

**NEW YORK STATE OFFICE FOR THE AGING**

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**PROGRAM INSTRUCTION**

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**DATE:** July 17, 2012

**TO:** AAA Directors

**SUBJECT: Equal Access to Services and Targeting Policy**

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**PURPOSE**

The purpose of this Program Instruction is to issue the New York State Office for the Aging's (NYSOFA's) revised Equal Access to Services and Targeting Policy. This updated policy statement serves to clarify the responsibilities of New York State's Aging Network Providers under federal and state laws regarding equal access to services and nondiscrimination in serving all cohorts of New York's older adults and caregivers. It also addresses the federal and state requirements for targeting activities to reach those unserved and underserved groups that are in greatest social and/or economic need.

**ACTION REQUIRED:**

Each Area Agency on Aging (AAA) is required to ensure all legal requirements are met in delivering aging services in its service area. This includes implementing targeting activities for older adults and caregivers in greatest social and economic need as described in this policy and the following laws: the Older Americans Act (OAA), Title III of the Code of Federal Regulations, 45 CFR 1321; the NYS Elder Law and relevant NYS regulations (Title 9, Subtitle Y of the New York State Code of Rules and Regulations). Additionally, AAAs must ensure nondiscrimination and equal access to services in all programmatic activities as required by law (see summary of

relevant laws below and resource list at the end of this document for more information).

## **BACKGROUND**

The increase in the number of older persons, especially among ethnically diverse populations, immigrants with limited English proficiency and those who are age 85 and older, is challenging society's ability to meet the rapidly growing demand for age-related services. Such demographic changes call for specific approaches to service delivery that take into account issues such as health care disparities and cultural and linguistic competence. This Equal Access to Services and Targeting Policy is promulgated to advise Area Agencies on Aging (AAA) of their responsibilities and assist aging service providers in responding to the needs of New York's diverse older adults who have the greatest social and economic needs.

Over the last decade within New York State (NYS), the minority population aged 60 and older grew by 43 percent, compared to 8 percent for the non-minority population. Growth in the aged 85 and older minority population group is expected to be even greater. Over the last decade, this age group grew by 81 percent, compared to 22 percent for the non-minority population. This high growth rate will continue over the next three decades. Additionally, according to the 2009 American Community Survey, 21.3 percent of the NYS population is foreign-born, with 28.5 percent of the population speaking a language other than English at home.

In addition, the Centers for Disease Control and Prevention's (CDC) Office of Minority Health and Health Disparities states that "compelling evidence indicates that race and ethnicity correlate with persistent, and often increasing, health disparities among the U. S. populations." In addition to race and ethnicity, the CDC found that health disparities also occur among various segments of the population by gender, education or income, disability, geographic location, or sexual orientation.

This Equal Access and Targeting Policy, which includes all of the following pages, provides information to Area Agencies on Aging (AAAs) regarding their responsibilities in developing and implementing strategies to improve equal access to, and targeting of services for, unserved and/or underserved populations who are in greatest social and/or economic need.

## EQUAL ACCESS TO SERVICES AND TARGETING POLICY

<b>Table of Contents</b>		<b>Pages</b>
I.	Legal Environment and General Requirements	4
II.	Definitions and General Requirements Regarding Targeting	5
III.	Targeting Objectives and Goals	8
IV.	NYSOFA Equal Access and Targeting Responsibilities	10
V.	AAA Equal Access and Targeting Responsibilities	11
VI.	Language Assistance	14
	A. Language Assistance Requirements	14
	B. Providing Meaningful Access to Persons with LEP	16
	Interpretation and Translation	17
VII.	Resources for Technical Assistance	19
VIII.	Questions	21

## I. LEGAL ENVIRONMENT AND GENERAL REQUIREMENTS

The preference to serve those in greatest social or economic need was inherent in the federal OAA, as enacted in 1965, and has been explicitly re-emphasized and expanded in subsequent amendments. This preference is reflected in current language within the OAA, for example, §305(a)(2); §306(a)(1); §306(a)(4)(A) and (B); §306(a)(11)(A) and §306(a)(15)(A). The older adult groups identified within the OAA for particular attention include those which are defined under Section II.B., “Population Groups to be Included in Targeting Efforts” below. These groups continue to comprise a significant segment of older adults in greatest social or economic need, who are underserved in aging programs and services.

The NYS Elder Law § 203, Title 9, Subtitle Y, §6652.4 (e) and §6654.3 of the New York Code of Rules and Regulations, also require the targeting of services to older adults who are low-income, minority, frail, or vulnerable (see Section II. B of this Program Instruction for further clarification of older adults included in these categories by NYSOFA).

Both the OAA Regulations (Title III Regulations, Title 45, Code of Federal Regulations (CFR) § 1321.5) and NYSOFA Regulations (Title 9, Subtitle Y, § 6651.2(c)(iv)), also require compliance with federal and state nondiscrimination laws (see below) in all programs and services.

