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## INTRODUCTION

The Department of Human Services (DHS) will provide equal opportunity to participate in its programs, services and activities.

This policy has legal authority within the parameters of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans With Disabilities Act of 1990 as amended, as well as the Hawaii Revised Statutes, including and not limited to Chapter 371, Part II, 31 to 37 and Chapter 378, as amended.

State and Federally-funded programs must be planned and administered such that they do not have the effect of denying or delaying services to any particular person or groups of persons seeking services at the DHS.

### 1.0 PURPOSE

The primary purpose of this policy is to assure that opportunities to participate in DHS services are free from discriminatory practices.

### 2.0 REFERENCES, ACRONYMS AND DEFINITIONS      SEE APPENDIX A

### 3.0 POLICY

It is the policy of the Department of Human Services to provide all persons with an equal opportunity to participate in, and benefit from all departmental programs, services and activities. Goals will be set and updated as needed.

### 4.0 SCOPE

This policy applies to all DHS divisions and their branches, sections and units as well as agencies and commissions administratively attached to DHS, individuals, and organizations that receive State and Federal funds through contracts or other arrangements with the DHS.

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## 5.0 RESPONSIBILITIES

Director Ensure that all programs, services and activities administered by the Department are provided in an environment free of discriminatory practices. The Director may delegate any portion to a deputy director, staff officer and/or division administrator.

Civil Rights Compliance Staff (CRCS) (a) Develops, coordinates, monitors and maintains all departmental programs related to civil rights in accordance with appropriate federal and state laws and regulations, (b) develops and implements policies and procedures relative to providing an opportunity to participate in programs, services and activities, (c) provides technical assistance and staff support to the Director, Deputy Director, Personnel Officer, and supervisory personnel in matters concerning non-discrimination in the provision of services. (d) investigates complaints of discrimination in accordance with section 4.10.1 of this Policy and Procedure Manual, (e) establishes and maintains a volunteer interpreter list and disseminates to division and administratively attached agency or commission. The list shall be updated at least on a semi-annual basis, (f) works in consonance with personnel in staff offices and divisions on matters relating to equal opportunity in the provision of services, (g) negotiates settlements and submits recommendations to the Director for review.

Division Administrators/Executive Directors/Staff Officers (a) Ensures programs are provided in a non-discriminatory manner to all eligible persons, (b) coordinates the Department's compliance programs, services and activities as they relate to their respective organizations, (c) provides direct assistance to the Civil Rights Compliance Staff in civil rights-related matters as deemed necessary, (d) disseminates list of volunteer employee interpreters to their respective organizational units, (e) notifies prospective and actual applicants and clients of their right to interpreter and other services at no cost to them assuring timely and meaningful access.

Program Administrators (includes Division, Branch, Section and Unit Supervisors) Identifies language and access needs of their clientele, and persons in the community likely to be affected by their program. Further, they are responsible for planning and administering the program, service or activity in a manner that does not openly result in, or have the effect of treating a person or a group of persons unfairly.

Supervisors (a) must ensure the consistent application of the Department's non-discrimination policy and method of administration in the provision of programs, services and/or activities to the public, and (b) inform each employee of the procedures to provide meaningful access to all individuals, including LEP persons and people with disabilities.

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Employees (a) Implement and consistently apply the Department's non-discrimination policy and method of administration in the performance of their jobs in a timely manner (b) inform clients and applicants of the availability of language assistance, auxiliary aids and services, (c) arrange for a sign or other language interpreter on behalf of the requesting individual, (d) explain discrimination complaint process, and (e) explain to clients their rights.

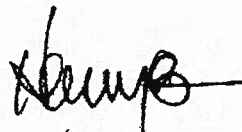
Contractors or Sub-recipients (a) This policy extends beyond those programs, services and activities administered directly by the Department and applies to all contractors, service providers and other sub-recipients that receive Federal and State funds that provide services on behalf of DHS. (b) DHS or its organizational divisions, and administratively attached agencies and commissions will not approve any application for or make any expenditures of Federal or State funds for the establishment, conduct or continuation of any program or activity, until the service provider furnishes an assurance in writing to comply with all of the requirements imposed by, or pursuant to, the applicable Federal and State laws and regulations. (c) Each program will be responsible for securing that written assurance of compliance and for monitoring the service delivery practices of the service provider to ensure compliance with the applicable laws, regulations and this policy.

6.0 IMPLEMENTATION

With the approval of this Policy, by the Director, DHS' Opportunity to Participate in Programs, Services and Activities will be implemented and will remain in effect until such time it is cancelled or superseded by order of the Director.

