



JENNIFER KENT
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



EDMUND G. BROWN JR.
GOVERNOR

DATE: June 30, 2017

ALL PLAN LETTER 17-011
SUPERSEDES ALL PLAN LETTER 14-008

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: STANDARDS FOR DETERMINING THRESHOLD LANGUAGES AND REQUIREMENTS FOR SECTION 1557 OF THE AFFORDABLE CARE ACT

PURPOSE:

This All Plan Letter (APL) serves to inform all Medi-Cal managed care health plans (MCPs) of the updated dataset for threshold languages and language concentration standards and clarifies the threshold and concentration standards specified in Welfare and Institutions Code (WIC), Section 14029.91¹ and MCP contracts. This updated dataset identifies the threshold languages that, at a minimum, MCPs must use to provide translated materials to their members.

This APL also provides guidance on the implementation of non-discrimination and language assistance requirements contained in Section 1557 of the Affordable Care Act (ACA). Among other requirements, Section 1557 requires MCPs to post notices of non-discrimination and taglines that inform individuals with Limited English Proficiency (LEP) about the availability of language assistance services. Section 1557 requires MCPs to post taglines in English and at least the top 15 non-English languages spoken in California; however, the Department of Health Care Services (DHCS) is requiring MCPs to post taglines in English and at least the top 16 non-English languages (see Taglines requirement below).

This APL supersedes APL 14-008.²

BACKGROUND:

State law³ requires DHCS to implement requirements for language group concentration standards through its contracts with MCPs. In addition, the current MCP contracts specify that MCPs must ensure equal access to health care services for LEP members through the provision of high quality interpreter and linguistic services, and that

¹ WIC Section 14029.91 is available at:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC§ionNum=14029.91.&article=1.&highlight=true&keyword=concentration+threshold+Medi-Cal

² APLs are available at: <http://www.dhcs.ca.gov/formsandpubs/Pages/AllPlanLetters.aspx>

³ WIC Section 14029.91

translated written informing materials must be provided to all monolingual or LEP members that speak the languages identified by DHCS for the MCP's service area.

Current MCP contracts specify that any provision in conflict with current or future state and federal law and regulations will be amended to conform to the provisions of those laws and regulations. Such amendment of the MCP contract shall be effective on the effective date of the statutes or regulations necessitating it, and shall be binding on the parties, even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties.

DHCS Threshold Languages

DHCS is responsible for promulgating the standards that MCPs must apply to determine which languages, at a minimum, MCPs must use to provide translated materials to their members.

As required under state⁴ and federal law and regulations⁵, DHCS must:

- Identify prevalent non-English languages spoken by members and potential members throughout the State based on a significant number or percentage of persons who speak each language.
- Provide member informing materials in each prevalent non-English language.
- Require each MCP to make its written information available in the prevalent non-English languages in its particular service area.

Section 1557 of the ACA Requirements

Section 1557 is the non-discrimination provision of the ACA, which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs or activities. Section 1557 builds on the following long-standing federal civil rights laws and incorporates all of the existing non-discrimination requirements of those laws: Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Age Discrimination Act of 1975 (Age Act). On May 18, 2016, the United States Health and Human Services (HHS) Office for Civil Rights (OCR), issued its final rule implementing Section 1557⁶. Section 1557 applies to any health program or activity, any part of which receives federal financial assistance, an entity established under Title I

⁴ WIC Section 14029.91

⁵ Title 42 of the Code of Federal Regulations (CFR), Section 438.10(d); Section 1557 of the ACA

⁶ Title 45 CFR, Part 92, Non-Discrimination in Health Programs and Activities Regulations can be found at: https://www.federalregister.gov/documents/2016/05/18/2016-11458/nondiscrimination-in-health-programs-and-activities?utm_campaign=subscription+mailing+list&utm_medium=email&utm_source=federalregister.gov

of the ACA that administers a health program or activity, and HHS. Accordingly, Section 1557 of the ACA applies to MCPs.

POLICY:

DHCS Threshold Languages

The attached dataset delineates the required threshold languages for all Medi-Cal managed care counties. DHCS updates threshold language data at least once every three fiscal years, to address potential changes to both numeric threshold and concentration standard languages within all Medi-Cal managed care counties. MCPs are expected to comply with the update within three months of the publication of the update.