In addition to the OAA and NYS Regulations, entities receiving federal funds, which include AAAs and their subcontractors, are required to meet additional legal requirements regarding nondiscrimination and equal access to services, as described below.

**Title VI of the Civil Rights Act of 1964 (CRA Title VI) mandates that entities receiving federal financial assistance (which would include AAAs and all subcontractors) may not, based on race, color, or national origin exclude any person from participation in; deny the benefits of; or subject any person to discrimination, under any program or activity receiving federal financial assistance. Under the CRA Title VI precept regarding national origin, “...failure to ensure that limited English proficiency (LEP) persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition ...against national origin discrimination.” (See Section VI., Language Assistance in this Program Instruction for more details on obligations to provide language access.)**

**Federal Executive Order 13166** requires entities that receive federal funds to: examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so persons with LEP can have meaningful access (see Section VI. below).

**Section 504 of the Rehabilitation Act of 1973, and Titles II and III of the Americans with Disabilities Act (ADA)** prohibit covered entities from discriminating against persons with disabilities in the provision of benefits or services or the conduct of programs or activities. Section 504 applies to programs or activities that receive federal financial assistance, directly or as subcontractors (e.g., AAAs and subcontractors). Title II of the ADA covers all of the services, programs, and activities conducted by public entities (state and local governments, departments, agencies, etc.). Title III covers private entities, including nonprofits that are considered places of public accommodation, which would include, but are not limited to, health related offices and senior centers.

**The New York State Human Rights Law (HRL), §290 through §301 of the Executive Law of NYS prohibits discrimination on the basis of the following characteristics:** Race, Color, Creed, National Origin, Sex, Age, Disability, Sexual Orientation, Marital Status, Familial Status, Military Status, Domestic Violence Victim Status, Arrest or Conviction Record, and Predisposing Genetic Characteristics.

**Localities may have Human Rights legislation** that also affects AAAs and their subcontractors. NYS Aging Network providers should ensure that they are familiar and comply with county and city laws and regulations in this regard, e.g., Albany, New York City, Suffolk, and Westchester Counties all have local Human Rights laws (not an all inclusive list, examples only).

**Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)** restricts access to "Federal public benefits" to qualified aliens in defined program areas. However, immigration and citizenship verification requirements promulgated by the Department of Justice under PRWORA are **not** applicable to Administration for Community Living (ACL) administered OAA programs. Therefore, **non-citizens, regardless of their alien status, should not be banned from services authorized by the OAA and administered by the ACL based solely on their alien status.** To do so may violate the requirements of other civil rights legislation as described above.

## **II. DEFINITIONS AND GENERAL REQUIREMENTS REGARDING TARGETING**

### **A. Targeting**

Targeting is defined in NYSOFA regulations §6651.2(i)(1) as, "... a range of activities at system, program, and client levels designed to identify individuals in a specified, defined population (called the target population(s)) who need services, and designed to increase service delivery to the target population by linking or providing them with appropriate services." AAAs are responsible for implementing targeting activities at the various levels described below, as follows:

- System targeting includes but is not limited to three processes with the goal of making good faith efforts to meet targeting objectives:
  - (1) Advocating and assisting other agencies to use their resources in service delivery processes;
  - (2) Determining the overall mix of services to be supported by AAA resources; and,
  - (3) Coordinating and integrating services with those of other agencies.
  
- Program targeting is the process of operationalizing system targeting, and a method of determining:
  - (1) which service providers are to be used;
  - (2) what service protocols are followed;
  - (3) how the clients will be identified and served; and,
  - (4) where the service is to be provided geographically.
  
- Client Targeting is the process of identifying, assessing and serving those individual older adults most in need, for example, by using outreach strategies designed to identify clients in targeted cohorts.

Targeting activities must be designed to identify individuals in the target populations who need services and to increase service delivery to the target population by linking targeted populations to, or providing them with, appropriate service. The Area Agencies on Aging should provide local leadership and assist in coordinating the planning of a range of activities at the system, program, and client levels designed to increase service delivery to the targeted population(s) in their respective service areas.

## **B. Population Groups to be Included in Targeting Efforts**

The Older Americans Act requires NYSOFA to provide assurances that preference "will be given to providing services to older individuals with the greatest economic or social needs..." with particular attention to specifically identified targeted groups (OAA §305(a)(2)(E)). The term "greatest economic need" is defined as the need resulting from an income at or below the poverty levels as established by the US Office of Management and Budget. The term "greatest social need" refers to the need caused by non-economic factors which include physical and mental disabilities, language barriers and cultural, social or geographical isolation including isolation caused by racial or ethnic status that restricts an individual's ability to perform normal daily tasks or threatens the capacity of the individual to live independently (OAA §102 (23 and 24)).

