DHCS
CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES
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DATE: February 12, 2025

ALL PLAN LETTER 25-005
SUPERSEDES ALL PLAN LETTER 21-004

TO: ALL MEDI-CAL MANAGED CARE PLANS

SUBJECT: STANDARDS FOR DETERMINING THRESHOLD LANGUAGES, NONDISCRIMINATION REQUIREMENTS, LANGUAGE ASSISTANCE SERVICES, AND ALTERNATIVE FORMATS[1]

PURPOSE:

This All Plan Letter (APL) serves to inform all Medi-Cal managed care plans (MCPs) of the dataset for threshold and concentration languages and clarifies the threshold and concentration standards specified in state and federal law and the MCP Contract.[2] This dataset identifies the threshold and concentration languages in which, at a minimum, MCPs must provide written translated Member information.

This APL also provides guidance on federal and state requirements regarding nondiscrimination, discrimination grievance procedures, language assistance, and communications with individuals with disabilities as set forth in the federal regulations implementing Section 1557 of the Patient Protection and Affordable Care Act (ACA),[3] Title 42 of the Code of Federal Regulations (CFR) Part 438,[4] Senate Bill (SB) 223 (Atkins, Chapter 771, Statutes of 2017),[5] and SB 1423 (Hernandez, Chapter 568, Statutes of 2018).[6]

[1] See APL 22-002 or any superseding APL. APLs are searchable at: https://www.dhcs.ca.gov/formsandpubs/Pages/AllPlanLetters.aspx.
[2] The boilerplate MCP Contract is available at: https://www.dhcs.ca.gov/provgovpart/Pages/MMCDBoilerplateContracts.aspx.
[3] See 45 CFR, Part 92. The CFR is searchable at: https://www.ecfr.gov/titles.
[4] 42 CFR, Part 438.
[5] SB 223 is available at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB223
[6] SB 1423 is available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1423

BACKGROUND:

DHCS Threshold and Concentration Standard Languages

Federal law[7] requires the Department of Health Care Services (DHCS) to establish a methodology for identifying the prevalent non-English languages spoken by Potential Members throughout the state, and in each MCP's service area, for the purpose of requiring MCPs to provide written translations of Member information in these languages.[8] State law requires DHCS to identify these languages by calculating whether individuals who speak a non-English language meet certain numeric thresholds or are geographically concentrated in certain ZIP codes.[9] Pursuant to State law, DHCS determines the languages in which, at a minimum, MCPs must provide translated written Member information. DHCS refers to these languages as the threshold and concentration standard languages. Additionally, DHCS is required to determine these languages when a non-managed care county becomes a new managed care county; a new population becomes a mandatory Medi-Cal managed care population; or a period of three years has passed since the last determination.

Nondiscrimination, Language Assistance, and Effective Communication for Individuals with Disabilities

Section 1557 of the ACA[10] prohibits discrimination on the basis of race, color, national origin, sex, age, or disability, in any health programs or activities, and builds on the following long-standing federal civil rights laws and incorporates all of the existing nondiscrimination 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). In addition, Section 1557 of the ACA also requires covered programs to ensure effective communication with individuals with disabilities and provide meaningful access to individuals with limited English proficiency (LEP) who are eligible to be served, or likely to be encountered, in health programs and activities.[11] Covered entities include every health program or activity, any part of which receives federal financial assistance directly or indirectly from the United States Department of Health and Human Services (HHS); every health program or activity administered by HHS; and every program or activity administered by a title I entity.[12] These requirements apply to MCPs' Medi-Cal lines of business.

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[7] 42 CFR section 438.10(d)(1).
[8] 42 CFR section 438.10(d)(2)-(3).
[9] See W&I section 14029.91. State law is searchable at: https://leginfo.legislature.ca.gov/.
[10] See Title 42 of the United States Code (USC) section 18116. The USC is searchable at: http://uscode.house.gov/.
[11] See, e.g., 45 CFR sections 92.11 and 92.102.
[12] 42 CFR section 92.2.101

HHS Office for Civil Rights (OCR) implemented Section 1557 through federal regulations set forth in Part 92 of Title 45 of the CFR in May of 2016. The 2016 version of these regulations included a requirement that covered health programs include a nondiscrimination notice and language taglines in non-English languages advising of the availability of free language assistance services in certain communications and publications. On June 19, 2020, HHS OCR published revised regulations eliminating these specific requirements and replaced them with a four-factor analysis that a covered program must engage in to determine the level of language assistance required under federal law.[13]

