

Handout #1 - Participant Session Outline

WELCOME!

Team TSI Language Assistance Services For Limited English Proficiency (LEP) Individuals

W. H. Heaton



© Team TSI Corporation

1

Your Team Today..

Hugh Heaton Reg. In-As-Fish, LLC training@teamtsi.com Direct Line: (256) 878-2121	Greg Seiple, RN Vice President - Informatics training@teamtsi.com Direct Line: (256) 878-2121
Pat Newberry PT, MBA, BAC-CT Vice President - Clinical Services training@teamtsi.com Direct Line: (256) 878-2121	Jill Peugh RN, DNS-CT, RMC-CT Director of Clinical Analytics training@teamtsi.com Direct Line: (256) 878-2121
Q & A - Dahlia Kroth training@teamtsi.com (256) 878-2121	Q&A - Kelsea Little training@teamtsi.com (256) 878-2121

CONFIDENTIAL

© Team TSI Corporation 2

2

Session Objectives

Upon completion of this training session, you should be able to:

- Discuss the **final rule** governing Language Assistance Services to LEP individuals;
- Determine **entities** that are **required** to provide LEP services;
- Define **LEP**;
- Discuss the **four factors** that determines the **extent** of the facility's **obligations** to provide LEP services;
- Identify the **two predominant ways** to provide languages assistance services;
- Discuss the **use of interpreters** and **translation of vital** documents;
- Describe the **use of Safe Harbor** to support **compliance** with LEP requirements; and
- Discuss the **purpose** and **use of Notices** and **Taglines**.



CONFIDENTIAL

© Team TSI Corporation 3

3

Introduction

- On **June 19, 2020**, the U.S. Department of Health and Human Services (HHS) published its **final** rule implementing Section 1557 of the Affordable Care Act (ACA). The final rule became **effective** August 18, 2020.
- **Section 1557** prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. The final rule:
 - Protects individuals with Disabilities;
 - Protects individuals with Limited English Proficiency; and
 - Requires Assurances of Compliance.



CONFIDENTIAL

© Team TSI Corporation 4

4

Who is Covered?

- **Entities** that **receive** Federal financial assistance, such as Medicare Parts **A, C, and D**, must take **reasonable** steps to provide meaningful access to their programs by persons **with** limited English proficiency (LEP).
- Eligible LEP individuals **must** be able to **access** the **full** spectrum of services **provided** by the facility.
- The facility's language assistance services program should be **tailored** to the individual organization and should **include** written policies and procedures that outlines **how** the facility will provide services to individuals who are non-English speaking or have limited English proficiency (LEP).



CONFIDENTIAL

© Team TSI Corporation 5

5

What Is LEP?

- Individuals who do **not** speak English as their **primary** language and who have a **limited** ability to read, speak, write, or understand English can be **Limited English Proficient**, or "**LEP**."
- These individuals **may** be entitled to language assistance with respect to a particular type of service, benefit, or encounter.
- The **2010** census shows that **37.5** million individuals spoke **Spanish**, **10.3 million** spoke an **Other Indo-European** language and **8.3 million** individuals speak an **Asian or Pacific Island** language at home.
- If these individuals have a **limited** ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."



CONFIDENTIAL

© Team TSI Corporation 6

6

Getting Started

- Facilities are required to take **reasonable** steps to ensure **meaningful** access to federally funded programs and resources by Limited English Proficient (LEP) persons.
- This "**reasonableness**" standard is intended to be flexible and fact-dependent.
- It is also intended to balance the need to ensure meaningful access by LEP persons to **critical** services while **not** imposing **undue** financial burdens on the facility.
- While designed to be a **flexible** and **fact-dependent standard**, the **starting point** is an **individualized assessment** that balances **four factors**.



CONFIDENTIAL

© Team TSI Corporation 7

7

Factor #1

Determine the **number** or **proportion** of LEP persons eligible to be served or likely to be encountered by the services provided by the facility.

- One factor in determining what language services the facility should provide, if any, is the number or proportion of LEP persons from a particular language group served or encountered in your service area.
- The **greater** the number or proportion of these LEP persons, the **more likely** language services are needed.
- The **focus** of the analysis is on the **lack** of English proficiency, **not** the **ability** to speak more than one language.



CONFIDENTIAL

© Team TSI Corporation 8

8

Factor #1 - Continued

When conducting the analysis:

- Examine your **prior** experience with **LEP** encounters.
- **Identify** the **breadth** and **scope** of language services that were needed.
- **Identify** and **include** language **minority** populations that are eligible for program services or activities but may be under-served **because** of **existing** language barriers.



CONFIDENTIAL

© Team TSI Corporation 9

9

Factor #1 - Continued

- **Collect** and **analyze** these **additional data** to refine or validate your prior experience:
 - Latest **census data** for the area you serve;
 - Data from **school** systems;
 - Data from **community** or **religious organizations** that serve LEP individuals;
 - **lep.gov**; and
 - Data from **local** and **state** governments.