The State Office for the Aging has identified the following four target groups within NYS, which have the greatest economic and social needs: **minorities, low-income, frail, and vulnerable**. Specific definitions for each group are listed below, updated where applicable in accord with the 2010 U.S. Census definitions.

1. **Minority** - persons of Black, Hispanic, Asian, Native American (American Indian), Alaska Native, Native Hawaiian or Other Pacific Islander origins. Persons whose origins are of 2 or More Races or who are identified as being in a racial category different from those above (other than white) may be included (see the Other Race or 2 or More Races categories, defined below).

- A. Black - refers to a person who has origins in any of the Black racial groups of Africa. This includes, for example, persons who self report as Black, African American, Kenyan, Nigerian, Haitian or other applicable identification.
- B. Hispanic (or Latino) - refers to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race. Hispanic origin can be viewed as the heritage, nationality group, lineage, or country of birth of the person or the person's parents or ancestors before their arrival in the United States. People who identify their origin as Hispanic, Latino, or Spanish may be any race.
- C. Asian - refers to a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, but not limited to, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- D. American Indian or Alaska Native - refers to a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment. This category includes people who indicated their race(s) as "American Indian or Alaska Native" or reported their enrolled or principal tribe, such as Navajo, Blackfeet, Inupiat, Yup'ik, and/or Central American or South American Indian groups.
- E. Native Hawaiian or Other Pacific Islander - refers to a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- F. Other Race or 2 or More Races - this category includes persons who self identify as multiracial, mixed, interracial, or a racial category other than white, not included in the descriptions above.

2. **Low -Income** - Persons with incomes at or below 150% of the poverty level.

3. **Frail** - Persons with one or more functional deficits in the following areas:

- Physical functions;
- Mental functions;
- Activities of daily living (eating, bed/chair transfer, dressing, bathing, toiletry and continence); and/or,
- Instrumental activities of daily living (meal preparation, housekeeping, shopping, medications, telephone, travel, and money management).

4. Vulnerable – Persons with a deficit of social resources, those who are isolated socially, linguistically or geographically, and/or those affected by other environmental conditions including the following:

- Language barriers; <sup>1</sup>Limited English Proficiency(LEP)]
- Rural residence;<sup>2</sup>
- Persons with disabilities;
- Institutionalized or at risk of institutionalization;
- Lesbian, gay, bisexual, transgender (LGBT) older adults;
- Low literacy;<sup>3</sup>
- Older adult caregivers of children with developmental disabilities, mental illness, or other disabilities requiring a caretaker (e.g., traumatic brain injury);
- Homebound; and,
- Alzheimer’s or other Dementia.

### III. TARGETING OBJECTIVES AND GOALS

Targeting requirements are applicable to all Older Americans Act and New York State programs (e.g., Community Services for the Elderly (CSE), Expanded In-Home Services for the Elderly (EISEP), Supplemental Nutrition Assistance Program (SNAP), etc.) administered by NYSOFA and the Area Agencies on Aging.

Consistent with the OAA and NYS applicable regulations, the aging services network's targeting goal is to substantially increase the numbers of older adults from targeted population groups (minority, low-income, frail, vulnerable) served by both Aging Network funded programs and programs funded by other community resources (such as the local Department of Social Services, Mental Health, Public Health Nursing, United Way, etc.) through network system development activities, and assisted referrals.

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1 **LEP definition**, condensed from Policy Guidance for US Department of Health and Human Services (ACL) Funding Recipients: A Limited English Proficient (LEP) individual is a person who does not speak English as his/her primary language and who has "a limited ability to read, write, speak, or understand English, and may be eligible to receive language assistance with respect to a ...service, benefit, or encounter."

2 **“Rural” defined by US Census** as all population, housing, and territory not included within an urban area. Urban areas comprise (1) urbanized areas (a central place and its adjacent densely settled territories Rural (2) continued: with a combined minimum population of 50,000) and (2) an incorporated place or a census designated place with 20,000 or more inhabitants.

3 **Low Literacy**: in 1991, Congress passed the *National Literacy Act* that defined literacy as "an individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and develop one's knowledge and potential." Rather than classifying individuals as either "literate" or "illiterate," five levels of literacy were defined with Level 1 reflecting the lowest skills and Level 5 reflecting the highest skills.(U.S. Department of Education).

AAAs are required to set specific objectives, consistent with NYSOFA policy, for providing services to older individuals with greatest economic and social needs as defined under Section II., B., of this policy. Within the Four Year and Annual Implementation Planning processes, NYSOFA requires AAAs to specify, and /or report on, the planned targeting activities at the system, program and client levels for the applicable time period.