On May 6, 2024, HHS OCR issued a revision of these regulations, that removed the four-factor analysis and replaced it with regulations that contain more specificity and flexibility for the provision of meaningful access to individuals with LEP. The 2024 version of these regulations clarifies and affirms the categories of prohibited discrimination, including race, color, national origin (including LEP and primary language), sex (including sex characteristics, including intersex traits; pregnancy or related conditions; sexual orientation; gender identity; and sex stereotypes), age, or disability. Covered health programs are also required to not discriminate against individuals through telehealth services or the use of patient care decision support tools. The regulations also provide specific requirements for a nondiscrimination notice. Covered health programs are required to notify Members and the public of the nondiscrimination notice and the Notice of Availability, which are to be provided annually in English and at least the 15 most commonly spoken languages, and in alternate formats for individuals with disabilities.[14] Covered entities are required to have a Section 1557 Coordinator responsible for discrimination grievances. The regulations include the use of the term “Notice of Availability of Language Assistance Services and Auxiliary Aids and Services” – “Notice of Availability“ for short when referring to language taglines.

42 CFR Part 438 also contains complementary language assistance requirements specific to MCPs, such as the requirement to provide the Notice of Availability in the prevalent non-English languages in the state, in a conspicuously visible font size, explaining the availability of written translation or oral interpretation services and how to request auxiliary aids and services for people with disabilities.[15]

MCPs are also subject to federal requirements contained in the Americans with Disabilities Act (ADA), including standards for communicating effectively with people

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[13] Former 45 CFR section 92.101, effective August 18, 2020, through July 4, 2024.
[14] The Nondiscrimination in Health Programs and Activities Final Rule can be found at: https://www.govinfo.gov/content/pkg/FR-2024-05-06/pdf/2024-08711.pdf
[15] 42 CFR section 438.10(d)(2)-(3).

with disabilities to ensure they benefit equally from government programs.[16] Additional communication-related regulations are set forth in 42 CFR section 438.10.

SB 223 and SB 1423 codified into state law certain nondiscrimination and language assistance service requirements specific to DHCS[17] and MCPs.[18] SB 223 and SB 1423 also incorporated additional characteristics protected under state nondiscrimination law, including gender, gender identity, marital status, ancestry, religion, and sexual orientation.[19]

POLICY:

DHCS Threshold and Concentration Language Requirements

Member information[20] is essential information regarding access to and usage of MCP services. MCPs are required to provide translated written Member information, using a qualified translator (see requirements for qualified translators in the section on Written Translation below), to the following language groups within their service areas, as determined by DHCS:

- A population group of Potential Members[21] residing in the MCP's service area who indicate their primary language as a language other than English, and that meet a numeric threshold of 3,000 or 5 percent of the Potential Member population, whichever is lower (Threshold Standard Language)[22]; and

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[16] ADA Title II Regulations are available at: https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm.
[17] W&I section 14029.92.
[18] W&I section 14029.91.
[19] W&I section 14029.92 and 14029.91. For additional state-law-protected characteristics, see Government Code (GC) section 11135.
[20] Member information includes documents that are vital or critical to obtaining services and/or benefits and includes, but is not limited to, the Member Handbook (also called the Evidence of Coverage, or EOC); Provider directory; welcome packets; marketing information; form letters, including Notice of Action letters and any notices related to Grievances, actions, and Appeals, including Grievance and Appeal acknowledgement and resolution letters; plan generated preventive health reminders (e.g., appointments and immunization reminders, initial health examination notices and prenatal follow-up); Member surveys; notices advising persons with LEP of free language assistance; and newsletters. Examples of Member Information can also be found in APL 18-016: Readability and Suitability of Written Health Education Materials.
[21] "Potential Member" is defined in the MCP Contract as a Medi-Cal member who resides in the MCP's service area and is subject to mandatory enrollment, or who may voluntarily enroll, but is not yet enrolled in an MCP and is in one of the listed covered aid codes. Note: threshold language calculations include all Medi-Cal members who are "eligible" to enroll, either mandatorily or by choice, in the MCP in the county and are not based on actual MCP enrollment.
[22] W&I section 14029.91(b)(1).