TEAM TSI
CONFIDENTIAL © Team TSI Corporation 10

10

Factor #2

Determine the frequency with which LEP persons come in contact with your services or programs.

- Assess, as accurately as possible, the **frequency** with which you have, or the potential to have, contact with LEP individuals from **different** language groups seeking assistance.
- Consider the **frequency** of **different types** of language contacts.
- The steps that are **reasonable** for a facility that serves an LEP individuals on a **limited basis** will be very **different** than those **expected** from a facility that serves LEP persons **daily** or **weekly**.

TEAM TSI
CONFIDENTIAL © Team TSI Corporation 11

11

Factor #2 - Continued

- The **more frequent the contact** with a particular language the more likely enhanced language services in that language are needed. Consider the **frequency** of different types of language contacts.
- **Frequent contact** with LEP individuals may indicate a special need for language assistance.
- **Less frequent contact** with different language groups may suggest different and less intensified language assistance services.

TEAM TSI
CONFIDENTIAL © Team TSI Corporation 12

12

Factor #3

Determine the **nature** and **importance** of the program, activity, or service provided by the facility to LEP persons.

- The **more important** the facility's activity, information, service, or program, or the **greater** the possible **consequences** of the contact to the LEP individuals, the **more likely** language services are needed.
- Determine whether **denial** or **delay** of access to services or information **could** have **serious** implications to the LEP individual.



CONFIDENTIAL

© Team TSI Corporation 13

13

Factor #3 - Continued

- The facility should **consider** the **importance** and **urgency** of its programs, activities, or services.
- If the service is **both important** and **urgent** the **more likely** that **immediate** language services **are needed**.
- **For example:**
 - Communication of critical information concerning an admission.
 - A discharge to the hospital.
 - A significant change in medical conditions or treatments.
 - The obtaining of informed consent to permit a procedure, etc.



CONFIDENTIAL

© Team TSI Corporation 14

14

Factor #3 - Continued

- If the service is **important**, but **not urgent**, it is **more likely** that language services **are** needed, **but** that such services **can** be **delayed** for a **reasonable** period of time in order to obtain an interpreter or provide translation of a document.
- These **types** of **situations** may include activities such as the communication of information about administrative matters, or communication of information regarding admission to the hospital for tests where **delay** would **not** affect the resident's health.
- If an activity is **neither** important **nor** urgent, such as a tour of the facility, request for admission information, etc., it is **more likely** that language services would **not** be needed.



CONFIDENTIAL

© Team TSI Corporation 15

15

Factor #4

Determine the **resources** available to you and the **costs**.

- The facility's level of resources **available**, and the **costs** imposed, **may** have an **impact** on the nature of the steps that should be taken.
- "**Reasonable steps**" may **cease** to be **reasonable** where the **costs** imposed **substantially exceed** the benefits.
- The facility must **carefully** explore the most cost-effective means of **delivering** competent and accurate language services **before** limiting services due to resource concerns.



CONFIDENTIAL

© Team TSI Corporation 16

16

Factor #4 - Continued

- **Services to consider in reducing the facility's use of its resources and costs include, but are not limited to:**
 - **Utilizing** advances in technology;
 - **Sharing** language assistance materials and services among and between other facilities, advocacy groups, telephone and video interpretation services, etc.;
 - **Training** bilingual staff to act as interpreters and translators;
 - **Pooling** resources and standardizing documents to reduce translation needs; and
 - **Using** qualified community volunteers.



CONFIDENTIAL

© Team TSI Corporation 17

17

Ways to Provide Language Services

There are **two predominant** ways to **provide** language services:

- **Oral Interpretation** and
- **Written Translation.**
- The facility must provide **competent** interpreters in a **timely** manner.
- One clear guide for **timeliness** is that the facility must provide language assistance at a **time** and **place** that does **not** cause a **denial, delay**, or the **imposition** of an undue burden in the **receipt** of **important** rights, benefits, or services to the LEP individual.



CONFIDENTIAL

© Team TSI Corporation 18

18

Using Interpreters

- **Interpreters provide verbal interpretation and may be:**
 - Dedicated staff interpreters.
 - Contracted interpreters.
 - Qualified bilingual staff.
 - Telephonic or Video-Remote Interpreters.
 - Community Volunteers.
- **Bilingual family members** often are **not** well equipped to interpret, and their use is **highly discouraged**.
- The use of a **minor child** is **not** permitted **unless** it is an emergency involving imminent threat to the safety or well-being of the individual and there is **no qualified interpreter immediately available**.

TEAM TSI
CONFIDENTIAL © Team TSI Corporation 19

19

Written Translation

- **Translation** is the **replacement** of a **written text** from one language (the **source** language) into an **equivalent** written text in **another** language (the **target** language).
- The facility should **identify** which documents are "**vital**" documents, or those that "contain information that is **critical** for obtaining services they seek."
- Whether or not a document is "vital" **may depend** upon the **importance** of the program, information, encounter, or service involved, **and** the **consequence** to the LEP person if the information in question is **not** provided accurately or in a timely manner.
- It is **important** to that documents are **translated accurately** to ensure that the LEP individual can understand the content.

