



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office for  
Civil Rights

SEP 13 1994

Region 1  
Room 1875  
John F. Kennedy Federal Bldg.  
Government Center  
Boston, MA 02203

Ms. Melanie Malherbe  
Greater Boston Legal Services  
68 Essex Street  
Boston, Massachusetts 02111

Re: Complaints Nos. 01-92-3034  
to 01-92-3043, 01-92-3045, 01-  
93-3067 to 01-93-3069

Dear Ms. Malherbe:

Enclosed please find an executed copy of the Resolution Agreement resolving the above-referenced complaints concerning services to persons with limited English proficiency (LEP). OCR will monitor the steps to be taken by the Department of Public Welfare (DPW) pursuant to the Agreement. Subject to such monitoring, OCR has closed the complaints and will take no further action.

During the negotiations with DPW and representatives from the Division of Medical Assistance (DMA), it was agreed that a separate Resolution Agreement would be developed between OCR and DMA to address the LEP issues unique to DMA's operations. Therefore, OCR has assigned a new docket number to identify the issues relating to DMA. In all future correspondence concerning this matter, OCR will use Complaint No. 01-94-3111 - Greater Boston Legal Services v. Massachusetts Division of Medical Assistance.

Please be advised that, under the Freedom of Information Act, it may be necessary for OCR to release this letter and related documents in response to appropriate public inquiries. In the event we receive such a request, we will make every effort to protect information which identifies individuals or which, if released, would constitute an unwarranted invasion of an individual's privacy.

If you have any further questions, please contact Ms. Deborah M. Coppa, Equal Opportunity Specialist, or Ms. Linda Yuu Connor, Branch Chief, at (617) 565-1340 (voice) or (617) 565-1343 (TDD).

Sincerely,

*Caroline J. Chang*  
Caroline J. Chang  
Regional Manager  
Office for Civil Rights  
Region I

Enclosure

RESOLUTION AGREEMENT

between

the

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE FOR CIVIL RIGHTS  
REGION I

and

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF PUBLIC WELFARE

Complaint Nos. 01-92-3034 through 01-92-3043,  
01-92-3045 and 01-93-3067 through 01-93-3069

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SECTION I. BACKGROUND

1. THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF PUBLIC WELFARE ("the STATE AGENCY"), is a department of State government administering public assistance programs for needy persons that receive Federal financial assistance administered by the U.S. Department of Health and Human Services ("HHS"). The HHS assistance received by the Department in FY 1993 included payments under Title IV-A of the Social Security Act (Aid to Families with Dependent Children) (42 U.S.C. §601 et seq.), Title IV-F of the Social Security Act (Job Opportunities and Basic Skills Training Program) (42 U.S.C. §681 et seq.), Title XIX of the Social Security Act (Medicaid) (42 U.S.C. §1396), Title IV of the Immigration and Nationality Act (5 U.S.C. §1521 et seq.) (through the State's Office for Refugees and Immigrants), and the Child Care and Development Block Grant Act of 1990 (42 U.S.C. §9858 et seq.) (through the State's Executive Office of Human Services). The State's Division of Medical Assistance succeeded to the Department's responsibilities as a recipient of Title XIX (Medicaid) funds on July 18, 1993.

2. By reason of its receipt of Federal financial assistance, all of the STATE AGENCY's operations are subject to Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d et seq.) ("Title VI"), and the STATE AGENCY must comply with the Title VI regulations of the Federal agencies extending such assistance, including the HHS regulations at 45 C.F.R. Part 80, which prohibit recipients of HHS assistance from pursuing policies or methods of administration with the intent or effect of discriminating against any individual on grounds of race, color, or national origin.

3. On December 4, 1991 and April 30, 1993, the HHS Office for Civil Rights ("OCR") received complaints (Nos. 01-92-3034 through 01-92-3043, 01-92-3045 and 01-93-3067 through 01-93-3069) alleging that the STATE AGENCY's policies and practices regarding beneficiaries and prospective beneficiaries of its programs who have limited English proficiency ("LEP persons") had the effect of discriminating against such persons on grounds of national origin, in violation of Title VI and 45 C.F.R. Part 80. OCR accepted the complaints for investigation and made on-site visits to the STATE AGENCY's facilities on various dates during 1992 and 1993.

