Providing Effective Communication and Language Assistance

October 2024

This information is intended only for the use of entities and individuals certified to serve as Navigators, certified application counselors, or non-Navigator assistance personnel in a Federally-facilitated Marketplace. The terms "Federally-facilitated Marketplace" and "FFM," as used in this document, include FFMs where the state performs plan management functions. Some information in this presentation may also be of interest to individuals helping consumers in State-based Marketplaces and State-based Marketplaces using the Federal Platform. This material was produced and disseminated at U.S. tax filer expense.

Disclaimer

- This presentation is intended as training and technical assistance for Marketplace assisters (i.e., Navigator grantees, Enrollment Assistance Personnel (EAPs), and Certified Application Counselors (CACs)).

- This presentation is not a legal document.

  - The slides summarize complex statutes and regulations and do not create any rights or obligations.

  - Complete and current legal standards are contained in the applicable statutes and regulations.

  - Members of the press should contact the CMS Media Relations Group at press@cms.hhs.gov.

Overview of Presentation

- Overview of Non-Discrimination Laws

- What is Health Equity?

- Understanding Consumer Diversity in the Health Insurance Marketplace®*

- How Navigators, EAPs, and CACs Can Help Promote Health Equity

- Communicating Effectively with Individuals with LEP

- Conducting a Language Access Assessment

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- Implementing Language Access Procedures

- Preventing and Remediating Discrimination

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- Resources

*Health Insurance Marketplace® is a registered service mark of the U.S. Department of Health & Human Services.

Overview of Non-Discrimination Laws and Regulations

Certain laws protect people from discrimination based on these differences, including the following examples:

- **Section 1557 of the Affordable Care Act (ACA) (Section 1557)** prohibits discrimination on the basis of race, color, national origin (including Limited English Proficiency (LEP) and primary language), sex, age, or disability in covered health programs and activities.

- Pursuant to decisions by various courts regarding the 2024 Final Rule implementing Section 1557, entitled Nondiscrimination in Health Programs and Activities, 89 Fed. Reg. 37,522 (May 6, 2024) ("2024 Final Rule"), certain provisions are stayed or enjoined as indicated at Section 1557 of the Patient Protection and Affordable Care Act.

- **Title VI of the Civil Rights Act of 1964 (Title VI)** prohibits discrimination based on race, color, or national origin (including LEP).

- **The Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973**, and other laws protect individuals against discrimination based on disability.

Overview of Non-Discrimination Laws and Regulations (Cont.)

- **The Age Discrimination Act of 1975** and other laws protect individuals against age discrimination based on age.

- **Title IX of the Education Amendments of 1972** and other laws protect individuals against discrimination on the basis of sex.

- Multiple laws protect individuals against religious discrimination and protect the free exercise of religion, including the **Religious Freedom Restoration Act of 1993.**

- Federal CMS regulations at **45 CFR 155.120** prohibit the Marketplaces from discriminating against consumers because of their race, color, national origin, disability, age, or sex.

What is Health Equity?

To CMS, health equity means the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes.

Source: CMS Framework for Health Equity

Understanding Cultural and Linguistic Diversity in the Health Insurance Marketplace®

The U.S. has made progress towards improving health care access and quality, but well-documented disparities persist for many populations and communities, including the following:

- Racial and ethnic minorities, including individuals who are:

  - Black or African American

  - Of Hispanic, Latino, or Spanish origin

  - Asian

  - Native Hawaiian or other Pacific Islander

  - American Indian or Alaska Native

- Members of the lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) community

- Individuals with disabilities, including people who communicate through American Sign Language (ASL)

- People who have a limited ability to read, write, speak, or understand English, referred to as individuals with LEP

- People with low socioeconomic statuses

- People with less common religious beliefs and practices

- Older adults

How Navigators, EAPs, and CACs Can Help Promote Health Equity

- Language access, effective communication for individuals with disabilities, and the provision of culturally tailored services play a critical role in improving health care quality, patient/consumer safety and experience, and can impact health outcomes and enrollment in coverage.

- Navigators, EAPs, and CACs play a vital role in helping communities that experience health disparities understand and enroll in the right health care plan that meets their financial and health care needs.

Limited English Proficiency

- An individual with limited English proficiency (LEP) generally refers to someone:

  - ➤ Whose primary language for communication is not English; and

  - ➤ Who has a limited ability to read, write, speak, or understand English.

- An individual with LEP may be competent in English for certain types of communication (e.g., speaking or understanding), but still be limited English proficient for other purposes.

Source: 45 CFR 92.4

Communicating Effectively with Individuals with LEP

To be culturally and linguistically competent, assisters should:

- Identify, understand, and respect differences in individual's cultural beliefs, behaviors, and needs.