MCPs are required to provide translated member information to the following groups within their service areas as determined by DHCS:

- A population group of mandatory eligible beneficiaries⁷ residing in the MCP's service area who indicate their primary language as other than English, and that meet a numeric threshold of 3,000 or five-percent (5%) of the eligible beneficiary population, whichever is lower (Threshold Standard Language); and
- A population group of mandatory eligible beneficiaries residing in the MCP's service area who indicate their primary language as other than English and who meet the concentration standards of 1,000 in a single zip code or 1,500 in two contiguous zip codes (Concentration Standard Language).

MCPs must provide written translation of member informing materials to Medi-Cal beneficiaries with LEP based on the numbers and percentages of persons who speak a language other than English in a specified geographic area, as detailed above.

Section 1557 Non-Discrimination Requirements

MCPs must comply with the non-discrimination requirements set forth under Section 1557 of the ACA. This includes posting of the Notice of Non-discrimination, including Non-Discrimination Statements, in certain publications and communications, and providing taglines that inform individuals with LEP of the availability of language assistance services. Samples of the Notice of Non-Discrimination, Non-Discrimination Statement, and language assistance taglines are available at: <https://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>.

⁷ Eligible Beneficiary is defined in the MCP contract as any Medi-Cal beneficiary who is residing in the MCP's service area with one of the covered aid codes.

Notice of Non-Discrimination

MCPs must post a Notice of Non-Discrimination that informs members, potential members, and the public about non-discrimination and accessibility requirements and conveys the MCP's compliance with the requirements. The Notice of Non-Discrimination must be posted in a conspicuously visible font size and be included in significant publications and significant communications targeted to members, potential members, and the public, except for significant publications and significant communications that are small-sized, such as postcards and tri-fold brochures (see Non-Discrimination Statement below for small-sized communication requirements)⁸. HHS states that "significant publications" and "significant communications" include not only documents intended for the public, such as outreach, education, and marketing materials, but also written notices requiring a response from an individual and written notices to an individual such as those pertaining to rights or benefits. Additionally, the Notice of Non-Discrimination must be posted in a conspicuously-visible font size in conspicuous physical locations where the MCP interacts with the public, as well as in a conspicuous location on the MCP's website that is accessible on the MCP's home page. The Notice of Non-Discrimination must include the seven required elements⁹ as contained in the sample Notice of Non-Discrimination¹⁰.

Non-Discrimination Statement

MCPs must include the Non-Discrimination Statement in a conspicuously visible font size in all significant publications and significant communications that are small-in-size, such as postcards and tri-fold brochures. For small-size publications and communications, the Non-Discrimination Statement and taglines about the language assistance services must be included in at least the top two non-English languages spoken by individuals with LEP in California. These top two non-English languages are Spanish and Chinese. The required Non-Discrimination Statement is as follows:

[Name of MCP] complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

Taglines

MCPs are required to post taglines in a conspicuously visible font size in English and at least the top 16 non-English languages spoken by individuals with LEP in California (provided below). These taglines inform members, potential members, and the public of the availability of language assistance services. These taglines must be posted in

⁸ 45 CFR, Part 92, Subpart A, Section 92.8(f)(1)(i)

⁹ 45 CFR, Part 92, Subpart A, Section 92.8(a)(1)-(7)

¹⁰ Sample Notices can be accessed at: <https://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/index.html>

significant publications and communications and must accompany all Notices of Non-Discrimination in accordance with Section 1557 and this APL.

MCPs are not prohibited from including taglines in languages beyond those identified for California, or from posting the Notice of Non-Discrimination and taglines in additional publications and communications.

The top non-English languages identified for each state were derived from U.S. Census data. Based on U.S. Census data released in December 2015, the top 16 non-English languages spoken by individuals with LEP in California are: Arabic, Armenian, Cambodian, Chinese, Farsi, Hindi, Hmong, Japanese, Korean, Laotian, Punjabi, Russian, Spanish, Tagalog, Thai, and Vietnamese. These languages will remain in effect until the next U.S. Census Survey.

Other Section 1557 Requirements

Other Section 1557 requirements include, but are not limited to, the following:

- MCPs shall offer a qualified interpreter to an individual with LEP when oral interpretation is a reasonable step to provide meaningful access for the individual with LEP.
- MCPs shall use a qualified translator when translating written content in paper or electronic form.
- MCPs' language assistance services must be provided free of charge, accurately, timely, and protect the privacy and independence of the individual with LEP.
- MCPs must make reasonable changes to policies, practices, and procedures to provide equal access for individuals with disabilities.
- MCPs must ensure newly constructed and altered facilities are physically accessible to individuals with disabilities.
- MCPs must provide auxiliary aids and services to individuals with disabilities, when necessary to afford these individuals an equal opportunity to a benefit.