4. During its investigation, OCR informally advised the STATE AGENCY that it had obtained evidence indicating probable violations of Title VI and 45 C.F.R. §80.3(b)(1)(ii), (iv) and (v) and §80.3(b)(2), including instances of:

- (a) signs posted in at least two of the STATE AGENCY's offices indicating that LEP person were expected to bring interpreters with them when seeking benefits;

(b) the STATE AGENCY's use of printed forms stating that applicants or beneficiaries may appear at fair hearings with an interpreter "at their own expense", despite 106 CMR 343.000, requiring them to provide interpreters for persons who need them at fair hearings;

(c) staff instructing individual LEP applicants and beneficiaries, orally and in writing, to bring their own interpreters to the STATE AGENCY's service offices;

(d) the STATE AGENCY's obtaining, and acting upon, inaccurate information about LEP persons' eligibility for benefits and services because English-speaking staff tried to "muddle through" situations where an interpreter was needed, but not provided;

(e) staff burdening community agencies or organizations that provide other health and social services to LEP persons with requests for their personnel to act as interpreters in the STATE AGENCY's offices, without having contracted or otherwise arranged in advance for them to provide interpreter services;

(f) staff regarding the obligation to provide interpreters for LEP persons as limited to fair hearings held by the Division of Hearings and inapplicable to communication with LEP persons in the STATE AGENCY's service offices; and

(g) employees and representatives of health and human service providers, community agencies, and LEP persons stating, based on their experience, that the STATE AGENCY did not communicate effectively with LEP persons, and needed clearer LEP policies and procedures, additional bilingual staff, interpreter resources and translated materials to do so.

5. OCR acknowledges that the STATE AGENCY, prior to the filing of these complaints, and in the course of OCR's investigation, had voluntarily taken important steps to enhance its ability to communicate with LEP persons. When advised that OCR considered further action necessary to resolve these complaints, the STATE AGENCY expressed the desire to reach agreement with OCR on further steps it would take to be in voluntary compliance with Title VI and 45 C.F.R. Part 80. The STATE AGENCY's willingness to enter into a voluntary agreement is not to be construed as an admission that it has not complied with the provisions of Title VI or 45 C.F.R. Part 80, nor as evidence of such non-compliance.

6. In reliance on the promises made by the STATE AGENCY in this Agreement, OCR agrees to suspend further administrative action on the allegations and/or issues in the present outstanding complaint investigations subject to the STATE AGENCY's continued performance of its obligations under this Agreement.

## SECTION II. GENERAL PROVISIONS

1. Effective Date and Duration of Agreement. This Agreement shall become effective on the date it is executed by OCR (see the SIGNATURE page), following its execution by the STATE AGENCY. The Agreement will remain in effect as long as the STATE AGENCY continues to receive Federal financial assistance from HHS, or there is a change in applicable law.

2. STATE AGENCY's Continuing Obligations. Nothing in this Agreement is intended to relieve the STATE AGENCY of its obligations to comply with any and all provisions of applicable nondiscrimination statutes and implementing regulations, whether or not specifically referenced in the Agreement.

3. Effect On Other Compliance Matters. This Agreement resolves only Complaint Nos. 01-92-3034 through 01-92-3043, inclusive, Complaint No. 01-92-3045, and Complaint Nos. 01-93-3067 through 01-93-3069, inclusive, against the STATE AGENCY. This Agreement does not affect the status of such numbered complaints vis-a-vis the Commonwealth of Massachusetts Division of Medical Assistance, the STATE AGENCY's successor as recipient of HHS assistance under Title XIX of the Social Security Act (Medicaid) (42 U.S.C. §1396 et seq.). Nor does this Agreement affect any other issues, compliance reviews, or complaint investigations involving the STATE AGENCY that are pending before OCR or any other Federal agency regarding its compliance with applicable statutes or regulations enforced by OCR or another agency. This Agreement also does not preclude further OCR complaint investigations or compliance reviews of the STATE AGENCY. Any compliance matters arising subsequent to this Agreement shall be addressed and resolved separately in accordance with the procedures and standards in the regulations applicable to such matters.

4. Prohibition Against Retaliation And Intimidation. The STATE AGENCY agrees that it shall not intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, testified, assisted, or participated in any manner in the investigation of the matter addressed in this Agreement.

5. OCR's Review of STATE AGENCY's Compliance with Agreement. OCR may, at any time, review the STATE AGENCY's compliance with this

greement. As part of such a review OCR may require the STATE AGENCY to provide written reports, and to permit OCR to inspect their premises, interview witnesses, and examine and copy documents to determine if the STATE AGENCY is complying with the provisions of this Agreement. The STATE AGENCY agrees to retain the records required by OCR to assess their compliance with the agreement and to submit reports to OCR as requested.