- A population group of Potential Members residing in the MCP's service area who indicate their primary language as a language 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).[23]

The dataset attached to this APL delineates the required threshold and concentration languages, as determined by DHCS, for the above-mentioned groups within each MCP's service area(s). DHCS updates this dataset at least once every three fiscal years to address potential changes to both numeric threshold and concentration standard languages, as well as to reflect changes necessitated by state and federal law. This APL revision provides an updated threshold and concentration language dataset. MCPs must comply with the updated dataset by August 11, 2025, and begin providing translated written Member information, as required, in these languages.[24, 25]

Nondiscrimination, Language Assistance, and Effective Communication for Members with Disabilities

MCPs must comply with all of the nondiscrimination requirements set forth under federal and state law and this APL, which includes the inclusion of the nondiscrimination notice in Member information and all other informational notices, and the provision of the required Notice of Availability that informs Members with LEP of the availability of free language assistance services and appropriate auxiliary aids and services for people with disabilities.

DHCS has updated its template of the nondiscrimination notice and Notice of Availability to conform with the 2024 changes to federal law.[26] The DHCS templates for the nondiscrimination notice and Notice of Availability are provided as attachments to this APL. DHCS continues to require that the Notice of Availability include additional

[23] W&I section 14029.91(b)(2).
[24] Where Chinese has been identified as a threshold or concentration language and the Member has requested to receive translated written information in either traditional or simplified Chinese characters, the MCP must provide written information in the Member's preferred characters. However, if the Member has not indicated a preference for simplified or traditional Chinese characters, and the MCP does not yet have a process in place to provide written translations in Chinese, the MCP must provide translations in Simplified Chinese characters. Only upon Member request will the MCP be required to provide translated written information in Traditional Chinese characters. MCPs must comply with the updated threshold and concentration language dataset and, if applicable, provide translated written information in Chinese.
[25] The August 11, 2025, implementation date reflects the date of compliance (180 days from the release of this iteration of the APL).
[26] Please note that 4*5* CFR sections 92.10 and 92.11 require MCPs to be compliant with nondiscrimination requirements within 120 days of July 5, 2024, and compliant with the notice of availability requirements within one year of July 5, 202*4*.

languages to maintain consistency in translation with Medi-Cal fee-for-service (FFS).[27] DHCS does not require MCPs to use the DHCS-provided template language verbatim as long as all notices and the associated Notice of Availability are compliant with federal and state law and the requirements contained in this APL.

Nondiscrimination Notice

MCPs must make available a nondiscrimination notice[28] that informs Members, Potential Members,[29] and the public about nondiscrimination, protected characteristics, and accessibility requirements, and conveys the MCP's compliance with the requirements. The nondiscrimination notice must include all legally required elements.[30] MCPs are not prohibited from using a more inclusive list of protected characteristics than those included in the DHCS-provided template, as long as all protected characteristics listed in the DHCS-provided template are included.

All MCP nondiscrimination notices must include information about how to file a discrimination Grievance directly with the MCP, DHCS' OCR, and HHS' OCR (i.e., file a Grievance with HHS OCR if there is a concern of discrimination based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identify or sexual orientation or any combination thereof).

The nondiscrimination notice must be made available in accordance with federal and state law, and be included in the Member Handbook/EOC, on the internet website published and maintained by the MCP, and other informational notices targeted to Members, Potential Members, and the public. [31,32] Informational notices 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

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[27] W&I section 14029.91(a)(3) and 45 CFR section 92.11 require that the notice of availability be provided in at least the top 15 languages spoken by individuals with LEP in the state; however, DHCS requires MCPs to provide the notice of availability in English, the top 15 non-English languages spoken by LEP individuals in the state, as well as Laotian, Ukrainian, and Mien.
[28] 45 CFR section 92.10.
[29] "Potential Member" is defined in the MCP Contract as a Medi-Cal member who resides in an MCP's service area and is subject to mandatory enrollment or may voluntarily elect to enroll, but is not yet enrolled, in an MCP and is in one of the MCP Contract-specified aid codes.
[30] 45 CFR section 92.10(a); W&I section 14029.91(e)(1)-(5).
[31] Per 42 CFR section 438.10(d)(6)(ii), all written materials for Potential Members and Members must use a font size no smaller than 12-point. Per 45 CFR section 92.10(a)(2)(i), the nondiscrimination notice must also be provided to Members on an annual basis.
[32] W&I section 14029.91(f).

nondiscrimination notice must be posted in at least a 20-point san serif font in clear and prominent physical locations where it is reasonable to expect Members seeking health program or activities to be able to read or hear the notice,[33] as well as on the MCP's website in a location that allows any visitor to the website to easily locate the information.[34]