This part shall superseded any prior directive concerning equal opportunity to participate in programs, services and activities. Authorized modifications of content will not affect the life of these policies and procedures, unless so specified by the Director.

APPROVED: \_\_\_\_\_

  
Director

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## 7.0 PROCEDURES

### 7.1 Dissemination of Information

- a. Programs shall inform clients, applicants, potential applicants, and related program participants, that the Department's programs, services and activities are provided in a manner that is free of discriminatory practices. Additionally, such individuals shall be informed of their right to file a discrimination complaint with the Department or appropriate enforcement agency.
- b. All such information and assurance of compliance statements, shall be included as a provision in all contracts, grant assignments, licensing agreements, and other similar documents that are used in the administration of programs, services and activities of the Department of Human Services.

### 7.2 Maintenance of Records and Reports

- a. The Department will maintain such records and submit such reports as may be required by Federal or State agencies to assure compliance with regulations.
- b. The Department will require such program, agency or facility receiving Federal or State financial assistance directly or through contractual, licensing or other arrangements with the Department, to maintain and submit those records and reports deemed necessary to determine compliance.

### 7.3 Comparable Level of Service

- a. The Department shall take the necessary steps to ensure that resources are available to provide all persons with an equal opportunity to participate in the programs, services and activities administered by the Department. The level of service shall be equally effective as that provided to the general public. Accordingly, each program, service or activity shall be responsible to ensure that:
  1. no person is denied program services or benefits because of the person's inability to communicate in the English language; or due to a disability; and
  2. each unit employee shall arrange for a sign or language interpreter for anyone requiring such accommodation in order to access benefits or services.
- b. To promote a comparable level of service to that provided the general public, programs or activities that have substantial participation of LEP persons or persons with disabilities, shall take the necessary steps to furnish vital program information and notices in the appropriate languages, or in alternate format.

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- c. To ensure that all persons are provided an opportunity to participate in, and benefit from, our programs, services and activities, we must eliminate barriers that may preclude meaningful access for otherwise qualified individuals who might have special needs. In particular persons with disabilities and those with limited English skills might require assistance to access and participate in our programs, services and activities.

For further information on DHS' Access Policy which covers language, facilities and employment to support human services, see Access Policy 4.10.4 (2009).

For protocol on providing access for Persons with Disabilities under ADA, as amended, see Appendix B.

For protocol on providing access for persons with special communication needs, see Appendix C.

For protocol on providing access for Limited English Proficient (LEP) persons, see Appendix D.

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## 2.0 REFERENCES, ACRONYMS, AND DEFINITIONS

### 2.1 REFERENCES

Title VI of the Civil Rights Act of 1964, as amended  
 Title VIII of the Civil Rights Act of 1968, as amended  
 Food Stamp Act  
 Rehabilitation Act of 1973, Sections 503 and 504  
 Vietnam Era Veterans' Readjustment Assistance Act of 1974, Section 402  
 Civil Rights Restoration Act of 1988  
 Fair Housing Act of 1968, as amended  
 Executive Order 11246, 30 Fed. Reg. 12319, as amended  
 Executive Order 13166, 65 Fed. Reg. 50121, as amended  
 Americans With Disabilities Act of 1990, (ADA), as amended  
 U. S. Department of Health and Human Services, Office for Civil Rights, Policy  
     Guidance: Prohibition Against National Origin Discrimination as it Affects  
     Persons with Limited English Proficiency  
 Hawaii Administrative Rules, Title 11, Chapter 218, Utilization of Sign  
     Language/English and Oral Interpreter Services  
 Hawaii Revised Statutes, Chapter 489; 368, 1.5  
 Hawaii Revised Statutes, Chapter 371, Part II (31-37), and 378, Part I, as amended  
 Department of Human Services Administrative Directives Update

### 2.2 ACRONYMS

ADA	AMERICANS WITH DISABILITIES ACT, AS AMENDED
ASL	AMERICAN SIGN LANGUAGE
CRCS	CIVIL RIGHTS COMPLIANCE STAFF (DHS PERSONNEL)
DAGS	DEPARTMENT OF GENERAL ACCOUNTING SERVICES
DCAB	DISABILITY AND COMMUNICATIONS ACCESS BOARD
DHS	DEPARTMENT OF HUMAN SERVICES
DIR	DIRECTOR, DEPARTMENT OF HUMAN SERVICES
DDIR	DEPUTY DIRECTOR, DEPARTMENT OF HUMAN SERVICES
LEP	LIMITED ENGLISH PROFICIENCY
OCR	OFFICE OF CIVIL RIGHTS
OLA	OFFICE OF LANGUAGE ACCESS (STATE OF HAWAII)
USHHS	UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
TDD	TELEPHONE DEVICES FOR THE DEAF
TDY	TELETYPEWRITERS
TT	TEXT TELEPHONES