6. Enforcement Of Compliance With Agreement. If at any time OCR determines that the STATE AGENCY has failed to comply with any provision of this Agreement, OCR will notify the STATE AGENCY in writing. The notice shall include a statement of the basis for OCR's decision, and will allow the STATE AGENCY 15 days to explain in writing the reasons for its actions. The time frame allowed for the response may be less than 15 days whenever OCR determines that a delay would result in irreparable injury to the COMPLAINANT or to other affected parties. If the STATE AGENCY does not respond to the notice, or if, upon review of the response, OCR finds that the STATE AGENCY has not complied with any provision of this Agreement, OCR may request the initiation of administrative or judicial enforcement proceedings, including a court action filed by the Attorney General of the United States seeking specific performance of the provisions of this Agreement, or take other appropriate action to secure compliance with the applicable statute or regulation. Evidence regarding the STATE AGENCY's alleged violation of the applicable statute or regulation, in addition to evidence regarding its alleged violation of this Agreement, may be introduced by OCR in any enforcement proceedings or other appropriate action that may be initiated.

7. Modification Of This Agreement. This agreement may be modified by mutual agreement of the parties in writing.

8. Publication Or Release Of This Agreement. OCR shall place no restriction on the release or publication of the terms of this Agreement. In addition, OCR may be required to release this Agreement, and all related materials, to any person upon request consistent with the requirements of the Freedom of Information Act, 5 U.S.C. 552, and its implementing regulation, 45 C.F.R. Part 5.

### SECTION III. SPECIFIC PROVISIONS

1. The STATE AGENCY recognizes the special needs and concerns of persons who are members of minority national origin groups and have limited English proficiency ("LEP persons") and commits itself to overcoming language barriers that deprive LEP persons of equal access to, or an equal opportunity to participate in, the STATE AGENCY's programs. To that end, the STATE AGENCY shall have in

place policies and procedures, combining use of bilingual staff, interpreter services, and translated materials, that enable effective communication with LEP persons, in their primary languages, in the STATE AGENCY's programs and activities, during all hours of their operation, throughout the Commonwealth. The STATE AGENCY is committed to continue evaluation and improvement of these policies and procedures, at all levels, in consultation with service office staff, LEP persons, and community groups and their representatives and existing advisory councils. The following provisions detail specific actions to be taken by the STATE AGENCY.

2. The STATE AGENCY has already adopted regulations, at 106 CMR 343.160 and 106 CMR 343.450, under which it provides interpreters for persons with disabilities (e.g. deaf or hearing-impaired persons needing sign language interpreters) and persons who are not fluent in English, at fair hearings. Within one year after this Agreement becomes effective, the STATE AGENCY shall further amend its regulations to clarify that the right of such persons to interpreters provided by the STATE AGENCY is not limited to the context of fair hearings, but applies in all of the STATE AGENCY's operations. Under the amended regulations, the STATE shall furnish an interpreter, when one is needed, unless the LEP person prefers to bring his or her own interpreter. The STATE AGENCY shall submit a draft of such amended regulations to OCR, for review and comment, within 60 days after this Agreement becomes effective.

3. The STATE AGENCY recently posted, and shall maintain, signs in their offices inviting applicants and beneficiaries to identify themselves as LEP persons needing interpreter services (e.g. the Department of Public Welfare poster attached as Exhibit A to this Agreement).

4. The STATE AGENCY shall ascertain the primary language of each prospective beneficiary at the earliest opportunity, by means including, but not limited to, the STATE AGENCY's "I speak" card. The current card allows LEP persons to identify themselves as speaking English, Spanish, Chinese, Cambodian, Laotian, Vietnamese, Haitian Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-Cyrillic or Amharic. The STATE AGENCY may change the languages on the card to ensure that it includes all languages spoken by 100 or more client households. The STATE AGENCY shall record each prospective beneficiary's primary language and shall maintain a computerized recordkeeping system from which such language data is readily retrievable.

5. The STATE AGENCY shall use a notice, substantially in the form attached as Exhibit B to this Agreement, to inform LEP persons, in their primary languages, of their right to interpreter services.



The STATE AGENCY shall provide a copy of such notice, in the appropriate language, to each prospective beneficiary who identifies himself or herself as speaking a language other than English. The STATE AGENCY shall provide another copy of the notice, in the appropriate language, to a recipient of benefits or services when notifying the recipient that his or her eligibility will be redetermined. Copies of the English language notice and translated notices in Spanish, Chinese, Cambodian, Laotian, Vietnamese, Haitian Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-Cyrillic and Amharic shall be available in all of the STATE AGENCY's service offices. The STATE AGENCY may change the list of languages to ensure the availability of such notices in all languages spoken by 100 or more client households. The information in the notice shall be provided orally or in writing to LEP persons in additional languages as the need arises.