- Respond appropriately to individuals based on their culture and language needs, which may include making referrals or asking for help (e.g., getting interpretation and translation services).

- Acknowledge, respect, and accept cultural differences among individuals.

Navigators and EAPs: Communicating Effectively with Individuals with LEP

Navigator and EAP requirements to provide linguistically appropriate communication:

- Navigators and EAPs must take reasonable steps to provide meaningful access to individuals with LEP. This includes providing free, accurate, and timely written translations and/or oral interpretation services to individuals with LEP in their preferred language when necessary or when requested by the individual to ensure meaningful access [45 CFR 155.205(c); 45 CFR 155.215(c)(3); 45 CFR 92.201(b)].

  - ➢ When **oral interpretation services** are required, an assister subject to Section 1557 of the ACA <u>must offer</u> a qualified interpreter. [45 CFR 92.201(c)(1)]

  - ➢ When **written translation services** are required, an assister subject to Section 1557 of the ACA <u>must use the services of</u> a qualified translator. [45 CFR 92.201(c)(2)]

Navigators and EAPs: Communicating Effectively with Individuals with LEP (Cont.)

- Navigators and EAPs must provide oral and written notice to individuals with LEP, in their preferred language, informing them of their right to receive language assistance services and how to obtain them. [45 CFR 155.215(c)(4)]. Section 1557 also requires written notices of the availability of language assistance services. [45 CFR 92.10(a)(1)(iii); 45 CFR 92.11(a)]

- Language assistance services must protect the privacy and independent decision-making ability of the individual with LEP. [45 CFR 92.201(b)]

Qualified Translators

For the purpose of written translations under Section 1557 of the ACA, a qualified translator is a translator who:

- Has demonstrated proficiency in writing and understanding both written English and at least one other written non-English language;

- Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original written statement; and

- Adheres to generally accepted translator ethics principles, including client confidentiality.

Source: 45 CFR 92.4

Qualified Interpreters

For the purpose of oral interpretation under Section 1557 of the ACA, a qualified interpreter for an individual with LEP is an interpreter who via a remote interpreting service or an on-site appearance:

- Has demonstrated proficiency in speaking and understanding both spoken English and at least one other spoken language (qualified interpreters for relay interpretation must demonstrate proficiency in two non-English spoken languages);

- Is able to interpret effectively, accurately, and impartially to and from such language(s) and English (or between two non-English languages for relay interpretation), using any necessary specialized vocabulary or terms without changes, omissions, or additions and while preserving the tone, sentiment, and emotional level of the original oral statement; and

- Adheres to generally accepted interpreter ethics principles, including client confidentiality.

Source: 45 CFR 92.4

Qualified Bilingual/Multilingual Staff

Under Section 1557 of the ACA, qualified bilingual/multilingual staff means a member of the assister program's workforce who is designated by the assister program to provide in-language oral language assistance as part of the person's current, assigned job responsibilities and who has demonstrated to the assister program that they are:

- Proficient in speaking and understanding both spoken English and at least one other spoken language, including any necessary specialized vocabulary, terminology and phraseology; and

- Able to effectively, accurately, and impartially communicate directly with individuals with LEP in their primary languages.

Source: 45 CFR 92.4

Restrictions on Who May Interpret or Facilitate Communication

The following requirements under Section 1557 of the ACA apply to Navigator grantee organizations, EAP organizations, and Certified Application Counselor Designated Organizations (CDOs) that receive Federal financial assistance (directly or indirectly):

- An individual with LEP cannot be required to provide their own interpreter, or to pay the cost of their own interpreter.

- Individuals other than a qualified interpreter cannot be relied upon to interpret or facilitate communication, except:

  - In emergencies as a temporary measure while finding a qualified interpreter; or
  - When the individual with LEP specifically requests that an accompanying adult (a family member or friend 18 or older) interpret or facilitate communication **only if**:
    - The individual with LEP makes the request in private with a qualified interpreter present and without the accompanying adult present,
    - The accompanying adult agrees to provide such assistance,
    - The request and agreement by the accompanying adult are documented, and
    - Reliance on that adult for such assistance is appropriate under the circumstances.

- Staff other than qualified interpreters, qualified translators, or qualified bilingual/multilingual staff cannot be relied on to communicate with individuals with LEP.

Source: 45 CFR 92.201(e)

CACs: Communicating Effectively with Individuals with LEP

CAC requirements to provide linguistically appropriate communication:

- CACs are encouraged to provide translation and other language services.

- If they cannot assist an individual with LEP, CACs must refer the individual to a geographically accessible Navigator or the Marketplace Call Center [45 CFR 155.225(d)(5)].

- Navigators can be great resources for CACs who wish to provide referrals when they aren't able to provide the assistance individuals require.

