

Providing Effective Communication and Language Assistance Services



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

Hi, I'm Dara, with the Consumer Support Group for the Marketplace. I'll be guiding you through today's webinar, along with my colleague, Elissa. Welcome to the 2019 Assister Readiness Webinar Series! Content in this module focuses on the *Making Coverage Accessible* topic of *Providing Effective Communication and Language Assistance Services*.

Assister Readiness Webinar Series Overview

Here's an overview of the entire 2019 Assister Readiness Webinar Series. As you can see, the module, *Providing Effective Communication and Language Assistance Services*, 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's LIVE webinar. On Friday's webinar, you'll also have an opportunity to ask questions, so remember to take notes and please bring your questions.

Titled Slide: Providing Effective Communication and Language Assistance Services.

<Silent>

Overview

Thank you all for joining us today. This presentation will focus on *Providing Effective Communication and Language Assistance Services* and will be presented in two sections. The first section will cover "Understanding the Diversity of Consumer Groups" and the second section (will cover) "Communicating Effectively with Limited English Proficiency Consumers."

Overview of Non-discrimination Laws Protecting Major Consumer Groups

Ok, let's get started with the first section of today's presentation. You will likely work with a diverse array of consumers in your role as an assister. Be aware that there are applicable laws and standards that you must follow to provide appropriate non-discriminatory assistance. Section 1557 of the Patient Protection and Affordable Care Act, or PPACA, and Title VI of the Civil Rights Act of 1964 prohibit discrimination on the grounds of race, color, national origin, sex, sexual orientation, age, or disability.

The Americans with Disabilities Act of 1990 and other laws protect consumers against discrimination based on disability. The Age Discrimination Act of 1975 and other laws protect consumers against age

discrimination. Title IX of the Education Amendments of 1972 and other laws protect consumers against gender discrimination. Multiple laws protect consumers against religious discrimination.

The Department of Health and Human Services (HHS) Office for Civil Rights' Final Rule implementing Section 1557 of the Affordable Care Act (45 CFR Part 92) applies to individuals participating in:

HHS federally administered health programs and activities, health programs and activities that receive federal financial assistance (FFA) from HHS, and health programs and activities administered by an entity established under Title I of the ACA, such as the Federally-facilitated Marketplaces. Under this section of the ACA, Navigators and non-Navigator assistance personnel must ensure that all services are provided in a culturally and linguistically appropriate manner.

Certified application counselor, or CAC, organizations may receive federal funds to provide services to a specific population, such as a Ryan White HIV/AIDS program or an Indian health provider. These organizations *may* limit their provision of CAC services to that population, as long as they do not discriminate within that specific population. If CACs providing these limited services are approached by consumers outside of this specific population, they must refer these consumers to Marketplace-approved resources, such as Navigators, or other CACs who can provide assistance.

The standards for meeting these statutory requirements have been further clarified under regulations, which provides the Culturally and Linguistically Appropriate Services, or CLAS, standards, and the main principle is that individuals or entities subject to the standards provide effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs.

Understanding the Diversity of Some Categories of Consumer Groups

When dealing with consumers, please keep in mind that consumers can be different from one another in many ways, including race, color, national origin, disability, age, sex, religion and sexual orientation, and having an awareness of these different categories may inform the way you provide assistance. It's important to recognize and be sensitive to consumer differences based on racial or ethnic groups as well as disability, age, sex, and religion.

The Federal Government defines the major racial and ethnic groups in the U.S. as:

Black, not of Hispanic origin, which is a person having origins in any of the Black racial groups of Africa;

Hispanic, which is a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture origin, regardless of race;

Asian, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

Native Hawaiian or Other Pacific Islander, which is a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands;

American Indian or Alaska Native, which is a person having origins in any of the original peoples of North America who maintains cultural identification to tribal affiliation or community recognition; and

White, not of Hispanic Origin, which is a person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Understanding the Diversity of Some Categories of Consumer Groups (Cont.)