Additionally, minimum numerical goals, based on the most current U.S. Census data must be developed within the Four Year Plan and AAAs must report on these goals annually through the AIP process. An example of the process for setting minimum numeric goals is as follows:

If a Planning and Service Area (PSA) has 10,000 older adults of whom 500 belong to a particular target group, then that target group represents 5% of the general older adult population. If an AAA plans to serve 1,000 older adults within its PSA, targeting efforts should ensure that at the minimum, 50 (5% x 1,000) members of the target group are included among service recipients. If using this method results in a fraction, the number should be rounded up to the nearest whole number (person).

The numeric formula should be applied to those targeted cohorts for whom comparable census data is available. These cohorts include unserved and underserved older adults in greatest social or economic need who are: low-income, low-income minorities (includes Hispanics, Native American/Alaskan Natives, Asians, Blacks, Native Hawaiians/Pacific Islanders, persons who are of other races (excluding white) or two or more races), rural residents, older adults with limited English proficiency, and frail/persons with disabilities.

In setting goals, AAAs should consider the representation of targeted populations within their PSAs that need specific services. While goals do not have to be program specific, meaningful targeting efforts require AAAs to determine where their targeting efforts should be directed to meet the needs of “targeted” older adults. For example, if, in a given PSA, a significantly higher percentage of older adults from a targeted cohort requires EISEP services, with little immediate need for programming provided in a Senior Center, efforts to reach the targeting goal successfully would focus more heavily on EISEP services for the target cohort.

AAAs also have the option of adding additional goals based on unique local priorities. For example, a PSA may have a cohort of “targeted” older adults with HIV/AIDS (e.g., residents with HIV/AIDS in a specific region of the PSA) requiring specific outreach and programmatic efforts. In these instances, AAAs should include in reports to NYSOFA, the applicable population data and cite data sources, which may come from a source other than the U.S. Census. For example, an AAA might provide the number of older adults in the cohort with HIV/AIDS, the source of data and relevant information in the AIP reporting process regarding any additional goals they may have in its PSA.

AAAs should note, however, that, based on significant racial, ethnic, and language disparities in health related care outcomes and the need to more effectively address the needs of increasingly diverse populations, NYSOFA's policy requires that AAAs must make good faith efforts to serve members of target groups in substantially higher percentages than their representation in the general older adult population of the Planning Service Area (PSA). This approach is consistent with the OAA's stated preference to provide.... "*services to older individuals with the greatest economic or social needs...*" with particular attention to specifically identified targeted groups. (OAA §305(a)(2)(E)).

It should also be noted that AAAs may also develop targeting strategies for those targeted groups for which comparable census data may not be available. Thus, the AAA may not be able to determine a realistic numeric goal. For example, currently data on the representation of LGBT older adults is not captured through the U.S. Census and, for many PSAs, may not be available locally or regionally from other sources. However, AAAs may make efforts to create community linkages to identify and provide services to the LGBT older adult population in the PSA.

All AAAs must provide assurances to NYSOFA within their area plans that they will provide information and outreach to specified target populations and will make the maximum efforts through system, program, and client targeting to promote and increase services to these underserved and/or underrepresented groups.

AAAs targeting objectives and numerical goals are subject to review and approval by NYSOFA in the Four Year Plan and Annual Implementation Plan processes, evaluation visits and monitoring, including the ongoing review of the Consolidated Area Agency Reporting System (CAARS) reports. AAAs should be prepared to describe in detail their good faith efforts and results towards serving members of target groups in higher percentages than their representation in the general PSA population of older adults.

#### **IV. NYSOFA EQUAL ACCESS AND TARGETING RESPONSIBILITIES**

Under the requirements of the OAA §305 (a), NYSOFA is responsible for developing and administering the State Plan. This includes responsibility for assuring that preference will be given to providing services to older individuals with greatest economic and social needs, with particular attention to targeted groups. NYSOFA is also required to: develop policies consistent with legal requirements governing all aspects of federally and/or NYS funded aging programs including equal access, targeting and nondiscrimination requirements; enforce these policies (Title III Regulations, Title 45, Code of Federal Regulations (CFR) § 1321.11); and evaluate the effectiveness of Title III and VII services provided to individuals with greatest social and economic need with particular attention to targeted groups [OAA§ 307(a)(4)],

Other NYSOFA equal access and targeting activities may include:

- A. Ensuring that the intrastate funding formula reflects the proportion of targeted groups among the local PSAs (Title 45 CFR §1321.37).
- B. Supporting and ensuring local efforts to carry out equal access and targeting mandates through technical assistance, training, monitoring, and assessments.
- C. Monitoring and approving funding allocations and utilization to ensure service delivery to target populations.
- D. Developing program instructions, standards, guidelines and procedures to ensure equal access, nondiscrimination, appropriate participation of target populations and usable mechanisms and measures for identifying and reporting on the participation of identified targeted groups.
- E. Ensuring targeting population representation on NYSOFA Advisory Committees and advocating for the representation of their interests on advisory committees of other State agencies. NYSOFA also monitors AAAs for compliance with federal and state requirements for representation of minorities and other older persons with greatest economic or social needs on their advisory councils (Title 9, NYCRR Subtitle Y, § 6652.6(b)(1)).
- F. Setting objectives for providing services to specific targeted groups, in consultation with area agencies on aging, for each PSA (OAA §305(a) (2) (G) (i)).