MCPs are required to make the nondiscrimination notice available, upon request or as otherwise required by law, in the threshold and concentration languages,[35] or in an ADA-compliant, accessible format.[36] MCPs are not prohibited from posting the nondiscrimination notice in additional publications and communications. Printed nondiscrimination notice and Notice of Availability are not to be replaced by the use of quick response codes, otherwise known as QR codes.[37]

For small-sized informational notices, MCPs may use an abbreviated nondiscrimination statement in lieu of the full-sized nondiscrimination notice.[38] The abbreviated nondiscrimination statement must be accompanied by the full set of language taglines in 18 non-English languages required by this APL (see the attached DHCS template for the abbreviated nondiscrimination statement and language taglines for small-sized informational notices).[39]

Discrimination Grievances

MCPs must designate a discrimination Grievance coordinator who is responsible for ensuring compliance with federal and state nondiscrimination requirements.[40] The MCP's discrimination Grievance coordinator must investigate grievances alleging any action that would be prohibited by, or out of compliance with, federal or state

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[33] 45 CFR section 92.10(a)(2)(iv); W&I section 14029.91(f)(1)(B). The physical notice must be in a conspicuous location and easily readable by a member of the public (for example, in a patient waiting area), not behind private office doors.
[34] 45 CFR section 92.10(a)(2)(iii); W&I section 14029.91(f)(1)(C).
[35] W&I section 14029.91(a)(2).
[36] 45 CFR section 92.202.
[37] Quick Response Codes (QR Codes) can be used alongside the Nondiscrimination Notice and Notice of Availability but cannot replace or be used in lieu of these printed notices.
[38] The abbreviated nondiscrimination statement and full set of language taglines may be used for postcards, pamphlets, newsletters, brochures, and flyers if these items are printed and/or distributed on paper or folded in way that is smaller than 8.5 x 11 inches.
39 42 CFR 438.10(d)(2)-(3); WIC 14029.91(f)
[40] See, e.g., 45 CFR section 84.7; 34 CFR section 106.8; 28 CFR section 35.107; 45 CFR section 92.7.

nondiscrimination laws.[41] MCPs must also adopt Grievance procedures that provide for the prompt and equitable resolution of discrimination-related Grievance.[42] MCP discrimination Grievance procedures must follow the requirements outlined in sections III (A) – (C) of APL 21-011, Grievance and Appeal Requirements and Revised Notice Templates and "Your Rights" Attachments, or any superseding APL, including timely acknowledgment and resolution of discrimination Grievance. Members are not required to file a discrimination Grievance with the MCP before filing a discrimination Grievance directly with DHCS OCR or the HHS OCR.

The MCP's discrimination Grievance coordinator must be available to:[43]

1. Answer questions and provide appropriate assistance to MCP staff and Members regarding the MCP's state and federal nondiscrimination legal obligations.
2. Advise the MCP about nondiscrimination best practices and accommodating persons with disabilities.
3. Investigate and process any ADA, section 504, section 1557, and/or GC section 11135 Grievance received by the MCP.

MCPs must ensure that all discrimination Grievance are investigated by the MCP's designated discrimination Grievance coordinator. MCPs are prohibited from using a medical peer review body to investigate and resolve discrimination Grievance. MCPs must not claim that a discrimination Grievance investigation or resolution is confidential under Evidence Code section 1157 and/or Business and Professions Code section 805. Concurrent or subsequent referral of a discrimination Grievance to a peer review body for Provider disciplinary or credentialing purposes may be appropriate if quality of care issues are implicated, or if required by the MCP Contract.

The MCP Contract requires MCPs to forward to DHCS copies of all Member Grievance alleging discrimination on the basis of any characteristic protected by federal or state nondiscrimination law. This includes, without limitation, sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identity, sexual orientation, creed, health status, or identification with any other persons or groups defined in Penal Code section 422.56. This requirement includes language access complaints and complaints alleging failure to make reasonable accommodations under the ADA.

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[41] 45 CFR section 92.7; W&I section 14029.91(e)(4); 45 CFR section 84.7; 34 CFR section 106.8; 28 CFR section 35.107; and California's Medicaid State Plan, Section 7, Attachments 7.2-A and 7.2-B, available at: https://www.dhcs.ca.gov/formsandpubs/laws/Pages/Section7.aspx. See also GC section 11135.
[42] See, e.g., 45 CFR section 84.7; 34 CFR section 106.8; 28 CFR section 35.107.
[43] 45 CFR section 92.7.

