MONTHLY WEBINAR SERIES
Legal Mandates and National Standards: Ensuring Language Access in Children’s Mental Health

Tawara Goode, MA  
*Director*, National Center for Cultural Competence  
Georgetown University Center for Child and Human Development

Juliet Choi, JD  
*Chief of Staff and Senior Advisor*, Office of Civil Rights, U.S. Department of Health and Human Services

Heather R. Lawson, JD, MPH  
Civil Rights Division, Department of Health and Human Services

C. Godfrey Jacobs  
*Program Manager*, Health Determinants & Disparities Practice, SRA International
Title VI of the Civil Rights Act of 1964 & Implications for Persons who are Limited English Proficient

December 19, 2013

Heather R. Lawson
HHS Office for Civil Rights
Standing Against Segregation

President John F. Kennedy called for "giving all Americans the right to be served in facilities which are open to the public—hotels, restaurants, theaters, retail stores, and similar establishments," as well as "greater protection for the right to vote"
“No person in the United States shall on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”

Section 601 of Title VI of the Civil Rights Act of 1964

Who does Title VI protect?

Everyone.

- Title VI protects persons of all colors, races and national origins.

- Title VI protections against national origin discrimination are \textit{not} limited to citizens.

Title VI states that “no person” shall be discriminated against on the basis of race, color or national origin. Section 601 and 42 USC 2000d \textit{et al.} \textit{Seq.}
Title VI Applies to Recipients of Federal Financial Assistance (FFA)

- Hospitals, nursing homes, home health agencies, managed care organizations;
- Health research programs;
- Physicians, dentists, hospital social workers;
- State programs that receive FFA, including Medicaid, CHIP and TANF, and the agencies that administer these programs;
- Other providers who receive funding from HHS such as State health services.

Avoiding National Origin Discrimination Under Title VI

• Must take reasonable steps to provide meaningful access to individuals who are limited English proficient (LEP)

• Failure to provide meaningful access to individuals who are LEP, such as through oral interpretation and written translation, may constitute national origin discrimination
Unlawful Discrimination under Title VI

Recipients may not on the basis of race, color or national origin:

- Deny an individual any service, aid or benefit under the program
- Provide a benefit which is different or provided in a different manner
- Subject an individual to segregation or separate treatment
- Deny or restrict an individual’s enjoyment of a service, aid or benefit under the program
- Treat an individual differently in determining eligibility
- Deny an individual an opportunity to participate the program’s planning or advisory body

*45 C.F.R. Section 80.3(b)(1)(i) through (vi)*
Over 25 million are Limited English Proficient.

People who speak a language other than English at home in the U.S. 59,542,596

Source: U.S. Census Bureau, 2010 American Community Survey PLACE OF BIRTH BY LANGUAGE SPOKEN AT HOME AND ABILITY TO SPEAK ENGLISH IN THE U.S.
http://factfinder2.census.gov/faces/tablesservices/jsf/pages/productview.xhtml?pid=ACS_10_1YR_B06007&prodType=table
Effects of Communication Barriers

For LEP individuals:

- \textbf{Denial} of needed benefits
- \textbf{Delay} in delivery
- \textbf{Wrong} benefits or services
- \textbf{Ineffective} or less effective services

For Health Care Providers:

- \textbf{Inferior} quality
- Potential \textbf{liability}
- \textbf{Increased} costs and inefficiencies
Language Assistance Services

Examples of Language Access Services:

Bilingual staff

Contract interpreters

Telephonic interpreters

Video interpreting
HHS Guidance to Recipients of FFA

68 Fed. Reg. 153 47311-47323

Helps recipients of FFA assess their programs to determine whether they are taking reasonable steps to provide meaningful access to their programs by LEP persons.

Recommends conducting a four-factor analysis to determine the extent to which language assistance services are required in order for the program to operate in compliance with Title VI.
Using the Four-Factor Analysis

- Number or Proportion of LEP Persons Eligible to be Served or Likely to be Affected by the Program or Service
- Frequency of Contact
- Nature and Importance of the Program, Activity, or Service
- Costs and Resources Available

68 Fed. Reg. 153 47311-47323
Factor 1: Number of Persons:

- How many LEP persons are eligible to be served, or likely to be affected, by a recipient program or activity?