- Many organizations are required by federal, state, or local laws to provide accessible and appropriate services to the individuals they serve. Assisters should check with their organization if they are unsure of their responsibilities.

- Note: CAC Designated Organizations (CDOs) that receive Federal financial assistance are also subject to Section 1557 of the ACA and its implementing regulations.

Notice of Availability of Language Assistance Services

- Navigator grantee organizations, EAP organizations, and CDOs that receive Federal financial assistance are required to provide notices of availability stating language assistance services and appropriate auxiliary aids and services are available free of charge when necessary for compliance with Section 1557.

- Notices must be provided in English and at least the 15 languages most commonly spoken by individuals with LEP of the relevant state or states in which an assister program operates and in alternate formats for individuals with disabilities who require auxiliary aids and services for effective communication.

- Notices must be provided annually, upon request, on the assister program's website, and in clear and prominent physical locations.

- Notices must also be provided along with certain documents the assister program provides, such as application or intake forms.

- Sample notices of availability, including translations, can be found at Resources for Covered Entities.

Source: 45 CFR 92.11

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Notice of Nondiscrimination

- Navigator grantee organizations, EAP organizations, and CDOs that receive Federal financial assistance are required to provide a notice of nondiscrimination to its consumers and members of the public.

- This notice must be provided annually, upon request, on the assister program's website, and in clear and prominent physical locations.

- The notice must include, among other things, the following information:

  ➢ The assister program does not discriminate on the basis of race, color, national origin, sex, age, or disability;

  ➢ The assister program provides language assistance services, including electronic and written translated documents and oral interpretation, free of charge and in a timely manner, when such services are a reasonable step to provide meaningful access to an individual with LEP;

  ➢ How to obtain reasonable modifications, appropriate auxiliary aids and services, and language assistance services from the assister program;

Notice of Nondiscrimination (Cont.)

- The notice must include, among other things, the following information (cont.):

  - ➤ The contact information for the assister program's Section 1557 Coordinator designated pursuant to 45 CFR 92.7 (if applicable);

  - ➤ The availability of the assister program's grievance procedure pursuant to 45 CFR 92.8(c) and how to file a grievance (if applicable);

  - ➤ Details on how to file a discrimination complaint with the HHS Office for Civil Rights (OCR); and

  - ➤ How to access the assister program's website, if it has one, that provides the information required in this notice.

- Sample notices of nondiscrimination, including translations, can be found at Resources for Covered Entities.

Source: 45 CFR 92.10

Beyond Translations and Oral Language Services

To ensure Navigators and EAPs in FFMs understand the cultural and linguistic needs of the communities they serve, Navigators and EAPs in FFMs must:

- Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group's diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs.

- Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken.

- Receive ongoing education and training in culturally and linguistically appropriate service delivery.

- Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area.

Source: 45 CFR 155.215(c)(1)-(2) and (c)(5)-(6)

Conducting a Language Access Assessment

When collecting and maintaining updated information to help understand the composition of the communities in the service area, including the primary languages spoken, consider:

- Applicable laws and regulations.

- The number or proportion of individuals with LEP in your service area.

- Projected frequency of individuals with LEP that contact your program.

- Input from communities the program serves.

- Costs and resources.

Developing a Language Access Plan

After assessing the community's needs, assisters may want to develop and implement a language access plan that spells out how to provide services to individuals with LEP.

- When creating a language access plan:

  - ➢ Describe the types of services the organization will provide, such as in-person interpretation and remote interpretation.

  - ➢ Describe how the organization will let its consumers know about the availability of services. Examples may include taglines and signage.

  - ➢ Describe how the organization will train staff on its policies and procedures for providing language assistance services, including who and how often.

  - ➢ Plan for when and how the organization will monitor and update its plan, policies, and procedures to ensure that needs are met and that there is a framework for continuous quality improvement.

- For additional resources on implementing your language access plan, visit the CMS Office of Minority Health Guide to Developing a Language Access Plan and HHS's Language Access Plan.

Implementing Language Access Procedures

Navigator grantee organizations, EAP organizations, and CDOs that receive Federal financial assistance must implement written language access procedures in their health programs and activities describing the assister program's process for providing language assistance services to individuals with LEP when required.

- At a minimum, the language access procedures must include:

  - ➢ Current contact information for the Section 1557 Coordinator (if applicable);

  - ➢ How an employee identifies whether an individual has LEP;

  - ➢ How an employee obtains the services of qualified interpreters and translators the assister program uses to communicate with an individual with LEP;

  - ➢ The names of any qualified bilingual staff members; and

  - ➢ A list of any electronic and written translated materials the assister program has, the languages they are translated into, date of issuance, and how to access electronic translations.

- Sample language access procedures can be found at [Resources for Covered Entities](#).

