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Barriers to Accessing Services: The Importance of Advocates Accompanying Battered Immigrants Applying For Public Benefits^{1,2}

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The 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA or Welfare Reform Act) and The Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) substantially reduced unqualified immigrants' access to certain federal benefits programs.³ Despite these laws, many immigrants remain eligible for critical public benefits. Numerous systemic barriers keep battered immigrant women and their children from accessing the benefits to which they are actually entitled, however. These barriers include:

- language barriers,
- confusion or misunderstanding about eligibility for benefits:

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² In this Manual, the term "victim" has been chosen over the term "survivor" because it is the term used in the criminal justice system and in most civil settings that provide aid and assistance to those who suffer from domestic violence and sexual assault. Because this Manual is a guide for attorneys and advocates who are negotiating in these systems with their clients, using the term "victim" allows for easier and consistent language during justice system interactions. Likewise, The Violence Against Women Act's (VAWA) protections and help for victims, including the immigration protections are open to all victims without regard to the victim's gender identity. Although men, women, and people who do not identify as either men or women can all be victims of domestic violence and sexual assault, in the overwhelming majority of cases the perpetrator identifies as a man and the victim identifies as a woman. Therefore we use "he" in this Manual to refer to the perpetrator and "she" is used to refer to the victim. Lastly, VAWA 2013 expanded the definition of underserved populations to include sexual orientation and gender identity and added non-discrimination protections that bar discrimination based on sex, sexual orientation and gender identity. The definition of gender identity used by VAWA is the same definition as applies for federal hate crimes – "actual or perceived gender-related characteristics." On June 26, 2013, the U.S. Supreme Court struck down a provision of the Defense of Marriage Act (DOMA) (*United States v. Windsor*, 12-307 WL 3196928). The impact of this decision is that, as a matter of federal law, all marriages performed in the United States will be valid without regard to whether the marriage is between a man and a woman, two men, or two women. Following the Supreme Court decision, federal government agencies, including the U.S. Department of Homeland Security (DHS), have begun the implementation of this ruling as it applies to each federal agency. DHS has begun granting immigration visa petitions filed by same-sex married couples in the same manner as ones filed by heterosexual married couples (<http://www.dhs.gov/topic/implementation-supreme-court-ruling-defense-marriage-act>). As a result of these laws VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation) including particularly:

- victims of battering or extreme cruelty perpetrated by a U.S. citizen or lawful permanent resident spouse against a same sex partner in the marriage is eligible to file a VAWA self-petition; and
- an immigrant child who is a victim of child abuse perpetrated by their U.S. citizen or lawful permanent resident step-parent is also eligible when the child's immigrant parent is married to a U.S. citizen or lawful permanent resident spouse without regard to the spouse's gender.

³ For more information on this topic, visit <http://niwaplibrary.wcl.american.edu/public-benefits>.

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- on the part of the immigrant victim,
- on the part of the state eligibility workers,
- fear of deportation or other negative BCIS action,
- fear that receiving benefits will result in denial of lawful permanent residence on grounds that the immigrant is a “public charge.”⁴

The Impact of Welfare Reform on Immigrant Families

Welfare reform has had a chilling effect on immigrants' access to public benefits. Research demonstrates that between 1994 and 1999, non-citizen use of public benefits not only substantially declined, but did so at a faster rate than citizens' use of public benefits.⁵ Although welfare use declined among both citizens and non-citizens, the decreases for non-citizens were greater than for citizens.⁶ Among families with one or more adult(s) who are legal permanent residents, there was a significant decline in use of TANF, SSI, food stamps, and Medicaid benefits from 1994 through 1999.⁷ Legal permanent residents' participation in TANF decreased 60 percent from 1994 to 1999,⁸ and non-citizens use of food stamps decreased 48 percent.⁹ Legal permanent residents' participation in SSI decreased 32 percent.¹⁰ The least dramatic change was the 15 percent decrease in Medicaid use.¹¹ Furthermore, the overall declines in participation rates for legal permanent resident families exceeded the declines demonstrated by citizen families for TANF, SSI, and food stamps, although not for Medicaid.¹²