6. Whenever feasible, the case files of LEP persons shall be assigned to bilingual staff members fluent in the LEP persons' primary language. The STATE AGENCY will take all necessary steps to ensure that bilingual staff members and interpreters furnished by the STATE AGENCY (a) can fluently and accurately communicate in the language in which they profess proficiency, (b) are able to interpret effectively to and from such languages and English, and (c) understand the obligation to maintain recipient confidentiality.

7. The STATE AGENCY shall not burden community agencies or organizations serving LEP persons with requests for their personnel to provide on-call interpreter services (e.g. face-to-face or telephone interpretation, translation of materials, etc.) for the STATE AGENCY's programs, where no contract or other advance arrangement exists to justify such requests.

8. The STATE AGENCY shall conduct a pilot project implementing use of a national or international multi-language telephonic interpretation service, to assess the effectiveness and probable statewide cost of such service as an emergency backup to available bilingual staff members and other interpreter resources. The STATE AGENCY shall submit the proposed details of the pilot project (cost, duration, restrictions, scope, etc.) to OCR, for review and comment, within 120 days after this Agreement becomes effective.

9. The STATE AGENCY presently makes a "Your Right to Know" booklet for each of its programs available in English and Spanish. The STATE AGENCY agrees to translate the "Your Right to Know" booklet for each of its programs into Chinese, Cambodian, Laotian, Vietnamese, Haitian Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-

Cyrillic and Amharic, and to provide a copy of the booklet, in the appropriate language, to each applicant for benefits or services. Copies of the "Your Right to Know" booklets in English, Spanish, Chinese, Cambodian, Laotian, Vietnamese, Haitian Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-Cyrillic and Amharic shall be available in all of the STATE AGENCY's service offices. The STATE AGENCY may change the list of languages to ensure that "Your Right to Know" booklets are available in all languages spoken by 100 or more client households. The information in the "Your Right to Know" booklet shall be provided orally or in writing to LEP persons in additional languages as the need arises.

The STATE AGENCY presently generates standard computerized notices and letters to applicants and beneficiaries in English and Spanish. This Agreement does not resolve whether it will be necessary for the STATE AGENCY to generate such notices and letters in other languages. OCR may address this question in future complaint investigations, compliance reviews or when monitoring the STATE AGENCY's fulfillment of its other obligations under this Agreement. Meanwhile, the STATE AGENCY shall attach the following statement, in the appropriate language, to letters and notices to LEP persons:

**IMPORTANT!** This notice affects your rights and responsibilities and should be translated immediately. If you need help translating this notice, your Welfare Service Office will assign a bilingual staff member or interpreter to assist you.

The above statement shall initially be available for attachment to STATE AGENCY documents, letters and notices in English, Spanish, Chinese, Cambodian, Laotian, Vietnamese, Haitian Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-Cyrillic and Amharic. The STATE AGENCY may change the list of languages to ensure that the above statement is available for attachment in all languages spoken by 100 or more client households. The same information shall be provided orally or in writing to LEP persons in additional languages as the need arises.

10. The STATE AGENCY shall make available to OCR, on request, any records the STATE AGENCY keeps of the use of interpreters to communicate with LEP persons. Pursuant to 45 C.F.R. §80.6(b), OCR may request the STATE AGENCY to keep, and make available to OCR, additional records of the use of interpreters, as necessary for OCR to ascertain whether the STATE AGENCY is meeting the communication needs of LEP persons. In the pilot project pursuant to paragraph 8, the STATE AGENCY shall keep, or cause to be kept, records from which OCR could determine, for each occasion on which the multi-

language telephonic interpretation service is used to communicate with an LEP person: (i) the date, duration and cost of the call; (ii) the identity and language of the LEP person; and (iii) the identity of the interpreter.

11. When next reprinting its application and redetermination of eligibility forms, the STATE AGENCY shall include a signature line or other designated space for identification of any bilingual staff member or interpreter who translated the form and related conversation for the LEP person.

12. When next reprinting any of its forms mentioning interpreters, the STATE AGENCY shall ensure that such forms omit any suggestion that LEP persons are expected to furnish or pay for their own interpreters, e.g., Forms CH-17 (12/88) and ET-30 (7/90) ("At the fair hearing, you may appear personally and be accompanied by an interpreter, an attorney or other representative at your expense (emphasis supplied) and Form DOH-10 (1/90) ("If you need an interpreter and cannot bring your own (emphasis supplied), notify the Division of Hearings").

13. The STATE AGENCY shall review, on an ongoing basis, whether the communication needs of LEP persons at its service offices are being met by existing combinations of bilingual staff, interpreters and translated materials, or whether other steps to meet those needs are warranted. The STATE AGENCY shall involve service office managers and staff, LEP persons, community groups and their representatives, and existing advisory councils in this review, affording opportunities for them to exchange views with one another, and with the STATE AGENCY's central office, concerning existing policies and procedures for communication with LEP persons and means of further improving their effectiveness. The STATE AGENCY shall complete, and prepare a written report of, the first such review within 18 months after this Agreement becomes effective.

