

JAN 25 2012

A BILL FOR AN ACT

RELATING TO THE OFFICE OF LANGUAGE ACCESS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to improve access to
2 government services and programs for limited English proficient
3 individuals by transferring the office of language access, along
4 with all of the functions and duties of this office, from the
5 department of labor and industrial relations to the department
6 of health.

7 SECTION 2. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to read
9 as follows:

10 **"CHAPTER**

11 **OFFICE OF LANGUAGE ACCESS**

12 § -1 **General purpose; purpose of the office of language**
13 **access.** Most individuals living in Hawaii read, write, speak,
14 and understand English. There are many individuals, however,
15 who are limited English proficient. Language for limited
16 English proficient persons can be a barrier to accessing
17 important benefits or services, understanding and exercising
18 important rights, complying with applicable responsibilities, or



1 understanding other information provided by state-funded
2 programs and activities.

3 The purpose of this chapter is to affirmatively address, on
4 account of national origin, the language access needs of limited
5 English proficient persons. In providing the delivery of
6 language accessible services, it is the intent of the
7 legislature that those services be guided by Executive Order No.
8 13166 and succeeding provisions of federal law, regulation, or
9 guidance.

10 The purpose of the office of language access is to address
11 the language access needs of limited English proficient persons
12 and ensure meaningful access to services, programs, and
13 activities offered by the executive, legislative, and judicial
14 branches of state government, including departments, offices,
15 commissions, boards, or other agencies, and all covered
16 entities, for limited English proficient persons.

17 § -2 **Definitions.** As used in this chapter, unless a
18 different meaning clearly appears from the context:

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



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

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

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

15 "Limited English proficient" means individuals who, on
16 account of national origin, do not speak English as their
17 primary language and who identify themselves as having a limited
18 ability to read, write, speak, or understand the English
19 language.

20 "Oral language services" means the free provision of oral
21 information necessary to enable limited English proficient



1 persons to access or participate in services, programs, or
2 activities of a state agency or covered entity.

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

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

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

18 "Written language services" means the free provision of
19 written information necessary to enable limited English
20 proficient persons to access or participate in services,
21 programs, or activities of a state agency or covered entity.



1 § -3 **Oral and written language services.** (a) Each
2 state agency and all covered entities shall take reasonable
3 steps to ensure meaningful access to services, programs, and
4 activities by limited English proficient persons, which will be
5 determined by a totality of circumstances, including the
6 following factors:

7 (1) The number or proportion of limited English proficient
8 persons served or encountered in the eligible service
9 population;

10 (2) The frequency with which limited English proficient
11 persons come in contact with the services, programs,
12 or activities;

13 (3) The nature and importance of the services, programs,
14 or activities; and

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

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

21 (c) Subject to subsection (a), each state agency and
22 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.

§ -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.

§ -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 -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.

§ -6 Office of language access; established.

(a) 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;



1 (3) Review and monitor each state agency's language access
2 plan for compliance with this chapter;

3 (4) Where reasonable access is not provided, endeavor to
4 eliminate the barrier using informal methods such as
5 conference, conciliation, mediation, or persuasion.

6 Where the language access barrier cannot be eliminated
7 by informal methods, the executive director shall
8 submit a written report with the executive director's
9 opinion and recommendation to the state agency or the
10 covered entity. The executive director may request
11 the state agency or the covered entity to notify the
12 executive director, within a specified time, of any
13 action taken on the executive director's
14 recommendation;

15 (5) Consult with language access coordinators, the
16 language access advisory council, and state department
17 directors or their equivalent;

18 (6) Subject to section -3, create, distribute to the
19 State, and make available to covered entities
20 multilingual signage in the more frequently
21 encountered languages in the State, and other
22 languages as needed, informing individuals of their



1 right to free oral language services and inviting them
2 to identify themselves as persons needing services;
3 and

4 (7) Adopt rules pursuant to chapter 91 to address the
5 language needs of limited English proficient persons.

6 § -7 **Language access advisory council.** (a) There is
7 established the language access advisory council, which shall be
8 placed within the department of health for administrative
9 purposes only. The council shall consist of the following
10 members to be appointed by the governor:

- 11 (1) One representative from the state government;
12 (2) One representative from a covered entity;
13 (3) One bilingual worker who is or has been employed by a
14 state-funded immigrant service agency or program;
15 (4) One representative of an advocacy organization that
16 provides services to limited English proficient
17 persons;
18 (5) One member from the limited English proficient
19 population who has an interest in the provision of
20 oral language services;



- 1 (6) One representative from an accredited institution of
2 higher learning who provides professional training in
3 interpretation and translation;
- 4 (7) One representative of a Hawaiian language advocacy
5 organization;
- 6 (8) One representative of a professional interpreter's
7 organization;
- 8 (9) One representative of a bilingual referral service or
9 program;
- 10 (10) One representative residing in the county of Hawaii
11 who has shown interest in language access;
- 12 (11) One representative residing in the county of Kauai who
13 has shown interest in language access;
- 14 (12) One representative residing in the county of Maui who
15 has shown interest in language access;
- 16 (13) One representative residing in the city and county of
17 Honolulu who has shown interest in language access;
- 18 (14) One member-at-large;
- 19 (15) The executive director of the Hawaii civil rights
20 commission or authorized representative, as an ex-
21 officio member;



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

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

5 (b) Members shall be appointed in accordance with section
6 26-34. The terms of the members shall be for four years. The
7 council shall select one of its members to serve as chair. No
8 member of the council shall receive any compensation for council
9 services, but shall be allowed necessary expenses for travel,
10 board, and lodging incurred in the performance of council
11 duties.