These declines *are not* accounted for by changes in benefits eligibility after the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) or increases in income among immigrant populations.¹³ Rather in 1999, half of immigrant families were poor, poor legal immigrants were far more likely to be uninsured than similarly situated citizens and children of immigrants were more likely to be without food than children of citizens.¹⁴

Welfare reform not only reduced benefit use by non-citizens, but also reduced participation among U.S. citizen children who live in immigrant families. Families that include children and parents of different citizenship and immigration statuses are “mixed-status” families. About one in 10 American children live in a household where at least one parent is a non-citizen and at least one child is a citizen.¹⁵ For example, families may include U.S. citizen children, one legal permanent resident parent and a second parent who may be a legal immigrant or undocumented. Three-quarters of all children living in immigrant-headed households are U.S. citizens.¹⁶ All children born in the U.S. are eligible for public benefits on the same terms and extent as all other children, whether they are children born to citizens, legal residents, or undocumented parents. Among low-income immigrant families with U.S. citizen children, only 7.8 percent received TANF in 1999, compared with 11.6 percent of low-income citizen families with children.¹⁷ Similarly, only 19.8 percent of

⁴ See 8 U.S.C. § 1182(a)(4)(E) INA § 212(a)(4) and Section 804 of VAWA which exempt VAWA self-petitioners, VAWA cancellation of removal, VAWA suspension of deportation, T/U visa applicants and other qualified immigrants battered or subjected to extreme cruelty from the “public charge exception” to admissibility (in which a petitioner is deemed inadmissible to the United States because they might become a public charge, a person who is primarily dependent on the US government for subsistence).

⁵ See Michael Fix & Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, THE URBAN INSTITUTE (2002), available at <http://www.urban.org/url.cfm?ID=410412>.

⁶ *Id.* at 12.

⁷ *Id.* at 15.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Randy Capps, *Hardship among Children of Immigrants: Findings from the 1999 National Survey of America's Families*, No. B-29, THE URBAN INSTITUTE: ASSESSING THE NEW FEDERALISM POLICY BRIEF SERIES B (2001).

¹⁵ Michael Fix & Jeffrey Passel, *The Scope and Impact of Welfare Reform's Immigrant Provisions*, THE URBAN INSTITUTE (2002), available at <http://www.urban.org/url.cfm?ID=410412>.

¹⁶ *Id.* at 17 (citations omitted).

¹⁷ *Id.* at 18

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mixed-status low-income families received food stamps in 1999, compared with 27.9 percent of low-income citizen families.¹⁸ For both programs, the participation of mixed-status families declined significantly from 1994-1999.¹⁹ Medicaid participation rates among mixed-status low-income families remained essentially the same, however, with 42.7 percent in 1994 versus 43.4 percent in 1999.²⁰

Welfare reform has had a particularly devastating effect on low-income refugees, even though refugees are a protected population under PRWORA, and are exempted for five to seven years from the law's bars on federal public benefits.²¹ Before PRWORA, participation rates for low-income refugee families with children were much higher than the rates for citizen or legal permanent resident families.²² Between 1994 and 1999, participation rates for low-income refugees decreased 78 percent for TANF, 53 percent for food stamps, and 36 percent for Medicaid.²³ By 1999, rates for refugee families were roughly at the same level as those of citizens for TANF, food stamps, and Medicaid.²⁴

The stable Medicaid use rates for low-income legal resident and refugee families are at least in part explained by three important factors. These are the introduction of expanded health care coverage under the State Children's Health Insurance Program (SCHIP), increased state and local outreach for child health insurance, and the impact of new federal guidance clarifying that the use of health benefits would not be a bar to obtaining legal permanent residence or citizenship.²⁵ However, the generally high and sustained levels of Medicaid and SCHIP participation by low-income families was not found for low-income working-age individuals. Between 1994 and 1999, Medicaid use by working-age persons decreased 8 percent among citizens, 23 percent among legal permanent residents, and 58 percent among refugees.²⁶ Increases in the proportion of each population without health insurance were accounted for almost entirely by these decreases in Medicaid use. Reductions in Medicaid use are not being offset by other forms of health insurance, but are leading to total loss of coverage.²⁷