Within ten calendar days of mailing a discrimination Grievance resolution letter to a Member, MCPs must submit detailed information regarding the Grievance to DHCS OCR's designated discrimination Grievance email box. MCPs must submit the following information in a secure format to DHCS.DiscriminationGrievances@dhcs.ca.gov:

1. The original complaint;
2. The Provider's or other accused party's response to the Grievance;
3. Contact information for the MCP personnel responsible for the MCP's investigation and response to the Grievance;
4. Contact information for the Member filing the Grievance and for the Provider or other accused party that is the subject of the Grievance;
5. All correspondence with the Member regarding the Grievance, including the Grievance acknowledgment and Grievance resolution letter(s) sent to the Member; and
6. The results of the MCP's investigation, copies of any corrective action taken, and any other information that is relevant to the allegation of discrimination.

Additionally, MCPs will be required to attest that they are sending the aforementioned required information to the DHCS OCR by providing an attestation yearly each December via the Managed Care Operations Division (MCOD) SharePoint Submission Portal.[44]

Under 45 CFR section 92.8(c)(2), an MCP is required to retain records related to Grievance alleging discrimination on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, gender, gender identify or sexual orientation in its health programs and activities for no less than three calendar years from the date the MCP resolves the Grievance. The records must include the Grievance, the name and contact information of the complainant, if provided; the alleged discriminatory action and alleged basis of discrimination; the date the Grievance was filed; the date the Grievance was resolved, the Grievance resolution, and any other pertinent information.

Language Assistance - Notice of Availability
DHCS determined the Notice of Availability requirements in this APL based on a combination of federal and state law and DHCS policy. MCPs are required to provide the Notice of Availability in a conspicuously visible font size (no less than 12-point font), in English and the top 18 non-English languages as identified below in this APL and in

[44] The MCOD Contract Oversight SharePoint Portal is located at: https://cadhcs.sharepoint.com/sites/MCOD-MCPSubmissionPortal/SitePages/Home.aspx

the DHCS-provided Notice of Availability template that is attached to this APL. The Notice of Availability informs Members, Potential Members, and the public of the availability of free language assistance services, including assistance in non-English languages and the provision of free auxiliary aids and services for people with disabilities.[45]

Like the nondiscrimination notice, the Notice of Availability must be provided upon request, included in the Member Handbook/EOC and other electronic and written communications, posted in clear and prominent physical locations where the MCP interacts with the public in at least a 20-point sans serif font, on the MCP's website in a location that allows any visitor to the website to easily locate the information, and in all Member information and other informational notices, in accordance with federal and state law and this APL.[46]

MCPs are not prohibited from including in the Notice of Availability languages that exceed those identified for California in this APL.

In 2016, HHS OCR released a Frequently Asked Questions (FAQ) document and included as a resource a table displaying its list of the top 15 languages spoken by individuals with LEP in each state, the District of Columbia, Puerto Rico and each U.S. Territory. HHS OCR created this list for use in identifying languages in which to provide translated taglines The top 15 non-English languages spoken by LEP individuals in California, as identified by HHS OCR in 2016, were Arabic, Armenian, Cambodian, Chinese, Farsi, Hindi, Hmong, Japanese, Korean, Punjabi, Russian, Spanish, Tagalog, Thai, and Vietnamese.[47] Although state law, and now federal law, only requires that the Notice of Availability be provided in the top 15 non-English languages in California, DHCS made a policy decision to align the MCP- required Notice of Availability languages with those used in Medi-Cal FFS for consistency between programs. As a result, in addition to the top 15 non-English languages spoken by Members with LEP in California, as identified by HHS OCR in 2016, MCPs must also provide the Notice of Availability in Laotian, Ukrainian and Mien (i.e.; English and 18 non-English languages).

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[45] 42 CFR section 438.10(d)(2)-(3); 45 CFR section 92.11(a).
[46] 45 CFR section 92.11(c); W&I section 14029.91(f).
[47] For more information about the HHS OCR language table and the data used, please refer to the HHS OCR FAQ. The FAQ can be accessed at: https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/top15-languages/index.html. The language table can be accessed at: https://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf.