14. The STATE AGENCY's designated Title VI Coordinator shall act as liaison with the STATE AGENCY's service office managers, and with interested LEP persons and groups and their representatives and existing advisory councils, in evaluating the effectiveness of the policies and procedures in the service offices and Statewide for communication with LEP persons, identifying any problems or unmet needs, and proposing solutions or actions to meet those needs. The coordinator(s) shall also resolve questions or concerns raised about the adequacy or availability of bilingual staff or interpreter services at any of the STATE AGENCY's offices.

15. The STATE AGENCY shall provide initial and ongoing training for its managers and staff on the subject of effective

communication with LEP persons, including a review of the STATE AGENCY's obligations under this Agreement. Such training shall occur in regularly scheduled regional and cluster meetings of service office managers, in meetings of service office managers with their staffs, and in orientation sessions for new managers and staff. To expedite implementation of this Agreement, the STATE AGENCY shall disseminate a Commissioner's memorandum, in substantially the form attached as Exhibit C to this Agreement, to all managers and staff within 60 days after this Agreement becomes effective.

16. This Agreement does not affect the application, interpretation or enforcement of any statutes, regulations or guidelines (e.g. Food Stamp Program requirements) administered by the U.S. Department of Agriculture Food & Nutrition Service (FNS), or the status of any agreements or understandings, compliance reviews, complaint investigations, program evaluations or audits to which FNS and the STATE AGENCY are parties.

#### SECTION IV. REPORTING REQUIREMENTS

1. Within 60 days after this Agreement becomes effective, the STATE AGENCY shall submit to OCR:

(a) a draft of the regulation amendments referenced in SPECIFIC PROVISION 2, above, for OCR's review and comment.

(b) a certification (i) that the English language "Your Right to Interpreter Services" and translated versions in Spanish, Chinese, Cambodian, Laotian, Vietnamese, Haitian Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-Cyrillic and Amharic, referenced in SPECIFIC PROVISION 5, are available in all of the STATE AGENCY's service offices, and (ii) that the STATE AGENCY is giving a copy, in the appropriate language, to each prospective beneficiary who identifies himself or herself as speaking a language other than English and to each recipient of benefits or services when notifying the recipient that his or her eligibility will be redetermined.

(c) a certification that the STATE AGENCY is attaching the statement "IMPORTANT! This notice affects your rights and responsibilities and should be translated immediately. If you need help translating this notice, your Welfare Service Office will assign a bilingual staff member or interpreter to assist you.", in the appropriate

languages referenced in SPECIFIC PROVISION 9, above, to English language letters and notices to LEP persons.

(d) a certification that the Commissioner's memorandum referenced in SPECIFIC PROVISION 15, above, has been disseminated to all STATE AGENCY managers and staff.

2. Within 120 days after this Agreement becomes effective, the STATE AGENCY shall submit to OCR:

(a) proposed details of the pilot project required by SPECIFIC PROVISION 8, above, for OCR's review and comment.

(b) a certification (i) that "Your Right to Know" booklets in English, Spanish, Chinese, Cambodian, Laotian, Vietnamese, Haitian Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-Cyrillic and Amharic, referenced in SPECIFIC PROVISION 9, above, are available in all of the STATE AGENCY's service offices, and (ii) that the STATE AGENCY is giving a copy, in the appropriate language, to each applicant for benefits or services.

3. Within 30 days after the close of calendar year 1994, 1995 and 1996, the STATE AGENCY shall submit to OCR:

(a) a report showing the number of LEP persons, by language group, applying for benefits or services in the prior calendar year at each of the STATE AGENCY's service offices and the number of bilingual staff members, by language group, working in that office.

(b) a report of the STATE AGENCY's expenditures for interpreter services, by language group, at each of its service offices in the prior calendar year, including charges incurred for telephonic interpretation in the pilot project required by SPECIFIC PROVISION 8, above.

(c) an account of any questions or complaints the STATE AGENCY's Title VI coordinator received in the prior calendar year about the adequacy or availability of bilingual staff or interpreter services at any of the STATE AGENCY's offices and the answers or resolutions thereof.

OCR Complaint Nos. 01-92-3034 through 01-92-3043,  
No. 01-92-3045, and Nos. 01-93-3067 through 01-93-3069

4. Within one year after this Agreement becomes effective, the STATE AGENCY shall provide OCR with evidence of its adoption of the regulation amendments required by SPECIFIC PROVISION 2, above.