Between 1994 and 1999 there was a substantial increase in the number of naturalized citizen families in the U.S.²⁸ The rise in naturalizations was accompanied by a significantly greater increase in the number of naturalized families receiving some benefits.²⁹ The share of the naturalized population receiving benefits remained relatively modest, however, and the increases account for only a small fraction of the reductions in usage among legal permanent residents.³⁰ In addition, rising incomes were generally not the cause of the significant decreases in benefits use among legal immigrants.³¹

Barriers

Welfare reform has created complex application procedures and other barriers that deter many immigrants who are eligible to receive benefits from applying for and receiving them. Lack of access to welfare benefits is particularly harmful for qualified immigrant victims of domestic violence for whom access to the benefits safety net is critical. Immigrants who have limited English proficiency face barriers when communicating with intake caseworkers and other staff at state social service agencies. Limited fluency with and comprehension of English often results in significant agencies who interact with battered immigrants are

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id. at 18.*

²² *Id. at 18-19.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id. at 22.*

²⁶ *Id. at 23.*

²⁷ *Id. at 23-24.*

²⁸ *Id. at 29.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

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neither bilingual nor adequately trained in assisting battered immigrants with limited English proficiency.³² As a result, battered immigrants with limited English proficiency are often turned away by the agency office staff or intake workers and forced to find their own interpreter, subjected to extensive waits in agency offices, or required to make repeated visits to the benefits office until an interpreter is available.³³

The rules that determine whether an immigrant is eligible for public benefits are complex. Therefore, many immigrants are unaware of their eligibility to receive certain benefits. For example, a battered immigrant woman may not know that even if she is personally ineligible for benefits, she may still apply for benefits for her U.S. citizen children. Given the complexity of benefits rules and the high importance of such benefits to battered immigrant women, serious problems arise when caseworkers in benefits offices misunderstand, or are unclear about or unaware of, the special eligibility of battered immigrants for certain public benefits.

Lack of access to the benefits safety-net locks battered immigrants into abusive relationships by robbing them of any means to survive economically and to support their children when they have an abusive relationship. Congress granted benefits access to VAWA-eligible battered immigrant spouses and children of citizens and lawful permanent residents with pending and approved immigration cases so that victims would be freed from economic dependence on their abusers.³⁰

It is essential that advocates be familiar with the rules and guidelines for accessing public benefits so that they are better able to assist battered immigrant clients to obtain the full range of benefits to which they and their children are entitled. This chapter explains policy guidance from the Department of Health and Human Services relating to both agency requests for disclosure of citizenship, immigration status and/or social security numbers during the benefits application process and the prohibition on discrimination against persons with limited English proficiency. The chapter will prepare advocates to anticipate barriers that their clients may face during the benefits application process, and to intervene with agency staff and caseworkers to ensure their clients receive the benefits to which they are entitled.

Department of Health and Human Services Guidance:

HANDLING QUESTIONS ABOUT CITIZENSHIP, IMMIGRATION STATUS, AND SOCIAL SECURITY NUMBERS DURING THE BENEFITS APPLICATION PROCESS

Many battered immigrant women, including those who, as a matter of law, are eligible for public benefits, fear that applying for benefits will lead to their deportation. A Social Security Number and information on citizenship or immigration status are required in order to obtain certain public benefits, but can only be required for the person who will be receiving such benefits. States often unlawfully require the disclosure of citizenship or immigration status information and/or Social Security Numbers for all family or household members of persons applying for benefits. Many eligible immigrants, and mothers of U.S. citizen children applying on behalf of their children, are deterred from applying for benefits because they are concerned about disclosing the Social Security Numbers of immigration status of non-applicant family or household members during the benefits-application process. State Welfare workers should not, as a matter of law, be making these inquiries.

In September 2000, the U.S. Departments of Health and Human Services (HHS) and Agriculture (USDA) issued a policy guidance³¹ ("HHS Policy Guidance") clarifying when states may or may not request

³² OFFICE FOR CIVIL RIGHTS, DEP'T OF HEALTH AND HUMAN SERV., POLICY GUIDANCE: TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AS IT AFFECTS PERSONS WITH LIMITED ENGLISH PROFICIENCY 1 (2001), *available at* <http://www.hhs.gov/ocr/lep/guide.html> [hereinafter OCR LEP Policy Guidance].

³³ *Id.* At § A.