Language Assistance Services – Meaningful Access

MCPs must take reasonable steps to provide meaningful access to each Member with LEP (including Member companions with LEP) eligible for services or likely to be affected by the MCPs health programs and activities.[48] Language assistance services must be provided free of charge, be accurate and timely, and protect the privacy and independent decision-making ability of the Member with LEP.[49] There are two primary types of language assistance services: oral and written. Members with LEP are not required to accept language assistance services[50], although a qualified interpreter may be used to assist in communicating with a Member with LEP who has refused language assistance services.[51]

Oral Interpretation

MCPs must provide oral interpretation services from a qualified interpreter (see qualifications below), on a 24-hour basis, at all key points of contact,[52] at no cost to Members.[53] Oral interpretation must be provided in all languages and is not limited to threshold or concentration standard languages.

Interpretation can take place in-person, through a telephonic interpreter, or via internet or video remote interpreting (VRI) services. However, MCPs are prohibited from using audio remote or VRI services that do not comply with federal quality standards,[54] or relying on unqualified bilingual/multilingual staff, interpreters, or translators.[55] MCPs should not solely rely on telephone language lines for interpreter services. Rather, telephonic interpreter services should supplement face-to-face interpreter services, which are a more effective means of communication.

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[48] 45 CFR 92.201(a).
[49] 45 CFR section 92.201(b).
[50] 45 CFR section 92.201(h).
51 Per 45 CFR 92.201(c)(3), if a covered entity uses machine translation when the underlying text is critical to the rights, benefits, or meaningful access of an individual with limited English proficiency, when accuracy is essential, or when the source documents or materials contain complex, non-literal or technical language, the translation must be reviewed by a qualified human translator. The definition of ”Machine Translation“ can be found at 45 CFR section 92.4.
[52] Per the MCP Contract, key points of contact include medical care settings (e.g., telephone, advice and urgent care transactions, and outpatient encounters with health care Providers) and non-medical care settings (e.g., Member services, orientations, and appointment scheduling).
[53] See 45 CFR section 92.201(c)(1); 42 CFR section 438.10(d)(2) and (d)(4); and W&I section 14029.91(a).
[54] See 45 CFR section 92.201(g); 45 CFR section 92.201(f); 28 CFR section 35.160(d); and 28 CFR section 36.303(f).
[55] 45 CFR section 92.201(4).

An interpreter is a person who renders a message spoken in one language into one or more languages. An interpreter must be qualified and have knowledge in both languages of the relevant terms or concepts particular to the program or activity and the dialect spoken by the Member with LEP. In order to be considered a qualified interpreter for an Member with LEP, the interpreter must: 1) 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); 2) be 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 3) adhere to generally accepted interpreter ethics principles, including client confidentiality.[56]

MCPs that provide a qualified interpreter for a Member with LEP through audio remote interpreting services must provide real-time audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality audio without lags or irregular pauses in communication; a clear, audible transmission of voices; and adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the remote interpreting services.[57]

MCPs must not require Members with LEP to provide their own interpreters or pay for the cost of their own interpreter, or rely on staff who are not qualified interpreters or qualified bilingual/multilingual staff.[58] Some bilingual/multilingual staff may be able to communicate effectively in a non-English language when communicating information directly in that language, but may not be competent to interpret in and out of English. Bilingual/multilingual staff may be used to communicate directly with Members with LEP only when they have demonstrated to the MCP that they meet all of the qualifications of a qualified bilingual/multilingual *staff*.[59]

Further, the use of family members, friends, and particularly minor children as interpreters may compromise communications with Members with LEP. Members with LEP may be reluctant to reveal personal and confidential information in front of these individuals. In addition, family members, friends, and minor children may not be trained

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[56] W&I section 14029.91(a)(1)(B). The definition of “relay interpretation” and “qualified interpreter for an individual with limited English proficiency” can be found at 45 CFR section 92.4.
[57] 45 CFR section 92.201(g).
[58] 45 CFR section 92.201(e)(1) and (4); W&I section 14029.91(a)(1)(C).
[59] *Definition and requirements for qualified bilingual/multilingual staff can be found at 45 CFR 92.4.*

in interpretation skills and may lack familiarity with specialized terminology. As a result, use of such persons could result in inaccurate or incomplete communications, a breach of the Member with LEP's confidentiality, or reluctance on the part of the Member with LEP to reveal critical information.

