

# Incident Resolution Process (IRP) For Language Access Providers



## Background

The Washington State Department of Social and Health Services (DSHS) began working with Language Access Providers (LAPs) in late 2012 under the first LAP Collective Bargaining Agreement (CBA) Contract for pre-scheduled appointments. During that time, DSHS worked closely with other agencies to procure a contract for spoken language interpreting services with the CBA requirements included.

As DSHS moves forward with procuring spoken language interpreting services from new coordinating entity(ies) to serve individuals with limited English proficiency (LEP) for our social service work, DSHS is establishing an incident resolution policy (IRP) consistent with our contract language for pre-scheduled social service appointments.

DSHS welcomes input from the Washington Federation of State Employees (WFSE) for Language Access Providers to assist with improving the process in which services are provided by LAPs.

## Feedback process for Coordinating Entity(ies)

Consistent with the collective Bargaining Agreement (CBA MOU-A between Washington Federation of State Employees (WFSE) for Language Access Providers (LAP) and the Agencies; the Agencies welcome the union's feedback to improve the process of comments about services provided by LAPs. This input includes, but is not limited to, how LAPs and the Union are notified of feedback made to the Coordinating Entity(ies) regarding services provided by LAPs. All feedback will be handled by the Coordinating Entity(ies)' trained individual within their business that has a thorough understanding of the process. LAPs will be notified immediately of any feedback that is received about them. Additionally, all feedback is tracked through the Coordinating Entity(ies)' platform and is accessible to each LAP and authorized requester.

**Who can give feedback:** LAPs and authorized requesters, facilities, and DSHS staff.

**What can they give feedback on:** LAPs and authorized requester's services.

**How can they submit feedback:** Online through the portal, email, phone, fax.

**What are some potential outcomes:** LAP outreach for education, warnings on record, partial or full suspension, or further action up to and including LAP account deactivation and subcontract termination.

## Methods for submitting feedback

**Scheduling platform:** Coordinating Entity(ies) will have a link available on their scheduling platform for submittal of feedback.

**Website:** Coordinating Entity(ies) will have a link available on their website for submittal of feedback.

**Email:** Coordinating Entity(ies) will have an email address directly to their program coordinator.

**Fax:** Coordinating Entity(ies) will have a fax number available for feedback.

**Mail:** Individuals can mail feedback directly to the Coordinating Entity(ies).

**Phone:** Coordinating Entity(ies) will provide a dedicated phone number.

## Definitions

**Authorized Requester:** Authorized users of the Coordinating Entity scheduling system who schedule interpreter services.

**Breach:** Generally, an impermissible use or disclosure under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule that compromises the security or privacy of the Protected Health Information (PHI) of an individual. Use or disclosure of PHI is presumed to be a breach unless the covered entity or business associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised. Coordinating Entity must notify the DSHS Privacy Officer of every potential HIPAA, PHI, or Personally Identifiable Information (PII) violation to determine if a

breach occurred.

**Business Days:** Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, excluding Washington State recognized holidays. All days referenced in this document are to be construed as business days unless otherwise noted.

**Code of Professional Conduct:** Professional standards for all LAPs who provide language services as outlined in [Washington Administrative Code \(WAC\) 388-03-050](#).

**Coordinating Entity:** The contractor awarded a DSHS contract for language services, its employees, subcontractors, and agents performing services under said contract between contractors and DSHS.

**Corrective Action:** A set of actions put in place to rectify, improve, or eliminate non-conformities or undesirable behaviors or situations.

**Department of Social and Health Services (DSHS):** Washington State Department of Social and Health Services.

**Extenuating Circumstances:** Death in the family; serious illness of family member(s) or self; incapacitation of self; fire or other form of destruction to immediate household family or self; and an unanticipated event or difficulty beyond the LAP's control, including reported inclement weather conditions.

**Feedback:** A compliment or a complaint reported by an LAP, authorized requestor, client, or DSHS staff.

**Formal Written Notice:** LAPs who accumulate four (4) Low Impact incidents or one (1) Medium Impact incident will receive a Formal Written Notice via email in the form of an Incident Report outlining the details of each violation. This document will also be forwarded to the DSHS contract manager.

