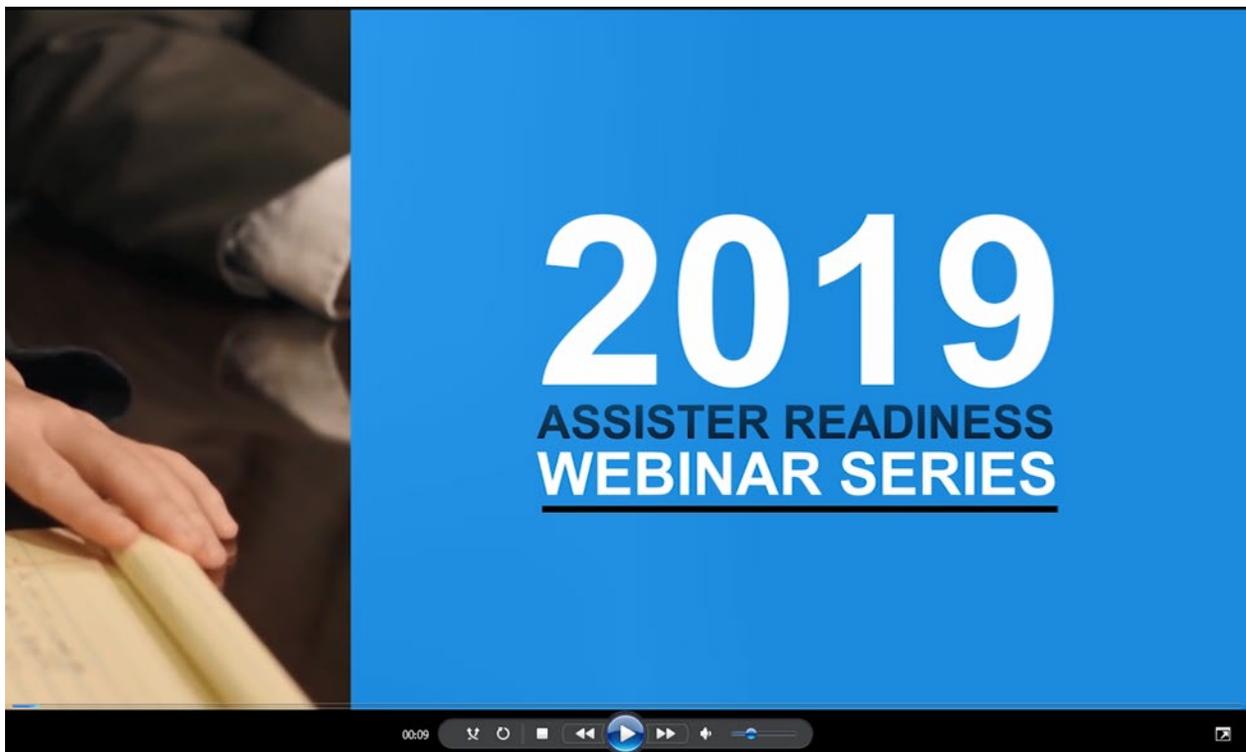


Working with Consumers with Disabilities: Understanding Disability Laws and Regulations



This document is a transcript of the Marketplace Assister Technical Assistance Webinar.

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Disclaimer

This presentation is intended as training and technical assistance for Marketplace Assisters (i.e., Navigator grantees, certified application counselors (CACs) and other assisters). 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.

Cover Slide

Hello and welcome to the 2019 Assister Readiness Webinar Series! I'm Leslie with the Consumer Support Group for the Marketplace and I'm joined today by my colleague Deborah and we'll be guiding you through today's webinar. Content in this module focuses on the Making Coverage Accessible topic of Working with Consumers with Disabilities: Understanding Disability Laws and Regulations.

2019 Assister Readiness Webinar Series Overview

Here's an overview of the entire 2019 Assister Readiness Webinar Series. This module, *Understanding Disability Laws and Regulations*, is situated in the Week 4 installment of the series and falls under the topic of Making Coverage Accessible. If you have not yet viewed the other modules under this week's topic, be sure to do so in advance of our Friday LIVE webinar. On Friday's webinar, you'll have an opportunity to ask questions, so remember to take notes and please bring all of your questions to us. And now, I'll turn it over to Deborah to start us off.