- Potential sources of data may include:
  - encounter data
  - Data from Census, school systems, state and local government
  - community organizations
Factor 2: Frequency of Contact:

- How often is a particular language encountered?
- Steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily.
Factor 3: Nature and Importance of the Program, Activity, or Service:

- How important is the recipient's activity, information, service, or program?
- What are the possible consequences if effective communication is not achieved?
- Could denial or delay of access to services or information have serious life-threatening implications?
Factor 4: Cost and Resources:

- What are the costs associated with providing language assistance services?
- What resources are available?
Use of Family Member or Friends as Interpreters

- When Title VI requires that a Covered Entity provide language assistance, the Covered Entity must inform the LEP Person that Interpreters can be provided at no cost.

- When Title VI requires that a Covered Entity provide language assistance, the Covered Entity cannot require the LEP person to provide his/her own interpreter.
Translating Written Materials

- Vital written materials should be translated.

- “Vital Documents” include those that affect legal rights or obligations, for example:
  - Application and enrollment forms
  - Notices about eligibility or changes in benefits
  - Letters requiring a response
  - Patient Consent Forms
Non-Discrimination on the Basis of Race, Color, or National Origin

Key Take Away Points:
Race, Color, or National Origin

• Title VI
  ➢ Reasonable steps to provide meaningful access
  ➢ Discriminatory effects of questions about immigration status of non-applicants

• Four Factor Analysis
  ➢ Number or Proportion of LEP Persons Eligible to be Served or Likely to be Affected by the Program or Service
  ➢ Frequency of Contact
  ➢ Nature and Importance of the Program, Activity, or Service
  ➢ Costs and Resources Available
Non-Discrimination on the Basis of National Origin
Ensuring Compliance with Respect to LEP Persons
Non-Discrimination on the Basis of National Origin
Immigration Status Inquiries
Applications and processes to determine a child’s eligibility:

- Should focus exclusively on the criteria to determine the child’s eligibility
- Should identify and differentiate between “applicants” and “non-applicants” early in the process to clarify which questions pertain to the applicant child
Non-Discrimination on the Basis of National Origin
Ensuring Compliance with Respect to LEP Persons

Strategies to ensure compliance:

• Maintain written policies and procedures on providing language assistance services

• Assess language needs of the service area

• Maintain data on the primary language of each LEP person served and the type of language assistance provided

• Notify LEP persons in the service area in their native languages of the right to language assistance at no cost

• Ensure competency, quality and accuracy of language services

• Offer language services even if a person brings a family member, friend, or child to interpret
OCR enforces Title VI in a number of ways:

- Compliance reviews: *45 CFR Section 80.7(a)*
- Investigate complaints: *Id. at (b)*
- Provide technical assistance
- Conduct outreach
What You Can Do to Increase Access and Reduce Health Disparities?

- Educate your patients and clients about their Federal civil rights in health care settings and the responsibilities of providers to comply with Title VI.
- Make cultural and linguistic competency your practice.
- Forge relationships with organizations that can enhance access to reduce disparities.
- Ensure that affected persons or persons who cannot come forward on their own know their right to file a complaint with OCR.
What You Can Do

Promote a Culture of Compliance

- Regular assessments of language needs
- Establish a method for identifying and serving LEP persons
- Regularly review LEP Policies and Procedures
- Provide effective notice of language assistance services at no cost
- Staff training
Civil Rights/LEP Resources

HHS Office for Civil Rights information and tools: http://www.hhs.gov/ocr/

OCR Regional Offices: http://www.hhs.gov/ocr/office/about/rgn-hqaddresses.html

OCR Fact Sheets: http://www.hhs.gov/ocr/civilrights/resources/factsheets/index.html

OCR Compliance Activities: http://www.hhs.gov/ocr/civilrights/resources/specialtopics/hospitalcommunication/heccomplianceactivities.html


Provider Obligations: http://www.hhs.gov/ocr/civilrights/resources/providers/index.html#obli

Training: http://www.hhs.gov/ocr/civilrights/resources/training/index.html


CMS Regional Office Contact Information: http://www.cms.gov/RegionalOffices/
THE NATIONAL STANDARDS FOR CULTURALLY AND LINGUISTICALLY APPROPRIATE SERVICES IN HEALTH AND HEALTH CARE

Legal Mandates and the National Standards: Ensuring Language Access in Children’s Mental Health

December 19, 2013

C. Godfrey Jacobs
Health Determinants & Disparities Practice
SRA International, Inc.
What is Cultural and Linguistic Competency?

A set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enable that system, agency, or those professionals to work effectively in cross-cultural situations.

Cross, Bazron, Dennis, & Isaacs, 1989
What are Culturally and Linguistically Appropriate Services (CLAS)?

Services that are respectful of and responsive to individual cultural health beliefs and practices, preferred languages, health literacy levels, and communication needs and employed by all members of an organization (regardless of size) at every point of contact.