Source: 45 CFR 92.8(d)

Helpful Tips for Providing LEP Services

1. Engage local community-based groups.

2. Apply an "LEP lens" in decision-making before beginning any action.

3. Assess consumers with LEP through United States census and community data sources.

4. Create a one-page document for each commonly used language.

5. Inform individuals about laws and policies that protect them against unfair treatment.

6. Verify translations with Health Insurance Marketplace resources such as HealthCare.gov or CuidadoDeSalud.gov.

Helpful Tips for Providing LEP Services (Cont.)

7. Use newsletters, ethnic media outlets, the Internet, and other ways to reach your community.

8. Consider the best arrangement for your organization to provide oral interpretation and written translation services.

9. Create a centralized web page or resource for the organization's staff that contains important information about serving individuals with LEP.

10. Create audio or video translations.

11. Provide translated materials in simple, understandable language at a fourth-grade literacy level.

12. Include diverse images and culturally sensitive language in outreach, education, and marketing materials.

13. Collect surveys and/or informal feedback.

National CLAS Standards Resources

- The National CLAS Standards are a set of 15 action steps intended to advance health equity, improve quality, and help eliminate health care disparities by providing a blueprint for individuals and health care organizations to implement culturally and linguistically appropriate services.

- We encourage assisters to follow the National CLAS Standards. Although these standards are not requirements, similar requirements may exist under other authorities, including Federal civil rights laws and assister regulations.

- For more about the National CLAS Standards, visit:

  - Think Cultural Health: National CLAS Standards

  - National Standards for CLAS in Health and Health Care: A Blueprint for Advancing and Sustaining CLAS Policy and Practice

  - A Practical Guide to Implementing the National CLAS Standards

Preventing and Remediating Discrimination (Slide 1 of 3)

- To ensure compliance with language access and nondiscrimination requirements, we recommend assisters identify an employee to oversee organizational efforts to promote compliance, develop clear mechanisms for individuals to report discrimination, and investigate grievances.

- Under Section 1557, a covered entity (e.g. Navigator grantee organization, EAP organization, or CDO that receives Federal financial assistance) that employs fifteen or more persons must designate and authorize at least one employee, a "Section 1557 Coordinator," to coordinate the covered entity's compliance with its responsibilities under Section 1557, including the investigation of any grievance communicated to it alleging noncompliance with, or any action that would be prohibited by, Section 1557 and implementing regulations.

Source: 45 CFR 92.7

Preventing and Remediating Discrimination (Slide 2 of 3)

Examples of discrimination, if based on a protected class:

- Refusing to provide assistance

- Refusing to provide services

- Creating a hostile environment

- Refusing to provide appropriate language assistance

- Neglecting to tailor and conduct appropriate outreach

- Requesting immigration-related documents that aren't required

Preventing and Remediating Discrimination (Slide 3 of 3)

Avoid stereotyping by respecting:

Individuals – Consumers all have their own personal stories, beliefs, ways to communicate, and health histories.

Education and income – Consumers have different income and education levels, and these can affect their beliefs and opinions about health and coverage.

Country or region – Consumers from the same country, even the same region, may differ greatly in their traditions, customs, and opinions about health and coverage.

Key Points

1. Understanding the diversity of consumer groups

   ➤ You are not permitted to discriminate against individuals because of their race, color, national origin (including LEP and primary language), disability, age, sex, or religion.

   ➤ All people are different, and you should avoid stereotyping.

Key Points (Cont.)

2. Communicating effectively with individuals with LEP

   ➤ Federal laws and regulations protect individuals with LEP.

   ➤ CMS regulations implementing CLAS standards were created to make programs more responsive to the diverse needs of consumers.

   ➤ Conduct an individualized LEP assessment of your program.

   ➤ Work with trusted partners, including community organizations and non-English media.

Resources

- Serving Special Populations: Consumers with Limited English Proficiency Fact Sheet

- Assister Tip Sheet: Dos and Don'ts for Providing Non-discriminatory, Culturally and Linguistically Appropriate Services, and Services Accessible for Consumers with Disabilities in Federally-facilitated and State Partnership Marketplaces

- Reducing Racial Disparities in Health Outcomes and Promoting Equity webinar

- Providing Language Services to Diverse Populations: Lessons from the Field

- Getting Help in a Language Other than English

- Marketplace Resources in Other Languages

- HHS Office of Minority Health Cultural and Linguistic Competency Resources

- HHS Office for Civil Rights Limited English Proficiency Resources

- HHS Office for Civil Rights Resources for Covered Entities (sample policies, procedures, notices, and translations available for use in complying with Section 1557 of the ACA)

Resources (Cont.)

If you have topical questions about this presentation:

- Navigators - please contact your Project Officer directly.

- CACs - please email the CAC Inbox at CACQuestions@cms.hhs.gov.