5. Within 18 months after this Agreement becomes effective, the STATE AGENCY shall provide OCR with its written report of the first review required by SPECIFIC PROVISION 13, above, which shall:

(a) address whether the communication needs of LEP persons at its service offices are being met by existing combinations of bilingual staff, outside interpreters and translated materials, or whether further steps to meet those needs are warranted.

(b) include evidence that the STATE AGENCY involved service office managers and staff, LEP persons, community groups and their representatives, and existing advisory councils in the review, affording opportunities for them to exchange views with one another, and with the STATE AGENCY's central office, concerning existing policies and procedures for communication with LEP persons and means of further improving their effectiveness.

(c) report the results of the pilot project required by SPECIFIC PROVISION 8, above.

SECTION V. SIGNATURES

COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF PUBLIC WELFARE

By

*Joseph A. Hillant*  
Commissioner

Date

9-6-94

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE FOR CIVIL RIGHTS, REGION I


By

*Jaroline J. Chang*  
Regional Manager

Date

9-13-94

# Do you need an interpreter ? ¿Necesita un interpreté?

 **Massachusetts Department of Public Welfare**

I speak English

Yo hablo Español (Spanish)

我懂中文 (Chinese)

ള്സംസാരിക്കുന്നു (Cambodian)

ἰσπανικά (Greek)

Tôi nói tiếng Việt (Vietnamese)

Mwen pale kretyol (Haitian Creole)

Je parle Français (French)

Հայերէն եւ Թուրք (Armenian)

Я говорю по-русски (Russian)

Ομιλώ Ελληνικά (Greek)

Parlo Italiano (Italian)

Eu falo Português (Portuguese)

Mówię po polsku (Polish)

Govorim hrvatski (Croatian)

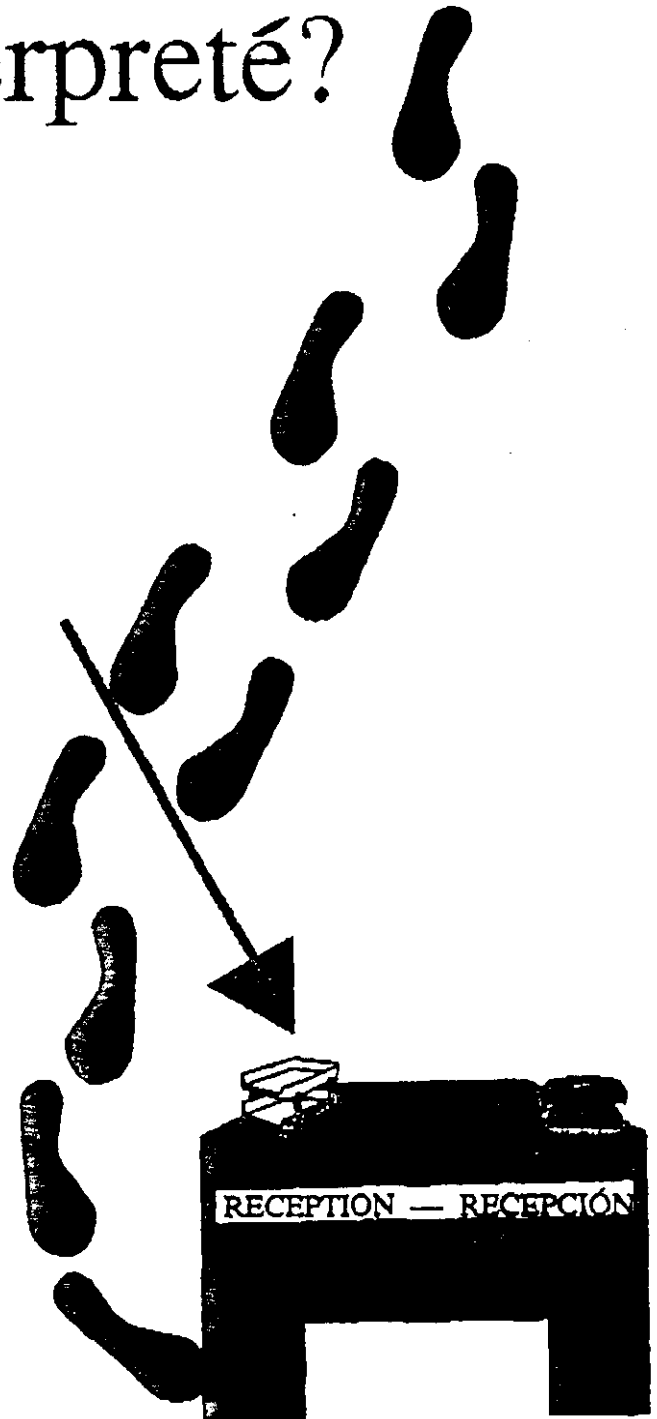
Govorim liovenski (Lithuanian)