³⁰ Leslye E. Orloff, *Lifesaving Welfare Safety Net Access for Battered Immigrant Women and Children: Accomplishments and Next steps*, 7 WM. & MARY J. WOMEN & L. 597, 621 (2001).

³¹ DEP'T OF HEALTH & HUMAN SERVICES & DEP'T OF AGRICULTURE, POLICY GUIDANCE REGARDING INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATIONS FOR MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS (2000), at <http://www.hhs.gov/ocr/nationalorigin/triagency.html> [hereinafter HHS Policy Guidance on Citizenship].

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information about citizenship, immigration status, and/or Social Security Numbers on applications for TANF, SSI, Medicaid, or food stamps benefits. The policy guidance also clarifies when states may or may not deny benefits when an applicant does not provide information that state welfare workers are authorized to request by the policy guidance..

HHS issued the policy guidance after finding that many states require non-applicants for public benefits to disclose immigration status and/or Social Security Numbers, even though this information is not legally required. HHS further found that U.S. citizen children and other eligible persons who live in immigrant families are deterred from applying for benefits out of fear that states will request information about non-applicant family members' immigration status, and provide such information to immigration authorities.³² To the extent that states' application requirements and processes have the effect of deterring eligible benefits applicants and recipients who live in immigrant families from enjoying equal participation in, and access to, these benefit programs, states may be inadvertently violating the prohibition on national origin discrimination contained in Title VI of the Civil Rights Act of 1964.³³

Advocates must understand that, under federal law, states are required to establish the citizenship or immigration status and Social Security Numbers of applicants for Medicaid (except emergency Medicaid), State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food stamps. However, under federal law, states may not require applicants to provide Social Security Numbers or information about the citizenship or immigration status of any non-applicant family or household member who will not also be applying for, or receiving, additional benefits for themselves. States may not deny benefits to an applicant because a non-applicant family or household member has not disclosed her or his Social Security Number or citizenship or immigration status.³⁴ The rules regarding who is "an applicant" vary depending upon the benefit program. Advocates need to be familiar with these rules so they can help their clients access the benefits to which they are entitled. The rules for each program are outlined below.

Medicaid and SCHIP

Individual children are encouraged to apply for and receive benefits under Medicaid and SCHIP. For both Medicaid and SCHIP, states are required to establish the citizenship or immigration status of *only* those individuals who will be receiving the benefits.³⁵ Parents must be able to apply for Medicaid and SCHIP benefits for their children. If a mother is applying for Medicaid or SCHIP benefits on behalf of her child and not for herself, the state may only ask immigration statutes of the applicant child. States cannot require a mother to disclose her citizenship or immigration status or the status of anyone else in the household who is not applying for, and will not be receiving, the benefits. In addition, the state may not deny benefits to an eligible applicant because the applicant or a person acting on behalf of the applicant did not certify or document the citizenship or immigration status of people in the applicant's household, if those people are not themselves seeking benefits.³⁶ The child's application for benefits cannot be denied because the mother did not disclose her immigration status or that of any other household member.

As with immigration status, under federal law, states are required to obtain Social Security Numbers *only* for applicants and recipients of Medicaid and Medicaid expansion programs under SCHIP.³⁷ States have the option of requiring a Social Security Number for applicants requesting benefits in separate, non-Medicaid-related, child health care programs under SCHIP.³⁸ If an applicant who qualifies for Medicaid or SCHIP does not have a Social Security Number, the state must assist that person to apply for one. States may ask non-applicants for their Social Security number if they clearly indicate that providing a Social Security Number is voluntary, and explain how the information will be used. States may not deny benefits because an applicant

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

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did not provide Social Security Numbers of family or household members who are not applying for or receiving benefits.³⁹

In accompanying battered immigrants applying for Medicaid or SCHIP benefits for themselves or their children, advocates or attorneys need to tell benefits workers that they are not to ask immigration status questions about non-applicant family members. If benefits workers ask for Social Security Numbers of non-applicants, advocates should ask benefits workers to disclose how that information will be used, and inform both the benefits worker and the battered immigrant client that answering Social Security Number questions with regard to persons, including the battered immigrant, who are not themselves applying for benefits is voluntary, and cannot legally impact the outcome of the benefits award.