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## 2.3 DEFINITIONS

**Auxiliary aids and services:** Equipment, materials and services that are used to provide effective communication for people who have visual, hearing, speech or cognitive disabilities

**Bilingual/Multilingual:** Any individual who has demonstrated proficiency in both spoken English and at least one other language, and who can interpret accurately, impartially, and effectively to and from such language and English using any specialized terminology necessary for effective communication

**Department or DHS:** the Hawaii Department of Human Services, including its administratively attached agencies and commissions

**Director:** Director of the Hawaii Department of Human Services

**Discrimination:** Any action/s or lack of action/s by the DHS, which results in disparate treatment or has an adverse impact on a person or group of persons, on the basis of one or more memberships in protected groups (groups protected by Federal and State laws)

**Facility:** Any building or space where DHS programs, services, activities, employment or other functions occur

**Frequently-Encountered Language:** Language spoken by a significant number or percentage of the population eligible to be served, employed by or directly affected by DHS programs, services, activities and functions

**Interpreter:** A bilingual or multilingual individual who understands interpreter ethics and client confidentiality needs. A person who has rudimentary familiarity with a language other than English shall not be considered an interpreter. Generally, an interpreter is trained in interpretation and has proficient knowledge and skills in English and at least one other language and who uses those skills and training to make possible communication in one language by orally converting what is said to another language while retaining the same meaning.

**Interpretation:** Interpretation means the oral rendition of a spoken message from one language to another, preserving the intent and meaning of the original message

**Limited English Proficient (LEP) Person:** Any individual who does not speak English as his or her primary language and who has a limited ability to read, write, speak or understand English in a manner that permits him or her to communicate effectively with DHS and have meaningful access to and an equal opportunity to participate fully in

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services, activities, programs, employment, or other benefits administered by the Department of Human Services

**Person with a Disability:** An individual who has a physical or mental impairment that substantially limits one or more of the person's major life activities, has a record of such impairment, or is regarded as having such and impairment

**Service Provider:** Any person, or group of persons, agency, organization, institution, political subdivision, that delivers a program, service or activity with Federal or State financial assistance through contractual, licensing or other arrangements with the Department of Human Services


**Sight Translation:** Occurs when an interpreter reads written text and orally converts what is written to another language while retaining the same meaning.

**Sub-Recipient:** Any entity that expends Federal or State assistance received as a pass-through from the DHS to carry out a program in which the sub-recipient provides services to and has contact with applicants and participants in the same manner as DHS if DHS were to administer the program directly, but does not include an individual applicant or participant who is a beneficiary of a program. For example, Medicaid payments to a contractor or provider for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended unless the State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis (OMB Circular A-133- Guidance on distinguishing between a sub-recipient and a vendor is provided in .210)

**Translate:** Translate means to convert written materials from one language into an equivalent written document in another language while maintaining the same coherence and meaning. Translation means an activity comprising the interpretation of the meaning of a document in one language and the production, in another language, of a new, equivalent document.

**Vital Documents:** include, and are not limited to: applications, consent forms, complaint forms, letters or notices pertaining to eligibility for benefits, letters or notices pertaining to the reduction, denial or termination of services or benefits or that require a response, written tests that test competency for a particular license, job or skill, documents that must be provided by law; and notices regarding the availability of free language assistance services.



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In keeping with the ADA, as amended, as well as a policy of the State of Hawaii that "no qualified individual with a disability is excluded from participation in, denied the benefits of, or is otherwise subjected to discrimination by any program, service or activity of the State of Hawaii on the basis of disability," the Department of Human Services (DHS) will take the following actions:

1. Make reasonable modifications to DHS policies, procedures and practices, to ensure that persons with disabilities are not excluded from participation;
2. Provide auxiliary aids and services to ensure effective communication access for persons with disabilities, taking into consideration the requesting individual's preference; and
3. Ensure our offices that serve the public on a regular basis are accessible. If this is not readily achievable, services shall be programmatically accessible to qualified individuals.

### **Program**

Programs are required to operate in such a manner that, when viewed in their entirety, are readily accessible to persons with disabilities. This means making reasonable modifications to program procedures, practices and processes to ensure that persons with disabilities are afforded an opportunity to participate in programs, services and activities of the Department.

