



OPERATIONAL MEMO

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| Audience: County Departments of Human/Social Services and Eligibility Sites | Sub-Topic: County Relations |
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| Legal Authority: eCFR 45 CFR Part 92, Title VI of the Civil Rights Act of 1964, Section 1557 of the Affordable Care Act, HB 21-1110, 10 CCR 2505-5 1.020.8 | |
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Purpose and Audience:

The purpose of this operational memo is to promulgate sub-regulatory requirements related to language access for members seeking assistance from the county departments of human/social services or Medical Assistance and Eligibility Application Partner Sites (collectively referred to as “eligibility sites”) to comply with updated language access standards issued by Centers for Medicare and Medicaid Services (CMS) and updates referenced in 10 CCR 2505-5 1.020.8.1.f. Definitions can be found at the end of this memo.

Information:

Language Access

Federal law requires federally funded entities (covered entities) to take reasonable steps to ensure that individuals with limited English proficiency (LEP) and individuals with disabilities have meaningful access and an equal opportunity to participate in all programs, services, and activities. This is commonly referred to as effective communication, which means ensuring that communication barriers do not prevent individuals from obtaining or understanding the information necessary to access health services and benefits. This includes cultural competency as a key factor in providing accurate interpretation and translations.

Eligibility sites must provide individuals with disabilities with appropriate auxiliary aids and services and language access services for individuals whose primary language is not English to ensure meaningful access to programs, services and activities. All aids and services must be provided in a timely manner and may not impose a fee or charge for these services, and determination of the appropriate aid or service must be made through consultation with the individual.

Examples of auxiliary aids and services include American Sign Language (ASL) interpreters, captioning, digital content accessible to assistive technology and information in alternate formats (such as large print, Braille...). Examples of language access services may include electronic and hardcopy translated documents, qualified interpreters, and qualified bilingual/multilingual staff.

Interpreter and Translator Requirements

Certification is not required to be considered a qualified interpreter or translator; however, to ensure accuracy and contextual understanding, eligibility sites must determine subject matter competence and language proficiency in the topic the provider is translating or interpreting.

Preferred qualification includes at least one of the following:

- A degree by a university or certificate in translation for the identified language;
- American Translator Association (ATA) or equivalent professional certification; and/or
- At least three years of professional experience in translation or interpretation.

Language Proficiency Expectations

General proficiency is expected and required for all translators and interpreters. General proficiency can be shown by:

- The ability to understand and participate in most conversations, including eligibility technician discussions;

- Accurately conveying meaning and nuance in both formal and informal settings; and
- Experiencing only occasional difficulty with complex or highly specialized language.

Action To Be Taken:

Eligibility sites must establish documented procedures related to language access to ensure effective communication with individuals with limited English proficiency. These procedures must apply to all forms of communication that are used when communicating about eligibility and enrollment, services and benefits. Eligibility sites must provide all necessary auxiliary aids and services to a member or applicant unless it would fundamentally alter the nature of the program or the auxiliary aid or service would cause an undue burden. This includes securing qualified provider(s) to ensure auxiliary aids and services are available and provided in a timely and secure manner.

Eligibility sites can select and retain their own provider(s) or utilize the State contracts for providers. More information can be found on the Colorado Department of Personnel & Administration (DPA) state price agreement website here, <https://www.bidscolorado.com/co/portal.nsf/xpPriceAgreementsByCategory.xsp>; current agreements can be found under Translation, Interpretation Services category. Eligibility sites must work with their procurement teams to review and retain any contracts or agreements with providers.

If an eligibility site chooses to utilize staff to provide effective communication, including interpretation or translation services, the eligibility site must establish a process to review bilingual or multilingual staff for quality of their services. Any tenured bilingual or multilingual staff must be reviewed within 12 months of the issuance of this memo.

Posting

Language access service notices must be posted in conspicuous locations likely to be seen by members or applicants. If the eligibility site has multiple locations, notices must be posted at each location. Notices must inform the members or applicants of services and how to request them.

Notices must be posted in multiple languages that are commonly used within the region. Included in the Attachments section of this memo are templates that eligibility sites are encouraged to use.

Ongoing Monitoring and Compliance

HCPF staff responsible for oversight activities may review language access services, including digital accessibility, during Management Evaluation Reviews, Desk Reviews, or other similar reviews or audits of the administration of this program. Findings of non-compliance may result in the issuance of a Management Decision Letter (MDL). The MDL acts as a notice of non-compliance and will require eligibility sites to correct the non-compliance and create internal procedures to prevent future non-compliance.

Definition(s):

Individual with limited English proficiency (LEP): an individual 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 (e.g., reading or writing).

Auxiliary aids and services support communication for individuals with disabilities. Auxiliary aids and services may include, but are not limited to:

- Qualified American Sign Language (ASL) interpreters (in person or through video remote interpreting)
- Note takers
- Real-time captioning or transcription services
- Written materials or written notes
- Amplified telephones or phones that work with hearing aids
- Assistive listening devices or systems
- Closed or open captions, including live captions
- Text, voice, or video communication devices such as TTYs, videophones, or captioned phones
- Video text displays
- Accessible information and communication technology (ICT)

For individuals who are blind or have low vision:

- Qualified readers
- Audio recordings or taped texts
- Braille materials or displays
- Screen reader or magnification software
- Optical readers or secondary audio programs (SAP)
- Large-print materials
- Accessible ICT

Other supports:

- Buying or adapting equipment and devices

Language assistance services may include, but are not limited to:

- Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with LEP, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with LEP;
- Written translation, performed by a qualified translator, of written content in paper or electronic form into or from languages other than English; and
- Written notice of availability of language assistance services.

Qualified bilingual/multilingual staff: a member of a covered entity's workforce who is designated by the covered entity to provide oral language assistance as part of the person's current, assigned job responsibilities and who has demonstrated to the covered entity 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.

Qualified interpreter for an individual with LEP: 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.
- 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.

Attachment(s):

["Help in your Language" tagline poster template](#)

[Department of Health & Human Services guidance regarding OCR's Final Rule Implementing Section 1557 of the Affordable Care](#)

HCPF Contact:

Questions for County Relations, please submit a County Relations webform ticket:
<https://hcpfdev.secure.force.com/HCPFCountyRelations> ,
or email HCPF_CountyRelations@state.co.us