**Harassment:** Intentionally targeting someone else with behavior that is meant to alarm, torment, or terrorize them.

**Health and Safety Violation:** The violation of an individual's rights to a safe and healthy environment, and the potential security breach of PHI.

**Health Insurance Portability and Accountability Act of 1996 (HIPAA):** An Act to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long term care services and coverage, to simplify the administration of health insurance, and for other purposes.

**HIPAA compliant environment:** Is a secure and quiet location where only the LAP can see or hear the DSHS staff and Client. It must be free from disruption from other people, children, pets, noises, and not be in a public setting, such as but not limited to:

- Outside the home,
- While driving,
- At a playground, outdoor area, including any public areas; and
- At home while loud disruptions can be heard by the Client and Authorized Requester.

**Incident:** The resulted outcome, pending investigation, of each complaint received regarding a LAP's action that violates the WAC 388-03-050. Depending on the impact of the complaint, the LAP may receive a Low, Medium, or High Impact Incident.

**Incident Report:** A report of the detailed incident or action that resulted in a violation of the Code of Professional Conduct outlined in WAC 388-03-050 or outlined in the LAPs Business Associate Agreement (s) (BAA).

**Invalid Reason:** Such as, but not limited to; to public road closure notices where two (2) or more days advance notice was given; forgotten appointment; cancelled the wrong appointment; overbooked schedule or combination of in-person and remote appointments; vacation; or home technology does not meet remote interpreting requirements. LAP had a reasonable opportunity to correct the issue.

**Limited English Proficient (LEP):** A person with LEP is an individual who does not speak English as their primary language and has a limited ability to read, write, speak, or understand English.

**Partial Portal Restriction:** Action taken because of a LAP's multiple violations or impact of the incident(s). LAP's platform will not show any DSHS jobs, nor allow the LAP to accept any new DSHS jobs. DSHS jobs that have already been accepted will remain on the LAP's schedule.

**Protected Health Information (PHI):** The HIPAA Privacy Rule provides federal protections for protected health information held by covered entities and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.

**Restriction Period:** The period during which a LAP's access to DSHS jobs is fully or partially limited in some capacity because of a corrective action. Restriction periods may range from 7 to 90 days.

**Impact Level:** The level of an incident as determined by this IRP, Code of Professional Conduct, and ethical violations.

**Suspensions:** LAP's portal may be inactive to prohibit accepting jobs during an investigation or during a temporary suspension due to an incident or reoccurring incidents.

**Termination of Sub-Contract:** An LAP may be terminated from servicing DSHS appointments through the coordinating Entity(ies) following an investigation and finding of incident(s) at any impact level, HIPAA, or PHI violations. All terminations are reviewed and approved by DSHS prior to the effective date. Once terminated, an LAP may not subcontract for any DSHS contracted coordinating entity(ies).

**Valid Reason:** Such as, but not limited to unexpected travel emergencies (i.e., short-notice road closures, traffic accidents, flat tires), illness or medical emergency of self or family; reports obstacles to practice per the WAC 388-03-050 (11a-b), inaccurate or incomplete information given by the requester; or other extenuating circumstances (see definition).

## Incident Impact Levels

**Low Impact:** Classifies any violation of WAC 388-03-080 that has a minimal impact on the appointment, requester, and/or individual with LEP.

**Examples** (including but not limited to):

- Requester reported LAP's late arrival;
- LAP gives back the job less than 24 hours before the scheduled start time (without a valid reason)<sup>1</sup>;
- LAP left job earlier than the scheduled end time without requester approval;
- LAP did not interpret accurately or express the source language message in a thorough and faithful manner;
- Not available for the start time of an over-the-phone interpreting (OPI) or video remote interpreting (VRI) scheduled job; or
- Requester reports a job could not be completed due to technical reason, i.e., choppy audio or video on the LAP's end.

**Medium Impact:** Classifies any violation of WAC 388-03-050 that has a moderate impact on the appointment, requester, and/or individual with LEP.

**Examples** (including but not limited to):

- LAP is a no-show (without valid reason);
- LAP solicits their services to the individual with LEP, their family members or requester;
- LAP expresses personal opinions; offers unwanted conversation;
- LAP services an acquaintance, family member, or friend without disclosing the potential conflict of interest;
- LAP requests the requester to enter incorrect start and/or end times;

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<sup>1</sup> Should an interpreter accept a job for an appointment within 24 hours of start time and gives job back within 30 minutes of accepting the job, there will be no incident.