## **V. AAA EQUAL ACCESS AND TARGETING RESPONSIBILITIES**

AAAs are charged with providing leadership in assisting communities throughout their planning and service areas to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need (see Section II., B., “Population Groups to be Included in Targeting Efforts”). AAAs must also ensure that each activity undertaken, including planning, advocacy, and systems development, will include a focus on the needs of low-income minority older individuals and older individuals residing in rural areas (OAA §306 4(C)).

Specifically, AAAs are responsible for:

- A. Complying with requirements for equal access including language accessibility, nondiscrimination and concentration of services on target populations as required in the OAA, NYS regulations, other relevant laws (see Section I of this Program Instruction - Legal Environment and General Requirements) and NYSOFA policies.

- B. Requiring all aging service providers under their respective PSAs to comply with the requirements summarized in letter A., immediately above, and include these requirements in each agreement made with such providers [OAA §306(a)(4)(A)].
- C. Including in AAAs agreements with providers in their PSAs that each provider comply with requirements for concentration of services on target populations (Title 9, Subtitle Y, § 6651.2) and specify how the provider intends to meet specific objectives for satisfying the service needs of, and providing services to, low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas [OAA §306(a)(4)(A)].
- D. Providing technical assistance, monitoring and periodically assessing the performance of all service providers regarding targeting, nondiscrimination and equal access issues (NYS regulations, Title 9, Subtitle Y, §6653.3).
- E. Coordinating with agencies that develop or provide services for individuals with disabilities to identify and assess the needs of older adults with disabilities, and to plan and provide services for older individuals with disabilities, with particular attention to individuals with severe disabilities, and individuals at risk for institutional placement (OAA §306 a(5)).
- F. Ensuring that all programs and sites provide maximum accessibility to those older adults in greatest economic or social need, and that new sites be free from architectural barriers that limit participation of disabled older individuals (NYS regulations, Title 9, Subtitle Y, §6652.2 (l)). Accessibility requirements include provision of services and assistive devices (including assistive technology services and devices) designed to meet the unique needs of older individuals who are disabled, and of older individuals who provide uncompensated care to their adult children with disabilities. Providers must ensure that communications with individuals with disabilities are as effective as communications with others (ADA, 28 CFR 35.160-35.164). For example, auxiliary aids and services may include:
- For individuals who are deaf or hard of hearing: qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs), videotext displays, and exchange of written notes.<sup>4</sup>

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<sup>4</sup> Please note that signed languages (e.g., American Sign Language) do not follow the socio-geographic movements of spoken languages. For example, ASL is used in Puerto Rico while Spanish is the spoken language. Although English is spoken in both England and the United States, the former uses British Sign Language (BSL), which differs greatly from ASL. Mexican Sign Language (LSM) differs from the varied signed languages of Spanish-speaking countries in Latin America [*\*from Certified Interpreting: The Sign Language Network website*]. Providers must work with clients who are deaf/hearing impaired to determine what signed language or other methodology would be appropriate for the client's preferred method of communication.

- For individuals with vision impairments: qualified readers<sup>5</sup>, taped texts, audio recordings, Brailled materials, large print materials, and assistance in locating items.
  - For individuals with speech impairments: TDDs, computer terminals, speech synthesizers, and communication boards.
- G. Assuring that funds received under the OAA will be used to provide benefits and services to older individuals, giving priority to targeted groups (OAA §306 a (15)) with particular attention to low-income minority individuals, older individuals with limited English proficiency, and older individuals residing in rural areas, e.g., locate service sites in low-income and/or minority communities, subcontract for service provisions with agencies that serve consumers from targeted groups.
- H. Reviewing current service patterns to determine where funds can be shifted to better serve target populations and considering the proportion of targeted older adults in the population of the service area when making allocation or reallocation decisions for resources. Special targeting efforts should be undertaken with any allowable sources or new or one-time funds. OAA carryover especially that in excess of ten percent, should be viewed as a potential resource for such targeting efforts. (In granting NYSOFA approval for retention of carryover funds, the proposed use of such funds for targeting activities (including language accessibility for persons with limited English proficiency) will be a major factor considered (NYS Title 9, Subtitle Y, §6654.3 (b)).
- I. Recognizing and making public mandated responsibilities on targeting, nondiscrimination and equal access to services. This includes educating the local network on the need to provide equal access to information and services to unserved and underserved populations including the availability of free language assistance services as required by law. **(See Section VI. Language Assistance, for specific requirements for communicating with older adults with limited English proficiency (LEP)).**
- J. Ensuring equal opportunity employment practices within the AAA and by subcontractors, to promote and increase staff and volunteers representative of target populations when opportunities arise.