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

14 (1) Implementation and compliance with this chapter;

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

17 (3) The adequacy of a state agency or covered entity's
18 dissemination and training of its employees likely to
19 have contact with limited or no-English proficient
20 persons, its policies and procedures for language
21 services, its competency in working effectively with
22 in-person and telephone interpreters, and its



1 understanding of the dynamics of interpretation
2 between clients, providers, and interpreters."

3 SECTION 3. Part II of chapter 371, Hawaii Revised
4 Statutes, is repealed.

5 SECTION 4. All rights, powers, functions, and duties of
6 the department of labor and industrial relations relating to the
7 office of language access are transferred to the department of
8 health.

9 SECTION 5. All officers and employees whose functions are
10 transferred by this Act shall be transferred with their
11 functions and shall continue to perform their regular duties
12 upon their transfer, subject to the state personnel laws and
13 this Act.

14 No officer or employee of the State having tenure shall
15 suffer any loss of salary, seniority, prior service credit,
16 vacation, sick leave, or other employee benefit or privilege as
17 a consequence of this Act, and such officer or employee may be
18 transferred or appointed to a civil service position without the
19 necessity of examination; provided that the officer or employee
20 possesses the minimum qualifications for the position to which
21 transferred or appointed; and provided that subsequent changes



1 in status may be made pursuant to applicable civil service and
2 compensation laws.

3 An officer or employee of the State who does not have
4 tenure and who may be transferred or appointed to a civil
5 service position as a consequence of this Act shall become a
6 civil service employee without the loss of salary, seniority,
7 prior service credit, vacation, sick leave, or other employee
8 benefits or privileges and without the necessity of examination;
9 provided that such officer or employee possesses the minimum
10 qualifications for the position to which such officer or
11 employee is transferred or appointed.

12 If an office or position held by an officer or employee
13 having tenure is abolished, the officer or employee shall not
14 thereby be separated from public employment, but shall remain in
15 the employment of the State with the same pay and classification
16 and shall be transferred to some other office or position for
17 which the officer or employee is eligible under the personnel
18 laws of the State as determined by the director of human
19 resources development.

20 SECTION 6. All council members serving on the language
21 access advisory council on the day prior to the effective date



1 of this Act shall continue as members of the council and their
2 terms shall be unaffected by this Act.

3 SECTION 7. All appropriations, records, equipment,
4 machines, files, supplies, contracts, books, papers, documents,
5 maps, and other personal property heretofore made, used,
6 acquired, or held by the department of labor and industrial
7 relations, its agencies, divisions, or offices relating to the
8 office of language access as determined by both the department
9 of labor and industrial relations and the office of language
10 access, which is transferred to the department of health shall
11 be transferred with the functions to which they relate.

12 SECTION 8. All rules, policies, procedures, guidelines,
13 and other material adopted or developed by the office of
14 language access to implement provisions of part II of chapter
15 371, Hawaii Revised Statutes, that are made applicable to the
16 office of language access established by this Act, shall remain
17 in full force and effect until amended or repealed by the office
18 of language access established by this Act pursuant to chapter
19 91, Hawaii Revised Statutes.

20 SECTION 9. All deeds, leases, contracts, loans,
21 agreements, permits, or other documents executed or entered into
22 by or on behalf of the office of language access transferred or



1 placed for administrative purposes within the department of
2 health shall remain in full force and effect.

3 SECTION 10. All relocation cost or expenses associated
4 with transferring the office of language access to the
5 department of health shall be borne by the appropriations
6 allocation to the office of language access or the department of
7 health with no liabilities or liens arising from such relocation
8 activity accruing to the department of labor and industrial
9 relations.

10 SECTION 11. All privileges and benefits as provided by the
11 department of labor and industrial relations, including parking,
12 and currently enjoyed by the office of language access shall be
13 forfeited and returned to the providing department upon transfer
14 of the office of language access to the department of health.

15 SECTION 12. There shall be a transition period to
16 facilitate the transfer of the office of language access from
17 the department of labor and industrial relations to the
18 department of health. The year following July 1, 2012, shall
19 serve as a transition period, in which the state agencies
20 affected by this Act shall assist the executive director in
21 implementing the transfer under this Act.



1 SECTION 13. The provisions of this Act are to be liberally
2 construed to effectuate its purpose.

3 SECTION 14. All acts passed by the legislature during this
4 regular session of 2012, whether enacted before or after the
5 effective date of this Act, shall be amended to conform to this
6 Act unless such acts specifically provide that this Act is being
7 amended.

8 SECTION 15. This Act shall take effect on July 1, 2012.
9

INTRODUCED BY: *Erin Anne O'Connell*
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Report Title:

Office of Language Access

Description:

Transfers the Office of Language Access to the Department of Health, as an administratively attached agency. Effective July 1, 2012.

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