

From: Emily Brice <emily@nohla.org>
To: Language Access Work Group Team <workgroupssb5304@dshs.wa.gov>
Date: Friday, October 27, 2023, 4:15PM
Subject: NoHLA Comment on DSHS Language Access Workgroup

Greetings,

Please see attached for comments from Northwest Health Law Advocates regarding DSHS' draft Language Access report.

I would appreciate an acknowledgement of receipt if possible, as I have not used this inbox before.

Thank you for considering these comments.

Emily Brice (*she/her*)

See comments below:



October 27, 2023

Ms. Malia Wallace-Mello
WA State Dept. of Social and Health Services
Language Access Workgroup
Submitted via email to workgroupssb5304@dshs.wa.gov

Re: Draft Language Access Workgroup Legislative Report

Dear Ms. Wallace-Mello:

I write on behalf of Northwest Health Law Advocates (NoHLA) to comment in response to the Department of Social and Health Services' (DSHS) draft report to the Legislature (Report) relating to the findings of the Language Access Workgroup (Workgroup) created by Substitute Senate Bill 5304.

NoHLA is a nonprofit consumer legal advocacy organization seeking a health care system which allows all Washington residents to receive quality, affordable health care. We view language access as an essential part of an equitable health care system. Washington's immigrant communities are vibrant, growing, and increasingly diverse: our immigrant population has increased by 29% from 2010-2021, with particular growth in Asian and Pacific Islander communities who speak a wide range of languages.¹ State estimates show that nearly 1 in every 4 Washington families use a primary language other than English.² But unfortunately, the evidence shows that many WA immigrants continue to experience health disparities.³

Given these equity concerns, we support the Workgroup's effort to examine the existing language access delivery system and make recommendations for the future. We support the Report's overarching recommendation that Washington should invest in a broader vision for language access, which should continue to include a central role for the state in overseeing language testing and certification, but may also need to include new elements such as workforce pipeline development, community partnerships, and concerted attention to solving access problems for languages of lesser diffusion and rural areas.

However, we are concerned that the draft Report does not adequately address some critical issues, and strongly recommend consideration of these issues in the final version:

¹ WA OFM. "Washington State's immigrant population: 2010-2021" (May 2023), at <https://ofm.wa.gov/sites/default/files/public/dataresearch/researchbriefs/brief110.pdf>

² WA OFM. "Estimate of population with limited English proficiency for the state and counties." (2021 data), at <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/limited-english-proficiency-population-estimates>

³ See, e.g., WA OFM, "Washington's non-citizen immigrant population continued to experience disparities in health coverage" (August 2023), at <https://ofm.wa.gov/sites/default/files/public/dataresearch/researchbriefs/brief112.pdf>; UW Center for Health Innovation and Policy, Booshehri & Dugan, "Overcoming barriers to access health care: the challenges facing minorities and immigrants in WA state" (Aug. 2021), at <https://evans.uw.edu/overcoming-barriers-to-access-health-care-the-challenges-facing-minorities-and-immigrants-in-washington-state/#:~:text=Washington%20state%27s%20BIPOC%20and%20immigrant,inadequate%20care%20and%20unmet%20needs.>

1. The Report should clearly identify the legal obligations of the state under the *Reyes Consent Decree*.

While the Report references the *Reyes Consent Decree* in several places, the current draft does not clearly identify the ongoing legal obligations of the state under *Reyes v. Thompson*. This must be prominently included in the final report - it is absolutely essential that policymakers understand the parameters of this important legal framework when considering next steps.

The *Reyes Consent Decree* requires the state to ensure that there is an adequate pool of qualified interpreters to meet the demand for interpreter services for state public benefit programs, including but not limited to Medicaid and other medical assistance programs. *Reyes* contemplates that the state must play a prominent role in developing and administering exams, as well as ensuring the quality and sufficiency of language providers in the state. This understanding is also reflected in state law, at RCW 74.04.025 and WAC chapter 388-03.

While we acknowledge that there is a need to modernize elements of testing, the state cannot shirk its duties by outsourcing these functions entirely to third-party entities. It must be clear in the report that the state has a continuing obligation to engage in medical interpreter testing and credentialing.

We would be glad to review the specific language you add to the final report with legal experts familiar with the *Reyes Consent Decree* to ensure accuracy. Please send the proposed language to emily@nohla.org and we will review as quickly as possible.

2. The Report should include data about existing language access gaps and DSHS' new model.

We are glad that the Report includes important information about the need for any future framework to address urgent language needs for newly-arriving refugees and humanitarian entrants.

However, we are concerned that the Report does not include important context about *other* known language access gaps in Washington. The final Report must include:

- Data on the diversity of Washington's immigrant population and language needs, which may be drawn from sources like OFM estimates⁴ and the Department of Health's COVID-19 language access plan.⁵
- Data on known shortfalls in Washington's current system, such as information in HCA's interpreter services dashboard that shows serious gaps between requests for interpreter services and interpreter fill rates, with particular disparities in rural areas and languages of lesser demand.⁶ This data likely underestimates the severity of these disparities because providers and clients stop requesting interpreters after repeat failures, but nonetheless is an

⁴WA OFM. "Estimate of population with limited English proficiency for the state and counties." (2021 data), at <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/limited-english-proficiency-population-estimates>

⁵ See <https://content.govdelivery.com/accounts/WADOH/bulletins/28940f4>, though note that the linked plan has been removed from the DOH website so DSHS should seek the information from DOH staff.

⁶ See <https://www.hca.wa.gov/about-hca/data-and-reports/interpreter-services-data-dashboard>.

important part of understanding the needs of Washington residents and opportunities to improve.

- Data on the effectiveness of the new testing models DSHS has piloted post-pandemic. The report describes how DSHS shuttered its LTC program during the pandemic and then re-opened the program with a delivery system that is dramatically different from the model the state used in previous decades. For the first time, DSHS is now using third-party vendors and online testing models. This is presented as a success in the Report, but there is no data to support this framing. The Report must include information about the number and types of interpreters who have been tested and credentialed under the post-pandemic model, how that compares to the pre-pandemic model, and any observations about the quality/sufficiency of the interpreter pool throughout.

3. The Report should identify the limitations of the Workgroup and suggest a framework for next steps that addresses both interim needs as well as long-term considerations.

We are concerned that the Report does not clearly identify the limitations of the Workgroup. The Workgroup met six times over a 12-week period. This is a wholly insufficient process to develop recommendations on a complex set of workforce issues which affect Washingtonians' civil rights to language access services. It is particularly deficient given that the recommendations are closely related to a model that has been in place for over 3 decades as a result of an ongoing consent decree.

We understand that DSHS is working on a timeline set by the Legislature. That is why we recommend that DSHS explicitly identify in the final report:

- The need for a longer, second review and stakeholder process for any long-term changes; and
- The urgent need to understand and identify whether the current post-pandemic model is working to serve communities, or whether DSHS should return to its pre-pandemic model in the interim as the state explores longer-term models.

Thank you for your consideration of these comments. As I noted above, I would be glad to review any additions to the Report you are considering to address these requests.

Sincerely,

Emily Brice, JD
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