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<sup>5</sup> A qualified reader is a person-e.g., an employee or volunteer- who reads aloud either directly to a visually impaired person who is present or onto a recording device to which a visually impaired person will later listen. The reader must be proficient enough in reading that he/she can communicate written material clearly and effectively to the visually impaired consumer. Another option may be an electronic device or application such as a screen reader, a software application that attempts to identify and interpret information displayed on a computer screen.

- K. Including target populations in the PSA in needs assessments, planning, implementation and evaluation of programs to identify and develop specific strategies and methods to identify unmet needs of these groups.
- L. Using outreach efforts that will place special emphasis on:
- older individuals residing in rural areas;
  - older individuals with greatest economic need (with particular attention to low-income minority individuals and older individuals residing in rural areas);
  - older individuals with greatest social need (with particular attention to low-income minority individuals and older individuals residing in rural areas);
  - older individuals with severe disabilities;
  - older individuals with limited English proficiency;
  - older individuals with Alzheimer’s disease and related disorders with neurological and organic brain dysfunction (and the caretakers of such individuals); and
  - older individuals at risk for institutional placement (OAA §306 a (4) (B))
- M. Informing the older individuals referred to in section L., above, and the caregivers of such individuals, of the availability of assistance (OAA §306 a (4)(B)). As an example, AAAs should consider participating in community, civic, cultural and other activities and programs to encourage target population participation in services.
- N. Including in outreach efforts the identification of older Native Americans in the PSA and informing such older Native Americans and their caregivers of the availability of assistance (OAA §306 (a) (11)).
- O. Ensuring minority and other targeted older adult representation on AAAs and service provider advisory committees and/or Boards of Directors and ensuring their participation in the development of targeting strategies (NYS regulations, Title 9, Subtitle Y, §Sec. 1321.57).
- P. Ensuring that subcontractors identify and serve the target population through the AAAs’ provision of technical assistance, assessment, training, and monitoring (e.g., reporting requirements) and evaluating of subcontractors. Service providers must follow methods established by the AAAs.

## **VI. LANGUAGE ASSISTANCE**

### **A. Language Assistance Requirements**

Language assistance refers to the development and implementation of effective communication methods and strategies to ensure the accurate exchange of information between service providers and linguistically diverse clients. All AAAs and subcontractors are required by law to take reasonable steps to provide meaningful access to limited English proficient persons. Specifics regarding this requirement are

summarized below and may be reviewed in more detail by using the resources listed in Section VII below. Since no single policy can include the extensive and complex information regarding many of the issues summarized in this policy, AAAs should, at a minimum, ensure they review the links to federal funding agencies' (U.S. Department of Health and Human Services (HHS) and ACL) information presented in Section VII for complete information relating to their responsibilities.

The OAA requires that any AAA with a significant number of limited English speaking older adults use staff in the delivery of outreach services that are fluent in the language spoken by a predominant number of such older individuals. The AAA is also required to designate an individual that it employs, or who is available to it on a full-time basis, whose responsibilities will include the following: taking appropriate action as may be appropriate to assure that counseling assistance is made available to older individuals with limited English speaking ability in order to assist such older individuals in participating in programs and receiving assistance under the OAA; and providing guidance regarding cultural sensitivities and linguistic and cultural differences to individuals engaged in the delivery of supportive services under the area plan 42 U.S.C. Sec. 3027(a)(15).

Additionally, consistent with the Civil Rights Act of 1964, Title VI, the Title VI regulations, federal Executive Order 13166, and the NYS Human Rights Law, all aging services providers, are obligated to provide reasonable, timely, and appropriate language assistance to the limited English proficiency (LEP) populations each serves. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI, CRA, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination.<sup>6</sup>

Under the above referenced laws and regulations, providers in service areas with significant numbers of older adults with LEP may be required to provide a range of language assistance options (e.g., see the four factor analysis described below). However, even in service areas with smaller numbers of consumers with LEP, every older adult with LEP (and/or caregivers) seeking aging services must receive timely language accessibility services. Timeliness means that persons with LEP receive communications and services in a manner that does not require delays appreciably greater than experienced by English proficient persons.

### **Mandated Action:**

**Therefore, all AAAs must, at a minimum, establish a telephonic interpretation service contract or similar community arrangement with a language interpretation services provider of their choice by October 1, 2012. All aging services staff with public contact must be aware of, and trained in the timely and appropriate use of,**

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<sup>6</sup> Based on **HHS/AoA(now ACL)** Guidance to Federal Financial Assistance Recipients regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.

these language services. Please see, *B. Providing Meaningful Access to Persons with LEP*, below, for further information.

Each AAA will be required to report on the telephonic interpretation service which it has established in its Annual Implementation Plan under the section entitled, “Demographic Data and Targeting Objectives”.