- LAP engages in unsupervised discussion with the requester and/or individual with LEP;
- LAP contacts the requester or the individual with LEP person directly, outside the appointment;
- Harassment or unprofessional behavior to State agency employees or employees of the Coordinating Entity(ies);
- During an interpretation session, LAP uses a mobile device for any reason unrelated to current services;
- During an active appointment, LAP accesses the portal to accept, reject, dispute, review jobs or conduct other activities; or
- LAP is not located in a secure HIPAA complaint space during an OPI or VRI appointment.

**High Impact:** Classifies any violation of WAC 388-03-050 that has a significant or critical impact on the appointment, requester, and/or individual with LEP; including those violations that put the health and safety of any of the parties involved at risk.

**Examples** (including but not limited to):

- Transporting an individual with LEP to or from appointments;
- LAP requests money or favors from the individual or requester;
- LAP passes their appointments to another LAP without Coordinating Entity’s knowledge and approval;
- LAP falsifies a job invoice;
- LAP’s behavior displays discrimination or threatens another individual and violates the Civil Rights Act of 1964, Washington State Law Against Discrimination, or other applicable laws, regulations, and policies;
- Harassing the requester, facility staff, DSHS employees or individual with LEP in a manner that creates a barrier to care and services; or
- Any violation to HIPAA, or the health and safety of the individual with LEP, requester, DSHS employees or facility staff.<sup>i</sup>

Any violations of LAPs sending unsecure client information via email will result in a 10-day portal restriction. If two violations occur within 1 year, the LAP will have a 90-day full suspension and will be required to provide proof of completion of an approved HIPAA training (at their cost) to be reinstated with the Coordinating Entity. If an additional occurrence happens within the next calendar year, LAP may be subject to immediate termination.<sup>ii</sup>

## Tracking Incidents

**Low and Medium Impact Incidents** are tracked on a rolling 12-month period. This means that incidents are removed from the LAP’s record once that incident is 366 days old. These incidents do not disappear, and they are maintained in the Coordinating Entity’s system. Incidents that have reached the 366-day mark will not be used to apply any actions listed in the following chart. However, they may be reviewed, and action may be taken in the event a pattern of unethical behavior, or some other concern is identified.

**High Impact Incidents** are tracked for the lifetime of the LAP’s sub-contract. There is no rolling time, and high impact incidents are never removed from the LAP’s record. These incidents are subject to immediate action, up to and including termination of the LAP’s contract. All terminations resulting from a high impact incident are reported to DSHS Language Testing and Certification Program (LTC) per WAC 388-03-160. This report will include all information from the requester, Coordinating Entity(ies), DSHS and the interview with the LAP.

**HIPAA and PHI incidents** are tracked for the lifetime of the LAP's contract. There is no rolling time, and high impact incidents are never removed from the LAP's record. These incidents are subject to immediate action, up to and including termination of the LAP's contract. All terminations resulting from a high impact incident are reported to DSHS LTC per WAC 388-03-160. This report will include all information from the requester, Coordinating Entity(ies), DSHS interview with the LAP, and the LAP.

## **Termination of LAP's Subcontract**

Per the Code of Professional Conduct (WAC 388-03-050), any violation of the Code may disqualify LAPs from providing those services to DSHS programs and clients. LAPs are to be professional service sub-contractors for DSHS staff and authorized requesters. Per this incident resolution policy, if an LAP fails to meet the requirements and incurs multiple incidents, an LAP may have their subcontract terminated with the Coordinating Entity and will not be eligible to provide interpreter services to DSHS individuals. Once terminated, an LAP may not subcontract with any DSHS contracted Coordinating Entity(ies).

Prior to Coordinating Entity(ies) termination of the LAP's subcontract, DSHS will review all documentation from the Coordinating Entity and the LAP to ensure that all processes were followed. Exceptions to this process are HIPAA and PHI-related breach or violations. Termination for these violations will be determined based on the outcome of a DSHS Contract Manager's investigation.