Titled Slide: Working with Consumers with Disabilities: Understanding Disability Laws and Regulations

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Introduction

Who is defined as a person with a disability under federal laws that apply to your work as an assister? Do you know how to identify which accommodations might be appropriate for a specific consumer with a disability? Are there best practices for communicating with consumers with disabilities? Today, you'll learn the answers to these questions and more. As part of your assister duties, you should be able to work effectively with people who have physical or intellectual disabilities; cognitive, hearing, speech, and/or vision impairments; or other disabilities that may warrant accommodations. Which, in some cases, may require you to provide information and assistance in a manner that is accessible to persons with disabilities.

Overview

In this presentation, you will learn about federal non-discrimination requirements that apply when helping consumers with various disabilities. You'll also learn about legal consumer protections and

resources that can help you assist consumers with disabilities, and best practices. We will cover the following topics:

1. The definition of disability;
2. Consumer protections under Section 1557 of the Patient Protection and Affordable Care Act also known as PPACA);
3. Assister duties under Section 1557 of PPACA and other applicable regulations; and 4 a discussion of different types of accommodations.

Defining the Term Disability

Let's begin with the definition of disability. Under federal regulations, an individual with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities— for example, a vision, speech, or hearing impairment. This includes people who have a record of an impairment even if they do not currently have a disability. It also includes people who do not have a disability but are regarded as having an impairment— for example, people who need assistance with the following life activities: caring for oneself, performing manual tasks, walking, or working.

Federal Provisions Prohibiting Discrimination

Assisters should always provide equal opportunities for all consumers, including consumers with disabilities. There are several federal provisions prohibiting discrimination and requiring equal access for people with disabilities that pertain to the work that assisters do, including: Section 1557 of PPACA; The HHS Office of Civil Rights (OCR) Final Rule (45 CFR Part 92) non-discrimination in health programs and activities; and, CMS Marketplace Regulations.

The rest of this presentation describes how assisters can best comply with these federal provisions to make sure you are providing appropriate services and accommodations to these consumers. Remember, you can always refer back to these regulations to understand how best to serve consumers with disabilities.

Section 1557

Now, let's discuss the federal requirements under the Section 1557 that apply to assisters when serving consumers with disabilities. Section 1557 is consistent with established federal civil rights laws, including Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act and includes: 1. A Definition of the Term Disability; 2. Consumer Protections—for example, under Section 1557, any health program or activity that receives federal financial assistance or FFA cannot deny consumers participation or benefits based on disability and other factors. Furthermore, it cannot subject consumers to any type of discrimination; and 3. Assister Duties under Applicable Regulations.

Key Section 1557 Requirements for Navigators

Section 1557 regulations set out specific requirements that Navigators must meet to provide physical accessibility and effective communication. Key Section 1557 requirements related to Physical Accessibility: 1. Ensure physical accessibility of newly constructed or altered facilities. 2. Provide meeting places that are physically and otherwise accessible. If a meeting place is not accessible, you must choose

an alternate accessible location. And 3. Make programs or activities accessible in a way that serves consumers with disabilities in the most integrated settings.

Here are key requirements related to effective communication:

- Ensure equally effective communication and provide appropriate auxiliary aids and services (such as alternative formats and sign language interpreters). Also, make all programs and activities provided through electronic and IT accessible.

Additional Section 1557 Requirements for Assisters

In addition to physical access and effective communication, Section 1557 regulations include additional Navigators requirements to provide access and prohibit discrimination for all consumers. Navigators must make reasonable changes to policies, practices, and procedures to provide access for people with disabilities to the health program or activity. They must not apply eligibility criteria or utilize methods of administration that screen out (or tend to screen out) people with disabilities. Navigators must also not deny services based on a consumer's association with a person with a disability nor must they provide services or benefits to people with disabilities through programs that are separate or different unless this separation is necessary to ensure the services and benefits are equally effective.

Section 1557 Requirements for Certified Application Counselors

Section 1557 and its regulations do not apply to CACs that do not receive FFA.

If you or your certified application counselor designated organization or CDO receives FFA for example, a CDO that is a health center that receives funding from HRSA, you must follow the same requirements that apply for Navigators. If you are unable to provide accessible services, you must refer consumers with disabilities to Marketplace-approved resources that can provide assistance such as Navigators or other CACs who can provide assistance, as required. Now, I'll turn it over to Leslie to discuss CMS Marketplace requirements. Thank you Deborah.

