator, three full-time program specialists, and one full-time clerk. To the extent possible, the executive director shall hire bilingual personnel to staff the statewide language access resource center and to administer its website. [L 2012, c 201, pt of §2; am L 2013, c 217, §3, pt of §4]

### **Note**

Multilingual website pilot project (ends June 30, 2017); report to 2017 legislature. L 2013, c 217, §2.

### **Revision Note**

L 2013, c 217, pt of §4 was codified to this section as paragraph (9) pursuant to §23G-15.

" **[\$321C-7] Language access advisory council.** (a) There is established the language access advisory council, which shall be placed within the department of health for administrative purposes only. The council shall consist of the following members to be appointed by the governor:

- (1) One representative from the state government;
- (2) One representative from a covered entity;
- (3) One bilingual worker who is or has been employed by a state-funded immigrant service agency or program;
- (4) One representative of an advocacy organization that provides services to limited English proficient persons;
- (5) One member from the limited English proficient population who has an interest in the provision of oral language services;
- (6) One representative from an accredited institution of higher learning who provides professional training in interpretation and translation;
- (7) One representative of a Hawaiian language advocacy organization;
- (8) One representative of a professional interpreter's organization;
- (9) One representative of a bilingual referral service or program;
- (10) One representative residing in the county of Hawaii who has shown interest in language access;
- (11) One representative residing in the county of Kauai who has shown interest in language access;
- (12) One representative residing in the county of Maui who has shown interest in language access;
- (13) One representative residing in the city and county of Honolulu who has shown interest in language access;
- (14) One member-at-large;
- (15) The executive director of the Hawaii civil rights commission or authorized representative, as an ex officio member;

(16) One representative from the disability and communication access board, as an ex officio member; and

(17) The executive director, as an ex officio member.

(b) Members shall be appointed in accordance with section 26-34. The terms of the members shall be for four years. The council shall select one of its members to serve as chair. No member of the council shall receive any compensation for council services, but shall be allowed necessary expenses for travel, board, and lodging incurred in the performance of council duties.

(c) The language access advisory council shall serve in an advisory capacity to the executive director, providing input on:

(1) Implementation and compliance with this chapter;

(2) The quality of oral and written language services provided under this chapter; and

(3) The adequacy of a state agency or covered entity's dissemination and training of its employees likely to have contact with limited English proficient persons, its policies and procedures for language services, its competency in working effectively with in-person and telephone interpreters, and its understanding of the dynamics of interpretation between clients, providers, and interpreters. [L 2012, c 201, pt of §2]