## **Revocation Referral**

When an LAP has violated any provisions of WAC 388.03.170 or has been terminated from the Coordinating Entity's subcontract, DSHS is required to provide all documentation to DSHS LTC for review. DSHS LTC will conduct their own review of the circumstances and decide whether the LAP should be allowed to retain their credential(s), or whether the credential(s) should be revoked. DSHS LTC is the entity responsible for this decision per WAC 388.03.170. DSHS and the Coordinating Entity does not make the determination of revocation.

## **Steps in the Resolution Process**

1. Feedback is submitted to Coordinating Entity(ies) by authorized requesters, LAPs, or via the call center staff.
2. Once recorded, either by email, portal, fax, or phone call, LAPs are notified that they received feedback, and the details of the feedback are included in the notification.
3. LAPs have ten (10) business days to respond to the Coordinating Entity in writing to dispute or explain the situation, except for HIPAA, PHI, or safety and health concerns where LAPs may be subject to immediate suspension pending the outcome of a DSHS investigation.
4. Once Coordinating Entity receives the LAP's response, any necessary follow-up must be completed within twenty (20) business days. To verify the validity of the LAP's response, coordinating Entity(ies) may need to reach out to the authorized requester or some other entity. LAPs must never contact the requester, facility, DSHS staff, or the client regarding the incident.
5. Coordinating Entity will notify the LAP of the investigation's outcome and take any corrective action if warranted and according to the incident scale table.
6. LAPs are notified three (3) business days prior to any portal restriction effective date. Exceptions are the High Impact Incidents that warrant immediate suspension, and the LAP will be notified immediately.
7. Suspensions that result from potential client safety and health concerns may be effective on the date of notification form requester, person with LEP, or DSHS employee and remain in effect during the investigation.
8. If feedback takes more than sixty (60) business days to resolve with the requester, person with LEP, or DSHS employee, or the incident is unable to be validated, the incident may be

removed from the LAP's profile.

## Incident Scale Tables

Please note that ALL feedback reports from requesters or other entities, regardless of impact, will result in a system-generated email notification immediately going to the LAP notifying them of the feedback. The sum of incidents from all DSHS contracted Coordinating Entities is used to determine the number of incidents and corresponding actions to be taken, as described in the tables below. Termination of subcontract will only happen with direct authorization of the DSHS Labor, Contracts, CMS Accountability Manager or designee.

Number of Incidents	Action Taken	Duration
<b>Low Impact Incidents within a rolling 365-day period</b>		
1 Low impact incident	Automatic Email Alert	N/A
4 Low impact incidents	Formal Written Notice	N/A
5 Low impact incidents	Partial DSHS Job Restriction	10 calendar days (min)
6 Low impact incidents	Partial DSHS Job Restriction	20 calendar days (min)
7 Low impact incidents	Full DSHS Job Restriction	7 calendar days
8 Low impact incidents	Full DSHS Job Restriction	14 calendar days (with final warning)
9 Low impact incidents	Termination of DSHS Contract	N/A
<b>Medium Impact Incidents within a rolling 365-day period</b>		
1 Medium impact incident	Formal Written Notice	N/A
2 Medium impact incidents	Partial DSHS Job restriction	10 calendar days (min)
3 Medium impact incidents	Partial DSHS Job Restriction	10 calendar days (min)
4 Medium impact incidents	Full DSHS Job Restriction	7 calendar days
5 Medium impact incidents	Full DSHS Job Restriction	14 calendars with final warning
6 Medium impact incidents	Termination of DSHS Contract	N/A
<b>High Impact Incidents within the term of contract</b>		
1 High impact incident	Partial/Full DSHS Job Restriction	10 calendar days min with a final warning
2 High impact incidents	Termination of DSHS Contract	N/A
2 PHI impact incidents	Temporary suspension	90 calendar days <sup>iii</sup>
<b>HIPAA, Breach or Safety Concerns</b>		
1 Incident	Partial/Full DSHS Job Restriction	10 calendar days min with a final warning
2 Incidents	Termination of Contract	N/A

<sup>i</sup> HIPAA and Health, Safety, and Ethics violations will have an immediate 10-day full DSHS job restriction or longer, pending the investigation of the incident.

<sup>ii</sup> A third HIPAA email violation will result in immediate DSHS contract termination.

<sup>iii</sup> LAP is required to take HIPAA training at their expense and reapply after 90 days.