OMH, 2013
The National CLAS Standards

- The National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care

- Published by the HHS Office of Minority Health in 2000

- Re-published in 2013
The National CLAS Standards

Advance health equity

Help eliminate disparities

Improve quality of services
# The National CLAS Standards

<table>
<thead>
<tr>
<th>Principal Standard</th>
<th>Standard 1</th>
</tr>
</thead>
</table>

The National CLAS Standards focus on providing a framework for improving health care delivery and reducing health disparities.
# The National CLAS Standards

<table>
<thead>
<tr>
<th>Principal Standard</th>
<th>Governance, Leadership, and Workforce</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard 1</td>
<td>Standards 2-4</td>
</tr>
</tbody>
</table>
The National CLAS Standards

<table>
<thead>
<tr>
<th>Principal Standard</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard 1</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Governance, Leadership, and Workforce</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Standards 2-4</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Communication and Language Assistance</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Standards 5-8</td>
<td></td>
</tr>
</tbody>
</table>
# The National CLAS Standards

<table>
<thead>
<tr>
<th>Principal Standard</th>
<th>Governance, Leadership, and Workforce</th>
<th>Communication and Language Assistance</th>
<th>Engagement, Continuous Improvement, and Accountability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard 1</td>
<td>Standards 2-4</td>
<td>Standards 5-8</td>
<td>Standards 9-15</td>
</tr>
</tbody>
</table>

---
The National CLAS Standards and Mental Health

Community’s cultural and communication characteristics

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
The National CLAS Standards and Mental Health

Infrastructure & Services

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
The National CLAS Standards and Mental Health

Community’s cultural and communication characteristics

Infrastructure & Services

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
The National CLAS Standards and Mental Health

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
The National CLAS Standards and Mental Health

2. Advance and sustain governance and leadership that promotes CLAS and health equity.

3. Recruit, promote, and support a diverse governance, leadership, and workforce.

4. Educate and train governance, leadership, and workforce in CLAS.

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
The National CLAS Standards and Mental Health

9. Infuse CLAS goals, policies, and management accountability throughout the organization’s planning and operations.

11. Collect and maintain demographic data.

13. Partner with the community.

15. Communicate the organization’s progress in implementing and sustaining CLAS.

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
The National CLAS Standards and Mental Health

5. Offer communication and language assistance.

6. Inform individuals of the availability of language assistance.

7. Ensure the competence of individuals providing language assistance.

8. Provide easy-to-understand print and multimedia materials and signage.

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
The National CLAS Standards and Mental Health

Culturally and Linguistically Appropriate Infrastructure & Services

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
Implementing the National CLAS Standards
Checking In

• Now that you have learned about CLAS and the National CLAS Standards, think about your organization...
  • What policies and practices does your organization currently adopt to address CLAS or cultural and linguistic competency?
    • Culturally and linguistically diverse staff and workforce
    • Provide communication and language access services
    • Leadership supported initiatives and outreach programs targeting culturally diverse populations
    • Collecting and using client demographic data (e.g., gender, race, ethnicity, language preference)
    • Others?
Organizational Implementation of the National CLAS Standards in Theme 1

- Collaborate with high schools, colleges and universities, and graduate programs to build workforce capacities and recruit more diverse providers and staff.

- Provide ongoing in-service training and/or additional employee incentives to complete trainings that meet the unique needs of the population.

- Ensure that the necessary fiscal and human resources, tools, skills, and knowledge to support and improve culturally competent policies and practices in the agency are available (National Quality Forum, 2009).

Adapted from Barksdale, Kenyon, Graves, & Jacobs, in press.
Organizational Implementation of the National CLAS Standards in Theme 2

- Consider employing cultural brokers to facilitate a better understanding of cultural beliefs in treatment, and to bridge differences between the practitioner’s cultural frame and the client’s cultural frame.

- Ensure that interpreters are qualified and trained (Wilson-Stronks & Galvez, 2007), and that the quality of the language skills used by self-reported bilingual providers and staff using non-English language skills during client-provider interactions is appropriate (Regenstein, Andres, & Wynia, 2013).

- Create materials in alternative formats for individuals with different communication needs (e.g., sensory, developmental, and/or cognitive impairments) (Joint Commission, 2010).

- Adopt a multifaceted approach to providing language assistance.