Emergency Medicaid Services

Applicants for emergency Medicaid are not required to provide a Social Security Number or proof of citizenship or immigration status. States may not deny emergency Medicaid benefits to an applicant who does not provide a Social Security Number or information about citizenship or immigration status. States may only ask for a Social Security Number if they clearly inform the applicant that providing the number is voluntary. The benefits worker and the victim's advocate should inform clients that failing to provide a Social Security Number cannot result in denial of emergency Medicaid benefits. States which request voluntary disclosure whether or not a client has a social security number must inform the applicant about all the ways that state will use that information.⁴⁰

Food Stamps

Food stamp eligibility and benefits are based on the circumstances of *all* household members. Therefore, all household members must demonstrate their citizenship or food-stamp eligible immigration status.⁴¹ If a household member does not demonstrate citizenship or eligible immigration status, the state agency may declare that household member ineligible for benefits, but *may not deny* benefits to eligible citizens or qualified immigrant household members. The federal Department of Health and Human Services (HHS) encourages states to allow individual household members to declare early in the application process that they are not applying for Food Stamps for themselves, and wish to be excluded from calculation of the Food Stamp benefits amount. Such persons will not need to disclose their Social Security Number or citizenship or immigration status.

One of the key reasons advocates and attorneys need to accompany immigrant victims applying for Food stamps for their children and/or themselves is to make sure victims are able to immediately inform Food Stamp eligibility workers that the victims themselves and/or any ineligible household members are declaring that they are not seeking Food Stamp benefits. Advocates may then also need to intervene to prevent workers from seeking Social Security Numbers, citizenship, or immigration-status information about these ineligible family members. Non-applicant household members, however, will still be required to answer questions on matters that affect the eligibility of applicant household members, such as income, resources, striker status,⁴² and intentional program violations.⁴³ States cannot, however, deny benefits to otherwise eligible household members simply because non-eligible members have chosen not to disclose their Social Security Number, citizenship, or eligible immigration status.⁴⁴

Temporary Assistance to Needy Families (TANF)

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See Chapter 5 for a discussion of immigrants eligible to receive food stamps.

⁴² While definitions may vary by state, a "striker" is anyone involved in a strike or concerted stoppage of work by employees.

⁴³ While definitions may vary by state, an "intentional program violation" generally occurs when a benefits recipient intentionally misrepresents, conceals, or withholds facts in an attempt to receive benefits to which they are not entitled.

⁴⁴ See HHS Policy Guidance, note 31.

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Like Food Stamps, as a general rule, TANF eligibility and the level of TANF benefits are based upon the circumstances of all household members. All household members who will be receiving benefits must demonstrate their citizenship, or eligible immigration status. States have considerable flexibility in administering TANF, however, and may have policies that provide for the mandatory or voluntary exclusion of family members. Excluded family members would be “non-applicants” who do not need to provide Social Security Numbers, or documentation of citizenship or immigration status. Twenty-one states require some adults who are not parents or caretakers, such as stepparents who are not legally responsible for a stepchild, to be included in the assistance unit. Twenty states allow some adults who are not parents or caretakers, such as essential persons and caretakers’ spouses, to be included in the assistance unit at the family’s adoption.⁴⁵ All states allow for “child-only” cases, where needy children are eligible to receive TANF benefits even if the other family members are non-applicants or ineligible. Family members may be non-applicants for TANF because they are not applying for benefits themselves, because they are not qualified, or because they are qualified immigrants who are subject to a five-year bar from participation in federal means-tested public benefits and therefore, TANF ineligible. These “child-only” policies are an example of how TANF programs operate for families that include members with differing citizenship and immigration statuses.

States may ask non-applicants for a Social Security Number only if they clearly indicate that provision of Social Security information is voluntary. Further, they must indicate how Social Security Number information, or information that an applicant lacks a Social Security Number will be used. Since a factor in TANF eligibility is household income, non-applicant family members who cannot be asked immigration status questions and who cannot be required to provide Social Security information must still provide income information as part of the TANF application for TANF-qualified family members. States may require non-applicants to provide information on factors that affect the family’s finances or other eligibility factors, such as income received by non-applicant parents through any type of employment, property rentals, prize-winnings, etc.⁴⁶ States, however, may not deny benefits to eligible family members because a non-applicant did not provide a Social Security Number or documentation of citizenship or immigration status.⁴⁷

Joint Application Forms

Most states have consolidated their application forms and use joint applications for Medicaid, SCHIP, TANF, food stamps and other benefits, which eliminates duplication, and helps ensure that applicants receive all the benefits to which they may be entitled. HHS recommends an approach that reflects an understanding that many families will include household members who qualify for some or all benefits programs and other family members who will not due to immigration status or other reasons. HHS urges states to design their joint application forms so that families and households complete the information needed to apply for Medicaid and/or SCHIP first, since neither of these programs requires a family or household to apply as a unit.