MCPs are prohibited from relying on an adult not qualified as an interpreter, or minor child accompanying an LEP Member to interpret or facilitate communication except:

1) As a temporary measure when there is an emergency involving an imminent threat to the safety or welfare of the Member or the public and a qualified interpreter is not immediately available; or,

2) If the LEP Member specifically requests that an accompanying adult interpret or facilitate communication. This request must be done in private with a qualified interpreter present and without an accompanying adult present. Additionally, the accompanying adult must agree to provide that assistance, the request and agreement is documented, and reliance on that accompanying adult for that assistance is appropriate under the circumstances. [60]

Prior to using a family member, friend or, in an emergency only, a minor child as an interpreter for an LEP Member, MCPs must first inform the Member that they have the right to free interpreter services and second, ensure that the use of such an interpreter will not compromise the effectiveness of services or violate the Member with LEP's confidentiality. MCPs must also ensure that the Member with LEP's refusal of free interpreter services and their request to use family members, friends, or a minor child as an interpreter is documented in the medical record.

Written Translation

Translation is the replacement of written text from one language into another. MCPs must use a qualified translator when translating written content in paper or electronic form.[61] A qualified translator is a translator who: 1) adheres to generally accepted translator ethics principles, including client confidentiality; 2) has demonstrated proficiency in writing and understanding both written English and the written non-English language(s) in need of translation; and, 3) is able to translate accurately, effectively, 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.[62] At a minimum, MCPs must provide written translations of Member information in the threshold and

[60] W&I section 14029.91(a)(1)(D); 45 CFR 92.201(e)(2)(ii).
[61] See 45 CFR section 92.202(b).
[62] The definition of a "qualified translator" is found under 45 CFR section 92.4.

concentration languages identified in this APL in the DHCS Threshold and Concentration Language Requirements section. In that same section of this APL, DHCS has also provided an explanation of the information that is considered "Member information" for purposes of this requirement.

Effective Communication with Members with Disabilities

MCPs must comply with all applicable requirements of federal and state disability law.[63] MCPs are required to take appropriate steps to ensure effective communication with Members with disabilities and companions with disabilities. [64,65] MCPs must provide appropriate auxiliary aids and services to Members with disabilities including the provision of qualified interpreters and written materials in alternative formats, free of charge, in accessible formats, in a timely manner, and in such a way to protect the Member's privacy when such aids and services are necessary to ensure that Members with disabilities have an equal opportunity to participate in, or enjoy the benefits of, the MCP's services, programs, and activities.[66] Without limitation, MCPs must provide interpretive services and make Member information available in the following alternative formats: Braille, audio format, large print (no less than 20 point font), and accessible electronic format (such as a data CD). In determining what types of auxiliary aids and services are necessary, MCPs must give "primary consideration" to the individual's request of a particular auxiliary aid or service.[67] DHCS expects MCPs to collect and store Members' alternative format selections. In 2022, DHCS posted an Alternate Format Data Process Guide for the ongoing process for MCPs and their Subcontractors and Network Providers to submit new Member Alternative Format Selection (AFS) requests.[68] This contains the steps required for regular reporting of AFS information to DHCS. DHCS sends a weekly file to the MCPs from the DHCS Alternative Format database. MCPs will use this file to deploy the alternative format requested by the Member. Additionally, MCPs are to share AFS data with their Subcontractors and Network Providers as appropriate.

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[63] Without limitation, MCPs must comply with Section 1557 of the ACA, available at: http://housedocs.house.gov/energycommerce/ppacacon.pdf, Title II of the ADA, Section 504 of the Rehabilitation Act, available at: https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973, and GC 11135.

[64] 45 CFR section 92.202; 28 CFR section 35.160-35.164.

65 Per 28 CFR 35.160(a)(2), "companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.

[66] 28 CFR section 35.160; 45 CFR section 92.202(b).

[67] 28 CFR section 35.160(b)(2).

[68] The Alternate Format Data Process Guide is available at: https://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2022/Alternative-Format-Data-Process-Guide.pdf. See APL 22-002, or any superseding APL, for additional information on AFS.

Auxiliary aids and services include:

- Qualified interpreters on-site or through VRI services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology; or other effective methods of making aurally delivered information available to Members who are deaf or hard of hearing.
- Qualified readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials (no less than 20 point font); accessible information and communication technology; or other effective methods of making visually delivered materials available to Members who are blind or have low vision.[69]

When providing interpretive services, MCPs must use qualified interpreters to interpret for a Member with a disability, whether through a video remote interpreting service or an on-site appearance. A qualified interpreter for a Member with a disability is an interpreter who[70]:

1) adheres to generally accepted interpreter ethics principals, including client confidentiality; and
2) is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology, and phraseology without changes, omissions, or additions while preserving the tone, sentiment, and emotional level of the original statement and [71]
3) has demonstrated proficiency in communicating in and understanding English and a non-English language (including American Sign Language) or another communication modality such as cued-language transliterators or oral transliterators

For a Member with a disability, qualified interpreters can include, for example, sign language interpreters, oral transliterators (individuals who represent or spell in the characters of another alphabet), and cued language transliterators (individuals who represent or spell by using a small number of handshapes).