Adapted from Barksdale, Kenyon, Graves, & Jacobs, in press.
Organizational Implementation of the National CLAS Standards in Theme 3

- Use existing cultural and linguistic competency assessment tools to describe structural policies, procedures, and practices

- Use information and knowledge gained from individual and agency-level assessments and evaluation to create culturally informed and relevant mission, vision, and goals for the agency and tailor services that are relevant to the community served

- Pilot test materials and forms that have been created with intended target audiences from the community

- Convene regular meeting and retreats to evaluate how goals, objectives, and timelines are responsive to the cultural needs of the community and clients served

- Implement accountability mechanisms throughout the agency to reinforce the commitment to using cultural knowledge in practices and operations

Adapted from Barksdale, Kenyon, Graves, & Jacobs, in press
Communication and Language Assistance

• Offer language assistance to individuals who have limited English proficiency and/or other communication needs, at no cost to them, to facilitate timely access to all health care and services.

• Inform all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing.

• Ensure the competence of individuals providing language assistance, recognizing that the use of untrained individuals and/or minors as interpreters should be avoided.

• Provide easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area.
Linking the National CLAS Standards to Other Policies

A CA

Culturally and Linguistically Appropriate Infrastructure & Services

HHS Action Plan

Adapted from Hernandez, Nesman, Isaacs, Callejas, & Mowery, 2006
Where Can You Find More About the National CLAS Standards?

National CLAS Standards: A Blueprint for Advancing and Sustaining CLAS Policy and Practice
Where Can You Find More About the National CLAS Standards?

www.ThinkCulturalHealth.hhs.gov
For More Information:

HDDPractice@sra.com
Contact@ThinkCulturalHealth.hhs.gov

www.ThinkCulturalHealth.hhs.gov
Legal Mandates and National Standards: Ensuring Language Access in Children’s Mental Health

Tawara Goode, MA
Director, National Center for Cultural Competence
Georgetown University Center for Child and Human Development
Ensuring compliance and the adoption of the National CLAS Standards in child and youth serving systems

What will it take?
A demographic reality

A series of projections from the U.S. Census Bureau estimates:

- in the year 2046 the nation will become “majority-minority” (all people except for those that are non-Hispanic, single-race white).
- the population under 18 years of age will reach this status by 2018 or 2019.
- the working-age population is projected to become majority-minority between 2036 (high series) and 2042 (constant series).

A demographic reality

Of the 289 million persons five years and older in the U.S., 70.6 million (24%) speak a language other than English at home.

SOCIO-POLITICAL & ECONOMIC CLIMATE AFFECTING LANGUAGE ACCESS

Anti-immigrant climate

English “Only” Laws

Discrimination against people who have LEP

State anti-immigrant laws

Inadequate funding in health, human services, education

Climate of fear & intimidation

Lack of knowledge about Title VI

Slide Source: © 2013 - National Center for Cultural Competence
Linguistic Competence

is the capacity of an organization and its personnel to communicate effectively, and convey information in a manner that is easily understood by diverse groups including persons of limited English proficiency, those who are not literate or have low literacy skills, individuals with disabilities, or those who are deaf or hard of hearing.

requires organizational and provider capacity to respond effectively to the health literacy and mental health literacy needs of populations served.

ensures policy, structures, practices, procedures and dedicated resources to support this capacity.

Goode & Jones, Revised 2009, National Center for Cultural Competence

Slide Source: © 2013 - National Center for Cultural Competence
...requires that organizations have a clearly defined, congruent set of values and principles, and demonstrate behaviors, attitudes, policies, structures, and practices that enable them to work effectively cross-culturally.

(adapted from Cross, Bazron, Dennis & Isaacs, 1989.)
ESSENTIAL ELEMENTS IN A CULTURALLY COMPETENT SYSTEM

These five elements must be manifested at every level of an organization or system including:

- policy making
- administration
- practice & service delivery
- children, youth, family
- community

and reflected in its attitudes, structures, policies, practices, and services.

Adapted from Cross, Bazron, Dennis, & Isaacs, 1989
Taking the next steps
The content of and this PowerPoint presentation are copyrighted and are protected by Georgetown University's copyright policies.

Permission is granted to use this PowerPoint presentation in its entirety and/or individual slides for non-commercial purposes if:
- the material is not to be altered and
- proper credit is given to the author(s) and to the National Center for Cultural Competence.

Permission is required if the material is to be:
- modified in any way
- used in broad distribution.

To request permission and for more information, contact cultural@georgetown.edu.
QUESTIONS AND COMMENTS?
IMPORTANT LINKS

Evaluation Form:  
https://www.surveymonkey.com/s/TACenterWebinarEvaluation

Webinar Website:  
http://gucchdtacenter.georgetown.edu/resources/TAWebinars.html

Data Matters:  http://www.gucchdgeorgetown.net/data/