The PPACA also established non-discrimination standards that prohibit all Marketplaces from discriminating based on sexual orientation when carrying out required Marketplace functions. Navigator programs and CAC programs are considered required Marketplace functions. Therefore, you must make sure that your organization does not discriminate on the basis of sexual orientation when carrying out required Marketplace functions.

These protections are very important because LGBT consumers have historically faced discrimination in accessing health care and coverage. If consumers fear you won't treat them equally and respectfully, they may withhold critical information necessary to help them select appropriate coverage or they may not enroll in needed coverage at all.

Four of the main sexual orientation and gender identity groups are listed and defined on this slide:

- **Lesbian**, which is a woman who is emotionally, romantically, or sexually attracted to other women;
- **Gay**, which is a person who is emotionally, romantically, or sexually attracted to members of the same gender;
- **Bi-sexual**, which is a person emotionally, romantically, or sexually attracted to more than one sex, gender, or gender identity, though not necessarily simultaneously, in the same way, or to the same degree; and
- **Transgender**, which is an umbrella term for people whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bi-sexual, etc.

Now I'll turn over to Dara to talk about communicating with consumers who have Limited English Proficiency.

Communicating Effectively With Limited English Proficiency Consumers

Thanks Elissa. Effective communication is important to understanding consumers' needs and making sure consumers understand you. If you're a Navigator in an FFM, you're responsible for providing fair, accurate, and impartial information and services in a manner that is linguistically appropriate to meet the needs of consumers, including those who don't speak English as their primary language, and those who have a limited ability to read, write, speak, or understand English, referred to as consumers with Limited English Proficiency or LEP.

Linguistically appropriate services may also need to be provided to different racial or ethnic communities, immigrants, and people who communicate through American Sign Language. These groups may have a more difficult time getting health care, may get a lower quality of care, and may have poorer health than the general population. To help overcome these disparities, HHS Office of Minority Health or OMH published the enhanced National CLAS Standards in Health and Health Care. OMH's National CLAS Standards include ways to make health care services more responsive to the individual needs of all consumers. CMS encourages all entities providing Marketplace outreach and enrollment assistance to refer to OMH National CLAS Standards as a resource when implementing CMS CLAS standards. To do this, you may need to provide LEP consumers with free written translations and oral interpretation services. You are also required to follow CLAS standards set forth in Centers for Medicare and Medicaid Services (CMS) regulations, which we will go over on the next slide.

Communicating Effectively With Limited English Proficiency Consumers (Cont.)

Now let's go over some of the CMS CLAS standards. For additional resources on the CLAS standards, visit <https://www.thinkculturalhealth.hhs.gov/resources/library>. Before you help consumers, you should identify the common languages spoken in the community you serve. If you're unable to communicate in those languages, you should locate language assistance services, including interpretation and translation services, before you meet with consumers.

Communicating Effectively With Limited English Proficiency Consumers (Cont.)

Here are some steps you should take to comply with CMS CLAS standards. First, you or your organization should collect and maintain updated information to understand the composition of the communities in the service area where you'll be working, including the primary spoken languages. Second, you'll want to be able to provide oral and written notice to consumers with LEP in their preferred language, informing them of their right to receive language assistance services and how to get them. Third, you'll want to provide consumers with information and assistance in their preferred language, at no cost to the consumers, including oral interpretation and written translation when necessary or requested.

Communicating Effectively With Limited English Proficiency Consumers (Cont.)

Let's take a closer look at what's required for you to provide appropriate services to consumers with Limited English Proficiency. This is really important because increasingly, more people in the U.S. speak languages other than English. Language assistance services are very important because language barriers can cause poor communication or miscommunication between you and consumers. These barriers could lead to coverage decisions that are based on misunderstanding and/or incorrect information. Further, if the organization you work for receives federal financial assistance, or FFA, you're prohibited by law from discriminating against consumers based on their national origin. A recipient of FFA that fails to provide language assistance services to LEP customers might be violating federal laws that prohibit national origin discrimination.