TEAM TSI
CONFIDENTIAL © Team TSI Corporation 20

20

Written Translation – cont'd

Vital documents may include, but are not limited to:

- Admission forms;
- Consent forms;
- Complaint/Grievance forms;
- Financial Payment Policies;
- Rights and Responsibilities;
- Medical and treatment instructions;
- Discharge summaries; and
- Advance Directives.

TEAM TSI
CONFIDENTIAL © Team TSI Corporation 21

21

Safe Harbor

The following actions will be considered strong evidence of compliance with the facility's written-translation obligations:

- The facility provides **written translations** of **vital** documents for each eligible LEP language group that constitutes **five percent or 1,000**, whichever is **less**, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- If there are **fewer than 50 persons** in a language group that reaches the **five percent trigger**, the facility does **not** translate **vital** written materials **but** provides **written notice** in the **primary** language of the LEP language group of the right to receive competent **oral interpretation** of those **written** materials, free of cost.



CONFIDENTIAL

© Team TSI Corporation 22

22

Safe Harbor – cont'd

- **Safe harbor** provisions apply **ONLY** to the **translation** of **written** documents.
- Safe Harbor does **not** affect the **requirement** to provide **meaningful** access to LEP individuals through competent **oral interpreters** where an application of the **four factor test** leads to the determination that **oral** language services **are** needed and **are** reasonable.
- **Oral** interpretation of documents may **not** substitute for **translation** of **vital** written documents. **For example**, **oral** interpretation of the resident's rights and responsibilities may **not** substitute for a written **translation** of a document containing the rights and responsibilities and the consequences of violating such rights or responsibilities.



CONFIDENTIAL

© Team TSI Corporation 23

23

Identifying LEP Individuals Who Need Language Assistance

The first **two factors** of the four-factor analysis **require** an **assessment** of the **number or proportion** of LEP individuals eligible to be served or encountered **and** the **frequency** of the encounters. This requires the facility to identify LEP persons with whom you have contact.

- **Consider** using "**Language Communication Cards**" or "**I Speak Cards**" which invite the LEP person to **identify** his or her language needs to staff.
- **If available**, use language information in **records** of past interactions with residents, representatives, family members, and members of the public.
- **Consider** posting notices in **commonly encountered** languages notifying LEP persons of the availability of language services.



CONFIDENTIAL

© Team TSI Corporation 24

24

Identifying Language Assistance Measures

An **effective LEP policy** includes information about the ways in which language assistance will be provided.

When **identifying** language assistance measures, the following information should be considered:

- The types of language services available;
- How staff can obtain those services;
- How to respond to LEP callers;
- How to respond to written communications from LEP persons;
- How to respond to LEP individuals who have in-person contact with your staff; and
- How to ensure competency of interpreters and translation services.



CONFIDENTIAL

© Team TSI Corporation 25

25

Identifying Staff Training to be Provided

It is the **responsibility** of the facility to **ensure** that staff know their obligations to **provide** meaningful **access** to information and services for LEP residents, their representative, family members, and potential residents.

The facility's **training program** should ensure that:

- **Staff** know about LEP policies and procedures; and
- **Staff** that have **contact** with the public, residents, resident representative, family members, etc., **are** trained to work effectively with in-person and telephone interpreters.



CONFIDENTIAL

© Team TSI Corporation 26

26

Notices

Once a **determination** has been made on the language services that will be **provided**, the facility should consider:

- Posting signs in appropriate languages in lobbies, admission and business offices, bulletin boards, dining and activity rooms, etc., that language services are available free of charge.
- Stating in documents such as brochures, booklets, websites, and other facility marketing information that language services are available.
- Using a telephone voice mail menu in the most common languages encountered.
- Including notices in local newspapers in languages other than English.



CONFIDENTIAL

© Team TSI Corporation 27

27

Taglines

- Another way to provide notices is through the use of "taglines" on printed and electronic materials, as well as on the Home Page of your website.
- **Taglines** are designed to **inform** individuals with limited English proficiency (LEP) about the availability of language assistance services your facility provides.
- **Tagline Example Written in Spanish:**
- **ATENCIÓN:** si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-555-555-1234 (TTY: 771).
If you speak Spanish, language assistance services are available free of charge. Call 555-555-1234 (TTY: 771) for assistance.



CONFIDENTIAL

© Team TSI Corporation 28

28

Monitoring and Updating Your LEP Plan

- The facility should have a **process** for determining, on an **ongoing** basis, whether **new** documents, programs, services, and activities need to be made accessible for LEP individuals.
- When **changes** in services **occur**, the facility may want to provide **notice** of these changes to LEP individuals and employees.
- Also **ensure** that:
 - Complaint/Grievance **procedures** are in place; and
 - A QAPI/QAA **monitoring** process has been developed.



CONFIDENTIAL

© Team TSI Corporation 29

29

Question and Answer Session



CONFIDENTIAL

© Team TSI Corporation 30

30