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[69] The definition of “auxiliary aids and services” can be found under 45 CFR section 92.4.
[70] 45 CFR section 92.4.
[71] The definition of “qualified interpreter for an individual with a disability” can be found under 45 CFR section 92.4.

MCPs that provide a qualified interpreter for an Member with a disability through VRI services must provide real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; a sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of body position; a clear, audible transmission of voices; and adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.[72]

MCPs must not require a Member with a disability to provide their own interpreter. Moreover, MCPs are prohibited from relying on an adult or minor child accompanying a Member with a disability to interpret or facilitate communication except when: 1) there is an emergency involving an imminent threat to the safety or welfare of the Member or the public and a qualified interpreter is not immediately available; or, 2) the Member with a disability specifically requests that an accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide that assistance, and reliance on that accompanying adult for that assistance is appropriate under the circumstances.[73] Prior to using a family member, friend, or, in an emergency only, a minor child as an interpreter for a Member with a disability, MCPs must first inform the Member that they have the right to free interpreter services and second, ensure that the use of such an interpreter will not compromise the effectiveness of services or violate the individual's confidentiality. MCPs must also ensure that the refusal of free interpreter services and the Member's request to use a family member, friend, or a minor child as an interpreter is documented in the medical record.

In addition to requiring effective communication with Members with disabilities, HHS OCR regulations pursuant to Section 1557 incorporate other long-standing requirements of federal law prohibiting discrimination based on disability.[74] MCPs are reminded that they must make reasonable modifications to policies, practices, or procedures when such modifications are necessary to avoid discrimination based on disability. This could include, for example, assisting a Member who cannot write to fill out required forms, even when such assistance is not generally provided to Members without a disability.

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[72] 28 CFR section 35.160(d); 28 CFR section 36.303(f).
[73] 28 CFR section 35.160(c); 28 CFR section 36.303(c).
[74] 45 CFR section 92.203-92.205.

Policies and Procedures

MCPs must submit policies and procedures (P&Ps) demonstrating their compliance with the ADA, Section 504 of the Rehabilitation Act, Section 1557, including the implementing federal regulations, SB 223, SB 1423, and GC 11135, and must update and resubmit these policies and procedures to DHCS following any substantive change in federal or state nondiscrimination law. MCP policies and procedures must ensure that, upon a substantive change in federal or state nondiscrimination law, training regarding the change will be incorporated into one or more appropriate existing, regularly scheduled MCP staff trainings.

As stated above, MCPs must comply with the updated threshold and concentration language dataset by August 11, 2025 and begin providing translated written Member information, as required, in these languages.

The requirements contained in this APL will necessitate a change in an MCP's contractually required P&Ps. MCPs must submit their updated P&Ps to the MCOD Contract Oversight SharePoint Submission Portal[75] within 90 days of the release of this APL.

MCPs are responsible for ensuring that their Subcontractors, Downstream Subcontractors, and Network Providers comply with all applicable state and federal laws and regulations, Contract requirements, and other DHCS guidance, including APLs and Policy Letters. These requirements must be communicated by each MCP to all Subcontractors and Network Providers. DHCS may impose Corrective Action Plans (CAP), as well as administrative and/or monetary sanctions for non-compliance. MCPs should review their Network Provider, Subcontractor, and/or Downstream Subcontractor Agreements, including Division of Financial Responsibility provisions as appropriate, to ensure compliance with this APL.

For additional information regarding administrative and monetary sanctions, see APL 25-007, and any subsequent iterations on this topic. Any failure to meet the requirements of this APL may result in a CAP and subsequent sanctions.

[75] The MCOD Contract Oversight SharePoint Portal is located at: https://cadhcs.sharepoint.com/sites/MCOD-MCPSubmissionPortal/SitePages/Home.aspx

If you have any questions regarding this APL, please contact your MCOD Contract Manager.

Sincerely,

Original Signed by Bambi Cisneros

Bambi Cisneros
Acting Division Chief, Managed Care Quality and Monitoring Division
Assistant Deputy Director, Health Care Delivery Systems