CMS Marketplace Regulation Requirements for Navigators

CMS Marketplace regulations also set requirements that assisters must meet for physical access and effective communication when serving consumers with disabilities. There is a physical accessibility requirement, which includes: Providing assistance in a location and manner that is physically and otherwise accessible. And secondly, there is an effective communication requirement, which includes, first of all, ensuring accessibility and usability of Navigator tools and functions for individuals with disabilities; Secondly, ensuring that consumer education materials, websites, or other tools used for consumer assistance are accessible to people with disabilities; and, thirdly, providing timely and accessible information to people with disabilities, including accessible websites and auxiliary aids and services (at no cost) when necessary or if requested by the consumer to ensure effective communication.

Please note: that using a consumer's family or friends as interpreters may satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services.

Additional CMS Marketplace Regulation Requirements for Navigators

Furthermore, CMS Marketplace regulations set additional requirements for Navigators to ensure information is available and accessible to all consumers. Navigators are required to provide targeted assistance to serve vulnerable and underserved populations in the FFM service area; Make sure authorized representatives are permitted to assist a consumer with a disability to make informed decisions; Acquire sufficient knowledge to make referrals to local, state, and federal long-term services and supports when appropriate; and Navigators must have the ability to work with all people regardless of age, disability, and culture, and seek advice or experts when needed.

CMS Marketplace Regulation Requirements for CACs

CMS Marketplace regulations also set additional requirements for CACs. First, CACs must ensure accessibility for consumers with disabilities either directly or through referrals to Navigators, or the FFM Call Center; Second, CDO that receives federal funds to provide services to a defined population, and services may be limited to that defined population. However, the CDO must comply with the regulations prohibiting discrimination with respect to that population; and third, If you, as a CAC, are approached for services by someone who is not in the defined population that you are to serve, you must refer the consumer to other Marketplace-approved resources who can provide assistance such as Navigators, or other CACs who can provide assistance.

Knowledge Check

Time for a knowledge check! Which of the following are required under federal regulations when you help consumers in FFMs?

- A. You must provide separate services with no added benefits to consumers with disabilities.
- B. You must provide assistance to consumers only with severe disabilities.
- C. You must provide appropriate auxiliary aids and services to consumers with disabilities; OR,
- D. You must make reasonable modifications for consumers with disabilities.

What do you think the answer is? Take some time to think about it. [Pause]

Knowledge Check Answer

The correct answers are C and D. Under federal regulations, you must provide appropriate auxiliary aids and services and make reasonable modifications for consumers with disabilities. Consumers with disabilities are legally entitled to reasonable accommodations and modifications. And assisting consumers with disabilities cannot be reserved for those with severe conditions alone.

Key Points

And now, I'll turn it back over to Deborah to go over some key points. Thanks so much Leslie. A consumer with a disability is defined as an individual: that one, has a physical or mental impairment that substantially limits one or more major life activities. Two, has a record of such an impairment, or three, is regarded as having such an impairment.

Key Points (Cont.)

There are a few more key points to remember: Section 1557 of PPACA and CMS regulations prohibit discrimination against people with disabilities by 1. Any health program or activity, any part of which receives federal financial assistance; 2. Any health program or activities that HHS itself administers; and 3. FFMs. CMS Marketplace regulations specific to your assister type will also govern your work with consumers with disabilities.

As an assister, you and your organization are likely to be covered by one or more of the federal laws and regulations prohibiting discrimination against individuals with disabilities. If you are, you must ensure compliance with the applicable law(s) or regulation(s).

Assister Readiness Webinar Series Resources

Congratulations on completing the *Understanding Disability Laws and Regulations* module of the Assister Readiness Webinar Series! Please proceed to the next Week 4 module, *Providing Appropriate Services and Accommodations*. Also, feel free to visit the Assister Readiness Webinar Series Resources listed on this slide, including: training materials for Navigators and other assisters; and the assister webinars webpage.

If you have topical questions about this presentation: Navigators please contact your Project Officer directly. CACs can email the CAC Inbox at CACquestions@cms.hhs.gov.