This assures that children and other household members who qualify for Medicaid SCHIP receive much-needed health care without regard to whether they or other family members qualify for other federal public benefits. States should inform families and households that families and individual family members may apply for individual benefits programs independent of other programs. Eligibility for one program will not be affected if the family or individual chooses not to apply for other programs.⁴⁸ A family or individual family member may apply for any combination of benefits for which they qualify. For example, the applicant may qualify for and receive SCHIP and TANF, but not Food Stamps. States should designate the information that is mandatory for each individual benefit program.⁴⁹ In addition to state efforts, advocates should continue to

⁴⁵ State Policy Documentation Project, *Categorical Assistance for TANF Cash Assistance*, available at <http://www.spdp.org/tanf/categorical/categsumm.htm>.

⁴⁶ See, e.g., DC Department of Health and Human Services available at http://www.dhs.dc.gov/pdfs/benefit_app/part_c.pdf.

⁴⁷ HHS Policy guidance, note 31.

⁴⁸ *Id.*

⁴⁹ *Id.*

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accompany clients applying for benefits to help them understand and complete the forms. HHS provides recommended sample language that clarifies which information must be provided in order for applicants to receive specific benefits.⁵⁰ Advocates should accompany clients to assist them in completing the Joint Application Forms, since the variations in information required by each program makes completion of the forms confusing.

Policy Guidance from the Department of Health and Human Services: Facilitating Access to Public Benefits for Persons with Limited English Proficiency

Battered immigrant women with limited-English-proficiency are frequently unable to obtain basic information on how to access public benefits. Many intake workers and other front-line employees are neither bilingual, nor trained in assisting people who have limited English proficiency (LEP).⁵¹ LEP persons are often turned away from public benefits agencies, forced to wait substantial periods of time, forced to find her own interpreter who may not be qualified to interpret, or required to make repeated visits to an agency's office until an interpreter is available to assist in conducting the interview. As a result, battered immigrant women may be denied necessary benefits to which they are entitled, or may experience significant delays in obtaining such benefits.

Legal Protections for Persons with Limited English Proficiency

Courts have held that persons with limited English proficiency are protected under Title VI of the Civil Rights Act of 1964,³⁴ and the Title VI regulations against national origin discrimination. Further, on August 11, 2000, President Clinton issued Executive Order 13166, directing agencies to ensure access by persons with limited English proficiency to federally funded programs.³⁵ The failure of a federally funded state agency to take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs may constitute a violation of Title VI, as well as HHS's own implementing regulations. Department of Health and Human Services' regulation requires all recipients of federal financial assistance from HHS to provide meaningful access to LEP persons.³⁶ "Federal financial assistance" includes grants, training, use of equipment, donations or surplus property, and other assistance.³⁷

The Department of Health and Human Services' (HHS) Office for Civil Rights has released a Policy Guidance to assist state benefits agencies, among others, in providing services to LEP persons without discriminating against applicants on the basis of LEP status/national origin. The LEP Policy Guidance has two goals: (1) ensuring that federal public benefits programs do not exclude individuals simply because they face language barriers to communicating in English, and (2) finding methods of minimizing the financial and administrative burdens of LEP requirements on small businesses, small local governments, and small, federally assisted non-profits.³⁸

⁵⁰ DEP'T OF HEALTH & HUMAN SERVICES & DEP'T OF AGRICULTURE, POLICY GUIDANCE REGARDING INQUIRIES INTO CITIZENSHIP, IMMIGRATION STATUS AND SOCIAL SECURITY NUMBERS IN STATE APPLICATIONS FOR MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM (SCHIP), TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF), AND FOOD STAMP BENEFITS: SAMPLE NOTICE (2000), *available at* <http://www.hhs.gov/ocr/nationalorigin/sample.html>

⁵¹ OCR LEP Policy Guidance, note 28, at 1.