Nagmamala ako ng Tagalog (Tagalog)

говорим српски (Serbian-Croatian)

አማርኛ እና ግዕዝ (Amharic)

I am an ASL user (American Sign Language)



# Your Right to Interpreter Services



*Massachusetts Department of Public Welfare*  
600 Washington Street, Boston, MA 02111



EXHIBIT C

MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE  
600 Washington Street, Boston, MA 02111

\_\_\_\_\_, 1994

TO: All DPW Managers and Staff

FROM: Joseph Gallant  
Commissioner

RE: Providing Interpreters for Non-English Speaking Applicants  
and Recipients -- Settlement of National Origin Discrimination  
Complaints under Title VI of the Civil Rights Act of 1964

The Department and the U.S. Department of Health and Human Services ("HHS"), Office for Civil Rights ("OCR") have signed an agreement settling fourteen administrative complaints filed with OCR against the Massachusetts Department of Public Welfare ("Department") in 1991 and 1993, on behalf of applicants and recipients who are not fluent in English (individuals with limited English proficiency or "LEP persons"). The complaints alleged that the Department's policies and practices regarding communication with LEP persons had the effect of subjecting them to national origin discrimination prohibited by the HHS Title VI regulations at 45 C.F.R. Part 80.

This memorandum provides background information on the settlement of the complaints, details of the agreement with OCR, and additional guidance for all DPW managers and staff.

Background Information

During its investigation, OCR informally advised the Department that it had obtained evidence indicating probable violations of Title VI and the HHS regulations, including instances of:

(a) signs posted in at least two of the Department's offices indicating that LEP persons were expected to bring interpreters with them when seeking benefits;

(b) the Department's use of printed forms stating that applicants or beneficiaries may appear at fair hearings with an interpreter "at their own expense", despite 106 CMR 343.000, requiring the Department to provide interpreters for persons who need them at fair hearings;

(c) staff instructing individual LEP applicants and beneficiaries, orally and in writing, to bring their own interpreters to the Department's service offices;

(d) the Department's obtaining, and acting upon, inaccurate information about LEP persons' eligibility for benefits and services because English-speaking staff tried to "muddle through" situations where an interpreter was needed, but not provided;

(e) staff burdening community agencies or organizations that provide other health and social services to LEP persons with requests for their personnel to act as interpreters in the Department's offices, without having contracted or otherwise arranged in advance for them to provide interpreter services;

(f) staff regarding the obligation to provide interpreters for LEP persons as limited to fair hearings held by the Division of Hearings and inapplicable to communication with LEP persons in the Department's service offices; and

(g) employees and representatives of health and human service providers, community agencies, and LEP persons stating, based on their experience, that the Department did not communicate effectively with LEP persons, and needed clearer LEP policies and procedures, additional bilingual staff, interpreter resources and translated materials to do so.

In response, and without admitting any past violation of Title VI or 45 C.F.R. Part 80, the Department expressed its desire to reach agreement with OCR on the actions necessary to resolve the complaints.

In the resulting agreement with OCR, the Department recognizes the special needs and concerns of LEP persons and commits itself to overcoming language barriers that deprive them of equal access to, or an equal opportunity to participate in, the Department's programs. To that end, the Department must have in place policies and procedures, combining use of bilingual staff, interpreter services, and translated materials, that enable effective communication with LEP persons, in their primary languages, in the Department's programs and activities, during all hours of their operation, throughout the Commonwealth. The Department is committed to continuous evaluation and improvement of these policies and procedures, at all levels, in consultation with service office staff, LEP persons, and community groups and their representatives and existing advisory councils.

#### Details of the Agreement with OCR

Specific actions to be taken by the Department under the agreement with OCR include:

- The Department will continue to post "Do you need an interpreter" signs in all offices, ascertain the primary language of each prospective beneficiary at the earliest opportunity (by means including, but not limited to the "I speak" card), and enter the primary language in the automated beneficiary data base.
- Whenever feasible, the cases of LEP persons will be assigned to bilingual staff members fluent in the LEP persons' primary language. If no bilingual staff member is available, the Department will furnish an interpreter when one is needed, unless the LEP person prefers to bring his or her own interpreter. (Previously issued instructions for providing interpretation services, e.g. Joyce Sampson's 2/1/93 memo to local office directors and up-dated Human Resource office lists of available interpreters, should be followed).
- The Department will not burden community agencies or organizations serving LEP persons with requests for their personnel to provide on-call interpreter services (e.g. face-to-face or telephone interpretation, translation of materials, etc.) for the Department's programs, where no contract or other advance arrangement exists to justify such requests.
- The Department will take steps to ensure that bilingual staff members and interpreters it furnishes (a) can fluently and accurately communicate in the language in which they profess proficiency, (b) are able to interpret effectively to and from such languages and English, and (c) understand the obligation to maintain recipient confidentiality.
- The Department will amend its regulations to clarify that the right of LEP persons to interpreters provided by the Department is not limited to the context of fair hearings, but applies in all of the Department's operations; the new regulations will state that the Department shall furnish an interpreter, when one is needed, unless the LEP person prefers to bring his or her own interpreter.
- Translated versions of the notice appended to this memorandum ("Your Right to Interpreter Services") will inform LEP persons of their right to interpreter services.<sup>1</sup> A copy of the notice, in the appropriate

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<sup>1</sup> "Your Right to Interpreter Services" is now available in the languages appearing on the "I speak: card: English, Spanish English, Spanish, Chinese, Cambodian, Laotian, Vietnamese, Haitian

language, will be given to each prospective beneficiary who identifies himself or herself as speaking a language other than English. Another copy of the notice, in the appropriate language, will be included when a recipient of benefits or services is notified that his or her eligibility will be redetermined. The translated notices have been mailed to all offices with this memorandum.

- The Department will also prepare additional translations of the "Your Right to Know" booklets. When these are available, the Welfare Service office will provide a copy of the proper booklet, in the appropriate language, to each applicant for benefits or services.
- The so-called "Babel notice" or multilanguage statement currently attached to Department notices and letters mailed to LEP persons ("IMPORTANT! This notice affects your rights and responsibilities and should be translated immediately") will be revised to include a reminder that if the addressee needs help translating the notice, the Welfare Service Office will assign a bilingual staff member or interpreter to assist him or her.
- The Department's application and redetermination of eligibility forms, when reprinted, will include a signature line or other designated space for identification of any bilingual staff member or interpreter who translated the form and related conversation for the LEP person. Other Department forms mentioning interpreters (e.g. Form ET-30 (7/90) and DOH-10 (1/90), when reprinted, will omit any suggestion that LEP persons are expected to furnish or pay for their own interpreters.
- The Department will also conduct a pilot project implementing use of a national or international multi-language telephonic interpretation service, to assess the effectiveness and probable statewide cost of such service, as an emergency backup to available bilingual staff members and other interpreter resources. You will receive a separate memorandum on the pilot project when its details are finalized.
- The Department will review, on an ongoing basis, whether it is meeting the communication needs of LEP persons with

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Creole, French, Armenian, Russian, Greek, Italian, Portuguese, Polish, Croatian, Slovakian, Tagalog, Serbian-Cyrillic and Amharic. The information in the notice will be provided orally or in writing to LEP persons in additional languages as the need arises.

existing combinations of bilingual staff, interpreters and translated materials, or whether other steps to meet those needs are warranted. Welfare Service Office Managers, LEP persons, community groups and their representatives, and existing advisory council will be afforded opportunities for participation in that review.

- The Department's designated Title VI Coordinator, Agnes Young (Tel. (617) 348-8490) will receive and respond to complaints from LEP persons about the adequacy or availability of bilingual staff or interpreter services at any of the Department's offices. Please note that offices needing contracted interpreters are to contact Linda Kennedy (Tel. (617) 348-5972), not Ms. Young.
- The agreement requires dissemination of this memorandum to expedite implementation of the settlement, in advance of other training for Department managers and staff on the subject of effective communication with LEP persons.

#### Additional Guidance

1. LEP Self-Identification. A prospective beneficiary's statement that he or she needs an interpreter should normally be accepted as establishing that need, unless you are certain that the person is fluent in English. If you are unsure about this, ask a bilingual staff member or interpreter fluent in English and the LEP person's language to determine by conversing with the LEP person in both languages whether he or she is fluent in English.
2. Use of Interpreters. When a bilingual staff member fluent in the appropriate language is available, he or she should be involved in any necessary conversation with the LEP person. If no bilingual staff member is available, staff should arrange for interpreter services furnished by the Department, unless the LEP person, after being informed of his or her right to interpreter services, expresses a clear preference to bring his or her own interpreter.
3. Client's Own Interpreters. The Department may not ask LEP persons to provide their own interpreters (this burden is not imposed on other clients). You should not assume that a LEP person who prefers to bring his or her interpreter on one occasion will do so on another occasion. Of course, whenever possible, interpreter arrangements should be made in advance of an LEP person's next appointment.