Modifications include, and are not limited to:

1. Making home visits in lieu of office visits;
2. Conducting interviews over the telephone rather than in person; and
3. Providing services in an alternate accessible site without compromising confidentiality.

### **Physical**

DHS will ensure that all programs, services and activities, when viewed in their entirety, be accessible to persons with physical and mental disabilities. This includes ensuring all DHS offices that serve the public are structurally accessible to persons with disabilities, in accordance with administrative directives related to facility access.

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1. State Owned Buildings


Programs shall work with DAGS, Planning Branch, and the Fiscal Management Office to ensure that existing state buildings are upgraded, when necessary, to meet access requirements. If this is not readily achievable, programs shall assure that access is achieved programmatically.

2. Leased Facilities

DHS will lease office space in accordance with Comptroller's Memoranda, Policy Guidance and Procedures for Leasing Office Space to Ensure Program Access for Persons with Disabilities.

DHS will ensure that organizational units in leased facilities are accessible to persons with disabilities. The programs shall work with the DAGS, Leasing Branch, when negotiating a new lease or lease renewal.

Administrators and Unit Supervisors or a designee shall accompany DAGS in a walk-thru of a prospective leased facility. The programs shall utilize the survey tool provided by DAGS when performing site assessments to determine whether or not the facility meets access requirements.

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	OPPORTUNITY TO PARTICIPATE IN PROGRAMS, SERVICES AND ACTIVITIES Protocol for Providing Access for Persons with Special Communication Needs	Issue/Revision Date JUL - 9 2009	

The Department of Human Services (DHS) will ensure that persons with communication disabilities have a means of communication that is as effective as that provided to persons without communication disabilities. Programs shall provide an effective means of communication with people who have hearing, visual, speech or cognitive disabilities by providing auxiliary aids and services. Programs shall take into consideration the preferences of the requesting individual when providing an auxiliary aid or service.

Programs shall not provide an auxiliary aid or service if it will fundamentally alter the program or create an undue financial or administrative burden. Under these circumstances, the program shall consult with the Civil Rights Compliance Staff (CRCS) to ensure compliance with the applicable laws, rules, regulations and this protocol.

1. Hearing Impairments—Examples of auxiliary aids and services for people who are hearing impaired include, and are not limited to:

- Qualified interpreters
  - Note takers or computer assisted note takers
  - Written material
  - Real-time transcription or video text displays
  - Amplified and hearing aid compatible telephones
  - Assistive listening devices
  - Open and closed captioning
  - Caption decoders
  - TTYs (teletypewriters), TDDs (telephone devices for the deaf) or TTs (text telephones)
- (a) Obtaining Qualified Sign Language Interpreters—DHS staff will obtain a qualified sign language interpreter in accordance with Hawaii Administrative Rules Title 11, Chapter 218.
  - (b) Interpreters will be nationally-certified or hold a local certification awarded by a local screening agency. Appropriate certification level of the interpreter will depend on the nature of the meeting or appointment.
  - (c) When it is determined that a sign language interpreter is necessary for effective communication, the requesting employee will contact an interpreter referral service agency with the following information: (1) requesting employee's full name and phone number, (2) location and purpose of meeting, (3) date of appointment, (4) start and stop time, (5) interpreter preference of hearing impaired individual, and

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(6) onsite contact person and telephone number (if different from requesting employee).

2. Visual Impairments

Examples of auxiliary aids and services for people who have visual disabilities include, and are not limited to:

- o Printed information on audio cassette or computer disk, in Braille, or large print, or read by skilled readers;
- o Verbal description of action and visual information to enhance the accessibility of performances and presentations; and
- o A staff member serving as a guide to enable a person who has limited vision to locate items or to find his or her way along an unfamiliar route.

3. Cognitive Impairments


Examples of auxiliary aids and services for persons with cognitive impairments, include and are not limited to:

- o Readers
- o Communication assistants
- o Rewording of information to use clear and concise language
- o Pictograms
- o Graphic presentation of information

4. Speech Impairments

Examples of auxiliary aids or services to persons with speech impairments include, and are not limited to:

- o Written material
- o More active and acute listening on part of listener
- o Communication assistants who are familiar with person's speech
- o Computer, Typewriter, TTYs or TDDs

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The Department of Human Services (DHS) will ensure that Limited English Proficient (LEP) persons will not be excluded from participation in, denied the benefits of, or subjected to discriminatory practices in the provisions of its programs and services because of their inability to communicate in English. The Department, its Divisions, Administratively Attached Agencies and Commissions will take the following steps to assure that all eligible persons with limited English Proficiency have meaningful access to the services we provide.