Communicating Effectively With Limited English Proficiency Consumers (Cont.)

So, where to start? Start by assessing what your organization needs to do to provide culturally and linguistically appropriate services to limited English proficient consumers in your community. This will require you to first know the standards. What are the regulations and guidance that apply to you and your organization? The ACA and its implementing regulations require Navigators in all Marketplaces to provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served and that complies with Section 1557 and Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, national origin, sex, sexual orientation, age, or disability. State and local regulations may require additional measures in your service area. It's your responsibility to be aware of and follow all applicable state and local laws and regulations when you provide assistance related to the Marketplaces, unless those laws and regulations would prevent the application of the provisions of Title I of the ACA.

Next, you'll want to get an idea of the number or proportion of consumers with LEP in your service area and how often you anticipate interacting with these consumers. You'll also want to make sure you have resources to provide these consumers what they need, including translated materials and access to free verbal translation assistance. It's also helpful to make a list of other organizations in the community that may be able to help. There's no one-size-fits-all solution, but considering these factors will help you

determine the appropriate language assistance services for your consumers. When your organization has taken all reasonable steps to assist consumers with LEP, you may still need to refer them to other FFM resources. It's important not to delay providing services to consumers with LEP while you look for additional assistance. For example, if you receive federal financial assistance, or FFA, you should contact your funding agency to make sure that you're complying with any applicable program requirements related to language assistance services. You should consider: the frequency with which you anticipate consumers with LEP will come in contact with your program, the nature and importance of your program, and the costs and resources available to you. And now I'll turn it back over to Elissa to tell you something about creating an LEP plan.

Communicating Effectively With Limited English Proficiency Consumers (Cont.)

Thanks Dara. After you've assessed your situation, you or your organization should develop a plan of action, or LEP plan, as a best practice for providing language assistance services consistent with applicable laws and regulations. If you're the person responsible for developing your organization's LEP plan, one way to develop this plan is to follow these steps. First, identify consumers with LEP who need language assistance. Next, determine how you'll provide language assistance. Consider using multiple methods of communication, such as oral, written, web content, and digital information. Then, you'll want to make sure staff members are trained. Identify staff who need to be trained on the LEP plan, develop a process for training them, and track training results. You'll want to provide staff with a description of the laws and regulations that apply to your organization, the types of language assistance services available for them to use with LEP consumers, how staff can access them, and how to use appropriate interpretation and translation services, including best practices for using taglines.

Once you've got your services in place, you'll want to inform consumers with LEP about those language services. Figure out how you'll let them know about your services. You can consider placing ads in newspapers or magazines or posters in your neighborhood or including information on your organization's website.

Finally, you'll want to monitor and update your LEP plan. Record any changes in the number of consumers with LEP in your area by language, figure out how often you assist consumers with LEP, evaluate resources and budget for the provision of cost-effective language access services, reach out to stakeholder communities for feedback, and regularly update your plan to meet the needs of consumers with LEP.

Implementing LEP Services: Helpful Tips

While different LEP services will best meet the needs of different consumers, here are some general tips:

- First, apply an "LEP lens" in decision-making to begin any action – apply this lens when considering budgeting, IT systems, a marketing plan, and data collection. Think about whether the decisions you make impact this community, and if the decisions appropriately address the needs of consumers with LEP.
- Second, assess consumers with LEP through United States Census and community data sources. You can search for your state, county, city, town, or zip code on the U.S. Census website to find the most commonly spoken languages in your community and other useful information.

- Think about creating a one-page document for each commonly used language, displaying a list of materials available in that language.
- Also, you can tell consumers about laws and policies that protect them against unfair treatment. You can also post applicable non-discrimination laws and policies in registration or waiting areas, or other high-traffic areas.
- You can also engage with local community-based groups to learn more about the different cultural and linguistic communities you are serving.
- Also, check official FFM resources like [HealthCare.gov](https://www.healthcare.gov) or [CuidadoDeSalud.gov](https://www.cuidadodesalud.gov), and [Marketplace.cms.gov](https://www.marketplace.cms.gov) to see if materials are already translated.