## **B. Providing Meaningful Access to LEP persons**

### **Four Factor Analyses**

All recipients of federal funds, which include AAAs and subcontractors providing aging services, are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment and analysis that balances the four factors below. The results of this assessment should be used to develop the AAA’s plan to provide timely and appropriate language services to consumers with LEP.

1. **The number or proportion of LEP persons eligible to be served or likely to be encountered by the program:** the greater the number or proportion of LEP persons in the PSA, the more likely language services are needed and the greater the obligation to provide language assistance services. In conducting the analysis, include LEP populations eligible for programs or activities that may be underserved because of existing language barriers.
2. **The frequency with which LEP individuals come in contact with the program:** providers should assess, as accurately as possible, the frequency with which they have or **should have** contact with LEP individuals from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. In applying this standard, providers should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups. If an LEP individual accesses a program, activity, or service on a daily basis, a provider has greater duties than if an LEP individual's contact with the program, activity, or service is unpredictable or infrequent. However, if an AAA or subcontracted provider serves LEP persons on an unpredictable or infrequent basis this balancing analysis should still be used to determine what to do if an LEP individual seeks services under the program in question. As noted above under **VI., A. Language Assistance Requirements**, at a minimum, aging services providers must have a telephonic language interpretation service available to obtain immediate interpreter services.
3. **The nature and importance of the program, activity, or service provided by the program to people's lives:** identify the programs, services, or activities

that would have a serious consequence if language barriers prevented LEP persons' access to them. Responsibility to provide language assistance would be greater for such critical services.

4. **The resources available to the provider/ agency, and costs:** explore the most cost-effective means of delivering competent and accurate language services. Provider organizations with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

After applying the above four-factor analysis, an aging services provider may identify different language assistance measures for the different types of programs or activities in which it engages. Some services will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. Providers should ensure that staff who may encounter clients with LEP are aware of, and use, the organization's plan to provide language assistance that is developed based on the four factor analysis. The flexibility that providers have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the legal obligation that the language assistance needs be addressed to provide meaningful access to services for LEP persons. **AAAs must also ensure that LEP persons are informed of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand at service locations.**<sup>7</sup>

## Interpretation and Translation

Interpretation involves the immediate communication of meaning from one language (the source language) into another (the target language). An interpreter conveys meaning orally, while a translator conveys meaning from written text to written text. As a result, interpretation requires skills different from those needed for translation.

Interpreting is a complex task that combines several abilities beyond language competence in order to enable delivery of an effective professional interpretation in a given setting. Consequently, extreme care must be exercised in selecting interpreters and interpreting duties should be assigned to individuals within their performance level. Command of at least two languages is prerequisite to any interpreting task. The interpreter must be able to (1) comprehend two languages as spoken and written (if the language has a script), (2) speak both of these languages, and (3) choose an expression in the target language that fully conveys and best matches the meaning of the source language.<sup>8</sup>

There are a number of steps that can assist in providing oral language assistance. They range from hiring bilingual staff or staff interpreters competent in the skill of interpreting, to contracting with qualified outside in-person or telephonic interpreter services, to arranging formally for the services of qualified voluntary community

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<sup>7</sup> Ibid-see footnote 6

<sup>8</sup> Ibid-see footnote 6

interpreters who are bound by confidentiality agreements. Generally, it is **not acceptable** for AAAs to require, or rely upon, an LEP individual's family members or friends to provide the interpreter services for reasons relating to confidentiality, objectivity, and competence in the interpretation process. The service provider should meet its obligations to provide language assistance by supplying competent language services free of cost and notifying the client that such assistance is available. In rare emergencies, the service provider may have to rely on an LEP person's family members or other persons whose language skills and competency in interpreting have not been established. Proper planning and implementation is important in order to ensure that those situations rarely occur.<sup>9</sup>

Written materials routinely provided in English also may require translation into regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the program or activity. A document is considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law. Vital documents include, for example: applications, consent and complaint forms; notices of rights, notices advising LEP persons of the availability of free language assistance; and letters or notices that require a response from the client or caregiver(s). Non-vital information includes documents that are not critical to access benefits and services.<sup>10</sup>

Vital documents must be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English for effective communication. For many larger documents, translation of only the vital information contained within the document will suffice and the documents need not be translated in their entirety.<sup>11</sup>

## **Identifying LEP Persons and Their Language**

In the service setting, providers should promptly identify the language and communication needs of the LEP client and obtain timely and appropriate interpretation services using the method(s) chosen by the provider based on the four factor analysis, e.g., contact bilingual staff or use telephonic interpretation service. If necessary, staff may use a language identification card (e.g., "I speak cards," available online at [www.lep.gov](http://www.lep.gov)) or posters to determine the language. In addition, when records are kept

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9 Ibid-see footnote 6

10 Ibid-see footnote 6

11 Ibid-see footnote 6

of past interactions with clients or family members, the language used to communicate with the LEP person(s) should be included as part of the record.<sup>12</sup>

## VII. RESOURCES FOR TECHNICAL ASSISTANCE

In addition to the assigned Aging Service Representative, NYSOFA's Director of Equal Opportunity and Diversity Management is a resource for information and technical assistance regarding equal access and targeting issues (518) 473-7342. Additionally, the resources listed below will also assist AAAs to increase their knowledge concerning their responsibilities and implementation strategies in these areas.