³⁴ 42 U.S.C.S. § 2000d (2003).

³⁵ Exec. Order No. 13166 (August 11, 2000).

³⁶ 45 C.F.R. 80.3(b)(2)(3) (2001).

³⁷ Includes hospitals, nursing homes, home health agencies, and managed care organizations; universities and other entities with health or social service research programs, state, county, and local health agencies; state Medicaid agencies; state, county and local welfare agencies; programs for families, youth, and children; Head Start programs; public and private contractors, subcontractors and vendors; physicians and other providers who receive Federal financial assistance from HHS.

³⁸ OCR LEP Guidance, note 28, at § F.

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To achieve this goal, the Policy Guidance suggests the use of the following four part balancing test to determine whether the agency is in compliance with LEP policy: The agency is to consider (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the program, activity, or service provided by the recipient; (2) the frequency with which LEP individuals come in contact with the recipient's program, activity, or service; (3) the nature and importance of the recipient's program, activity, or service, balanced against the resources available to the agency and administrative costs.³⁹

In putting forth this balancing test, HHS states a commitment to limiting burden on smaller recipients of federal financial assistance while providing meaningful access to benefits for LEP persons may be achieved. HHS plans to work with representatives of state health and social service agencies, hospital associations, medical and dental associations, managed-care organizations, and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches to fulfilling the HHS mandate.⁴⁰ An interagency working group on services to LEP individuals has developed a Web site⁴¹ to assist in disseminating policy information to federally funded state agencies, federal agencies, and the communities being served.⁴²

What is Required of Agencies? Compliance with LEP Requirements

To avoid discrimination on the basis of national origin, state benefits agencies must provide the language-assistance necessary to ensure meaningful access for LEP persons, at no cost to the individual.⁴³ The type of language-assistance that agencies are required to provide depends upon a variety of factors, including the size of the agency, the frequency with which particular languages are encountered, and the frequency with which LEP persons come in contact with the program.⁴⁴ The key to providing meaningful access for LEP persons is to ensure that the agency and the individual can communicate effectively. The agency must ensure that an LEP person is given adequate information, is able to communicate the relevant circumstances of her situation is able to understand the benefits available, and is able to receive benefits to which she is entitled.⁴⁵

Availability of translated agency materials and oral interpretive services are the most common policy issues that agencies must confront to comply with LEP guidelines. The Policy Guidance provides specific examples of documents that may be considered "vital" for purposes of facilitating agency access for LEP individuals, and for which translations, therefore, are required in order to comply with Title VI. A document will be considered "vital" if it is crucial 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 and disciplinary action; notices advising LEP persons of the availability of free language assistance; and letters or notices that require a response from the beneficiary or client.⁴⁶ For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. "Non-vital" information includes documents that are not critical to access such benefits and services. Vital documents must be translated when a significant number 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 to communicate effectively.

Similarly, the OCR LEP Guidance recognizes oral communication between LEP clients and agencies as a necessary part of the exchange of information. Thus, an agency that limits its language assistance to simply providing written materials may not be allowing LEP persons "effectively to be informed of or to participate in the program."⁴⁷ Agencies may take a number of steps to ensure oral communication between the LEP individual seeking services and the agency. They range from hiring competent bilingual staff or staff

³⁹ OFFICE FOR CIVIL RIGHTS, DEP'T OF HEALTH AND HUMAN SERV., POLICY GUIDANCE: TITLE VI PROHIBITION AGAINST NATIONAL ORIGIN DISCRIMINATION AS IT AFFECTS PERSONS WITH LIMITED ENGLISH PROFICIENCY: APPENDIX A QUESTIONS AND ANSWERS 1 (2001), <http://www.dhhs.gov/ocr/lep/finalproposed.html>.

⁴⁰ *Id.*

⁴¹ See Meaningful Access for People Who Are Limited English Proficient at <http://www.lep.gov>.

⁴² *Id.* See www.lep.gov for further discussion of LEP requirements.