Additional guidance on Section 1557 of the ACA is available at the following HHS link: <http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>.

MCPs are responsible for ensuring that their delegates comply with all applicable state and federal laws and regulations, contract requirements, and other DHCS guidance, including APLs and Dual Plan Letters. These requirements must be communicated by each MCP to all delegated entities and subcontractors.

ALL PLAN LETTER 17-011
PAGE 6

If you have any questions regarding this APL, please contact your Managed Care Operations Division contract manager.

Sincerely,

Original Signed by Nathan Nau

Nathan Nau, Chief
Managed Care Quality Monitoring Division

Attachments

Threshold and Concentration Languages For Rural Expansion Counties as of July 2016

County / # of Languages that meet T/CS (Inc. English)	Arabic	Armenian	Cambodian	Chinese*	English	Farsi	Hmong	Korean	Russian	Spanish	Tagalog	Vietnamese
Alpine (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Amador (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Butte (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Calaveras (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Colusa (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Del Norte (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
El Dorado (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Glenn (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Humboldt (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Imperial (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Inyo (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Lake (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Lassen (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Mariposa (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Modoc (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Mono (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Nevada (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Placer (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Plumas (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
San Benito (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Shasta (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Sierra (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Siskiyou (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Sutter (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Tehama (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Trinity (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Tuolumne (1)	No	No	No	No	Yes	No	No	No	No	No	No	No
Yuba (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No

Threshold Standard Languages (Blue cell shading) ≥ 3,000 per language or ≥ 5% of the Medi-Cal Population with mandatory aid codes that speak the language per county.

Concentration Standard Languages (Bold text with cell shading) ≥ 1,000 per zip code or ≥ 1,500 per two contiguous- no rural counties met either criteria for any non-threshold language.

Languages not included on this table did not meet the Threshold or Concentration criteria in any county at the time of analysis.

Beneficiaries identified above have mandatory Aid Codes for Regional and COHS plan model types

*Chinese is the combined total of Mandarin and Cantonese

**Threshold and Concentration Languages
For Two Plan, GMC, and COHS Counties as of July 2016**

County / # of Languages that meet T/CS (Inc. English)	Arabic	Armenian	Cambodian	Chinese*	English	Farsi	Hmong	Korean	Russian	Spanish	Tagalog	Vietnamese
Alameda (4)	No	No	No	Yes	Yes	No	No	No	No	Yes	No	Yes
Contra Costa (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Fresno (3)	No	No	No	No	Yes	No	Yes	No	No	Yes	No	No
Kern (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Kings (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Los Angeles (11)	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Madera (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Marin (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Mendocino (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Merced (3)	No	No	No	No	Yes	No	Yes	No	No	Yes	No	No
Monterey (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Napa (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Orange (7)	Yes	No	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes
Riverside (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Sacramento (7)	Yes	No	No	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes
San Bernadino (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
San Diego (5)	Yes	No	No	No	Yes	No	No	No	No	Yes	Yes	Yes
San Francisco (4)	No	No	No	Yes	Yes	No	No	No	No	Yes	No	Yes
San Joaquin (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
San Luis Obispo (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
San Mateo (4)	No	No	No	Yes	Yes	No	No	No	No	Yes	Yes	No
Santa Barbara (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Santa Clara (5)	No	No	No	Yes	Yes	No	No	No	No	Yes	Yes	Yes
Santa Cruz (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Solano (3)	No	No	No	No	Yes	No	No	No	No	Yes	Yes	No
Sonoma (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Stanislaus (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Tulare (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Ventura (2)	No	No	No	No	Yes	No	No	No	No	Yes	No	No
Yolo (3)	No	No	No	No	Yes	No	No	No	Yes	Yes	No	No

Threshold Standard Languages (Blue cell shading) ≥ 3,000 per language or ≥ 5% of the Medi-Cal Population with mandatory aid codes that speak the language per county.

Concentration Standard Languages (Bold text & cell shading) ≥ 1,000 per zip code or ≥ 1,500 per two contiguous- Hmong in Merced, Russian in Yolo, and Tagalog in Solano meet the Criteria.

Languages not included on this table did not meet the Threshold or Concentration criteria in any county at the time of analysis.

Beneficiaries identified above have mandatory Aid Codes for Regional and COHS plan model types

*Chinese is the combined total of Mandarin and Cantonese