- Ensure that LEP persons are informed of their right to be provided with interpreter and/or translation services free of charge to them. Please do not encourage or request that such individuals bring a friend or relative to interpret for them.
- Translate vital documents such as applications, consent forms and notices regarding denial or changes in benefits into other languages based on guidelines from program funding agencies and State laws. (Also see presentation on Best Practices in Written Translations at <http://www.hawaii.gov/dhs> in the Civil Rights Corner)
- Use Four-Factor Analysis defined in DHS' LEP Plan/Consult with Program Office Administrators to consider individual requests for translations to determine when to translate written materials. The four factors include: number of language encounters, frequency of language encounters, nature of the document, importance of the service/document and cost to translate the document. Please note that cost is only one of the four factors to be considered in determining when documents must be translated.
- Contact existing agencies, Tele-Interpreter, internal list of volunteer Interpreters (who may be utilized in person or by phone); contact interpreters off the list of Court Interpreters, known qualified individuals and organizations, profit and/or non-profit, such as educational institutions, Pacific Gateway, religious organizations, community entities, when interpreter and/or translation services are needed. Utilize qualified multilingual staff who have volunteered to serve as interpreters and/or translators.
- Utilize technology effectively to promote communication and understanding about programs, processes, and rights.

To the extent possible, DHS employees and contractors should adhere to the following guidelines when requesting oral interpretation services:

1. Explore all effective and timely options;
2. Seek volunteers who are familiar with your program;

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3. Consider the feasibility of having the volunteer perform interpretation electronically and/or through video conferencing or by phone, as appropriate;
4. When your interpreter needs require face-to-face contact, seek volunteer employees located at the same worksite or general geographical area;
5. While the Office of Language Access (OLA) provides monitoring and interpreter training services, they are not responsible for providing interpreters and DHS employees should not refer clients to OLA in search of an interpreter. DHS and its contractors and sub-recipients must provide an interpreter free of charge to the LEP individual in provision of services, programs and activities.
6. Refer to guidelines concerning "How to work with an Interpreter," located at <http://www.hawaii.gov/dhs> in the Civil Rights Corner.

#### **Oral Interpreter Requests**

1. When a request for an oral language interpreter is made, the DHS employee shall determine whether bilingual staff in the office, or a nearby office, or other DHS office is available who speaks the language being requested.
2. DHS employees shall contact a court interpreter, Tele-interpreter or other interpreter services, such as Pacific Gateway, to provide interpreter services for DHS when volunteer interpreters are not available.
3. The DHS employee shall contact one or more of the above before the scheduled appointment with the requesting LEP person providing the following information: (a) requesting employee's full name and telephone number, (b) department, section, unit and address, (c) language needed, (d) client's full name, (e) date and time of appointment, and (f) purchase order or pCard number.
4. The DHS employee may ask the interpreter to call the LEP individual to inform him/her of the scheduled appointment.
5. Upon completion of the appointment, an encounter form is completed and signed by the DHS employee and the interpreter. Information on the form (DHS D-40) includes the end time of the appointment, the nature of the encounter, and the interpreter's full name and signature.

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6. The DHS employee may cancel the request for interpreter, however, if the interpreter is not contacted within 24 hours of the appointment time, DHS will likely be charged a minimum of one hour even though no services are provided.
7. The DHS requesting employee shall determine first whether interpreting may be performed via telephone to minimize the time the volunteer spends interpreting and away from his/her regular duties.
8. Telephone interpreter services are available for brief encounters (one-half hour, or less) as are video phones and voice recognition packages. Programs shall have processes for utilizing such services based on contracts, needs and resources.
9. Interpreters should be familiar with the program for which interpretation is needed, be given a copy of the Interpreter Code of Ethics, and sign a self-attestation form concerning their interpreter abilities. Copies are available at <http://www.hawaii.gov/dhs> in the Civil Rights Corner.

#### **Written Translation Requests**

Division Administrators, Executive Directors and Staff Officers shall assess the language needs of their respective program/project areas to determine what documents will be translated and into what languages in order to ensure meaningful access to people eligible to be served or likely to be affected by the program/project. This determination shall be based on guidelines set forth by the Hawaii Department of Labor, Office of Language Access, and the U. S. Department of Health and Human Services, Office for Civil Rights, Policy Guidance: Title VI Prohibition Against National Origin Discrimination as it Affects Persons with Limited English Proficiency.