⁴³ See OCR LEP Policy Guidance, note 28, § C.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

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interpreters, to contracting with qualified in-person or telephonic interpreter services, to arranging formally for the services of qualified community volunteer interpreters who are bound by confidentiality agreements. It is generally not acceptable for agencies to rely upon an LEP individual's family members or friends to provide the interpretive services.⁴⁸ The agency should supply competent language services free of cost to be in compliance with the requirements of Title VI and Executive Order 13166. The particular option an agency takes will depend upon the resources of the agency, and the frequency with which an agency encounters a particular language.

While the Department of Health and Human Services has taken steps towards ending discrimination on the basis of national origin against persons with limited English proficiency and improving access to the critical federal benefits application process, there is little data concerning enforcement of state-agency compliance with LEP policies. Advocates for LEP clients should be aware of the requirements for state benefits in agencies in providing appropriate language services to LEP persons, and should coordinate with agencies to ensure that languages encountered in the community are adequately served. It is crucial that advocates accompanying battered immigrant women during the benefits application process be knowledgeable of the HHS Policy guidance, be vigilant of the extent to which agencies comply with the guidelines described above, and be prepared to intervene and demand adequate services for the LEP clients from public benefits agencies.

Steps for Advocates: Accompanying Battered Immigrants to Benefits Agencies

- **ACCOMPANY BATTERED IMMIGRANT CLIENTS APPLYING FOR PUBLIC BENEFITS FOR THEMSELVES AND/OR THEIR CHILDREN TO AGENCY OFFICES.**

Battered immigrant women applying for benefits face numerous difficulties during the benefits application process that make accompaniment by the knowledgeable advocates essential. Advocates can ease these difficulties by accompanying battered immigrant women to public benefits agencies when they are applying for benefits on behalf of their children and/or themselves as qualified immigrants under the Violence Against Women Act.

- **ANTICIPATE AND PREPARE YOUR CLIENT FOR BARRIERS SHE MAY FACE DURING THE BENEFITS APPLICATION PROCESS.**

During the benefits-application process, battered immigrant women may face linguistic and/or cultural barriers to accessing benefits agencies, discomfort with disclosing immigration status due to fear or deportation, complicated application forms and/or procedures, lack of awareness or training on issues of domestic violence or immigration on the part of the benefits agency staff, or confusion over the differing requirements for various benefits programs.

- **DETERMINE THE BENEFITS TO WHICH YOUR CLIENT AND/OR HER CHILDREN ARE ENTITLED.**

When accompanying their clients, advocates should use the information in the Public Benefits chapter of this manual to determine whether the child or the battered immigrant herself qualifies for Medicaid, SCHIP, TANF, Food Stamps, and/or Child Care. Advocates should take copies of any documentation showing that their clients qualify for the benefits listed above.

- **UNDERSTAND AND USE WITH AGENCY CASEWORKERS HS POLICY GUIDANCE ON DISCLOSURE OF IMMIGRATION STATUS AND SOCIAL SECURITY INFORMATION.**

⁴⁸ *Id.*

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When accompanying their clients to benefits agency offices, advocates should have with them a copy of the HHS Policy Guidance with respect to disclosure of immigration status/Social Security Numbers and be prepared to intervene should their clients feel coerced into “voluntary” disclosure of such information for any non-applicant family member. Confusion over disclosure requirements and/or benefits eligibility of battered immigrant women may be common among agency caseworkers; intervention by advocates may prevent incorrect denial or delay of benefits.

- UNDERSTAND AND USE WITH HHS OCR LEP GUIDANCE TO ENSURE ADEQUATE ACCESS TO THE BENEFITS APPLICATION PROCESS FOR CLIENTS WITH LIMITED ENGLISH PROFICIENCY.

Advocates should also take to benefits agency officers a copy of the OCR LEP guidance on providing agency access to individuals with limited English proficiency, and prepared to demand competent, expedient interpretive services for their LEP clients. Generally, advocates for bilingual clients should work with local benefits agencies to ensure appropriate translation or interpretive services or LEP individuals.

- BE PREPARED TO RESPOND IF YOUR CLIENT IS DENIED BENEFITS APPROVAL.

If the battered immigrant woman is turned away from the agency without benefits approval, advocates should insist that the application be accepted, demand an explanation for the denial, document names of agency workers and their action or inaction with the application, and be prepared to file an appeal.

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