**A. US DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS- includes and applies to entities funded by the US Administration on Community Living (ACL)), e.g., NYSOFA, AAAs and subcontracted providers:**

1. **Guidance to Federal Financial Assistance Recipients regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons-** Link:

<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/policyguidancedocument.html>

2. **HHS Office of Minority Health**

a. **Cultural competency-** Link:

<http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=1&lvlID=3>

b. **Health Related Information on Minority Populations-**Link:

<http://minorityhealth.hhs.gov/templates/browse.aspx?lvl=1&lvlID=5>

**B. UNITED STATES ADMINISTRATION ON COMMUNITY LIVING (ACL) RESOURCES**

1. **Diversity Toolkit:** consists of a four-step process and a questionnaire that assists the Aging Services Network and its partners with every stage of program planning, implementation, and delivery of diverse population services- Link:

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<sup>12</sup> Based on U.S. Department of Health & Human Services, **Policy And Procedures For Communication With Persons With Limited English Proficiency.**

[http://www.aoa.gov/AoARoot/AoA\\_Programs/Tools\\_Resources/DOCS/AoA\\_DiversityToolkit\\_full.pdf](http://www.aoa.gov/AoARoot/AoA_Programs/Tools_Resources/DOCS/AoA_DiversityToolkit_full.pdf)

2. **ACL General Diversity Information including, Cultural Competency, Translated Materials, Lesbian, Gay, Bisexual and Transgender (LGBT) issues-** Link:

[http://www.aoa.gov/AoARoot/AoA\\_Programs/Tools\\_Resources/diversity.aspx](http://www.aoa.gov/AoARoot/AoA_Programs/Tools_Resources/diversity.aspx)

3. **ACL Information on Civil Rights and Equal Access: includes information on Civil Rights, Limited English Proficiency, Citizenship/Alien Status-** Link:

[http://www.aoa.gov/AoARoot/AoA\\_Programs/Tools\\_Resources/civil\\_rights.aspx](http://www.aoa.gov/AoARoot/AoA_Programs/Tools_Resources/civil_rights.aspx)

4. **ACL Unofficial Compilation of Older Americans Act, as amended in 2006-** Link:

[http://www.aoa.gov/aoaroot/aoa\\_programs/oa/oa\\_full.asp](http://www.aoa.gov/aoaroot/aoa_programs/oa/oa_full.asp)

- C. **STANFORD SCHOOL OF MEDICINE: STANFORD GERIATRIC EDUCATION CENTER: Curriculum in Ethnogeriatrics (free, online):** provides basic concepts in culturally competent care and information designed to increase providers' awareness of specific cultural, racial, ethnic, and tribal influences on health related cultural traditions, beliefs and values- Link:

<http://www.stanford.edu/group/ethnoger/>

- D. **AMERICANS WITH DISABILITIES ACT (ADA) TITLE II AND III REQUIREMENTS :**

1. **Title II of the ADA** covers all of the services, programs, and activities conducted by public entities (state and local governments, departments, agencies, etc. - Link:

<http://www.ada.gov/taman2.html#II-1.3000>

2. **Title III** covers private entities, including nonprofits that are considered places of public accommodation that would include, but are not limited to, health related offices and senior centers - Link:

<http://www.ada.gov/taman3.html>

**SECTION 504 OF THE REHABILITATION ACT OF 1973, 45 CFR PART 85:**

Section 504 prohibits discrimination in service availability, accessibility, delivery, employment, and the administrative activities and responsibilities of organizations receiving Federal financial assistance-Link:

[HTTP://ECFR.GPOACCESS.GOV/CGI/T/TEXT/TEXT-  
IDX?C=ECFR;SID=A4336F2AF778D691B68F734E297835D1;RGN=DIV5;VIEW=TEXT;N  
ODE=45%3A1.0.1.1.43;IDNO=45;CC=ECFR](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=A4336F2AF778D691B68F734E297835D1;rgn=div5;view=text;node=45%3A1.0.1.1.43;idno=45;cc=ecfr)

**PROGRAMS AFFECTED:**

[Title III-B](#)

[Title III-C-1](#)

[Title III-C-2](#)

[Title III-D](#)

[Title III-E](#)

[CSE](#)

[SNAP](#)

[Energy](#)

[EISEP](#)

[NSIP](#)

[Title V](#)

[HIICAP](#)

[LTCOP](#)

[Other:](#)

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