Ok, let's move on to the next slide for tips on how to implement CMS' CLAS standards.

Helpful Tips for Implementing CMS CLAS Standards Include

Here are some helpful tips on creating CMS CLAS Standards. Those include:

- First, involve community members as you develop materials.
- Second, think about conducting targeted outreach to these communities using newsletters, ethnic media outlets whose target audience is non-native English speakers, the Internet, and more. Know the media that targets people with limited English proficiency is the primary source of community information for many people with LEP.
- Next, consider the best arrangement for your organization to provide oral interpretation and written translation services. This may be hiring bilingual staff, or a professional in-person interpreter, or making available telephonic oral interpretation services.
- Next, you can also create a centralized web page or resource for the organization's staff that contains everything they may need to know about serving consumers with LEP or assisting particular groups, like a guide that contains the organizations' policies and procedures for serving LEP consumers and instructions on how to access oral interpretation services.
- Also, you'll want to avoid making assumptions about a consumer's cultural or demographic background. For example, don't make assumptions about a consumer's sexual orientation or gender identity based on their outward appearance.

Helpful Tips for Implementing CMS CLAS Standards Include (Cont.)

Think about asking gender-neutral questions such as, "What name would you like to be called?" You may also consider creating audio or video translations of English-language materials and making the content available verbally, on the Internet, or in hardcopy.

Translated materials should be presented in simple, understandable language at an appropriate literacy level, preferably at the fourth-grade level. Also, including diverse images and culturally sensitive language in outreach, education, and marketing materials will likely make all consumers feel more comfortable and welcomed. And the last tip, measure how well you're implementing CMS CLAS standards through surveys for more informal feedback.

Please note: Navigator organizations cannot use federal Navigator funds to pay for surveys. Now, let's turn it back over to Dara to hear about preventing and remedying discrimination when it happens.

Preventing and Remediating Discrimination

OK, now let's talk some things you can do to ensure you are providing non-discriminatory assistance: First, you can identify and support staff who have special expertise or experience working with the diverse groups represented in the area you serve. You can also designate an individual in your organization to oversee organizational efforts to promote diversity and provide non-discriminatory assistance to consumers. In addition, you can develop clear mechanisms for consumers to report discrimination or disrespectful treatment to address any issues that may arise. And finally, be ready to explain how consumers who think their rights have been violated can file a complaint with the Office for Civil Rights, or OCR.

Preventing and Remediating Discrimination (Cont.)

Let's go over what discrimination is and how to avoid it. Examples of discrimination include refusing to provide assistance, providing inadequate assistance, or communicating with consumers in a way that makes them feel inferior because of their race, color, national origin, language, disability, age, sex, religion, or sexual orientation.

It could also be refusing to provide services or treating consumers poorly because of their dress, appearances, or mannerisms that don't conform to gender stereotypes. It could also be creating a hostile environment for consumers through harassment or disrespectful treatment. Or, refusing to provide appropriate language assistance services when necessary or requested, such as translation or sign language interpretation services. Discrimination could also be neglecting to tailor and conduct appropriate outreach and education activities in your organization's service area. Or, requesting immigration-related documents that aren't required for enrollment, which may deter eligible consumers from applying.

Preventing and Remediating Discrimination (Cont.)

Also, be careful not to treat certain consumers a certain way based on stereotypes about a group. Stereotypes are images or ideas of a particular type of person or thing that may be widely held but aren't necessarily accurate and represent an overly simplified view, like an idea that in a traditional family the man is the main financial provider or the decision-maker. It's important to understand that what applies to one person in a particular group may not apply to someone else in that same group. Knowing this will help you avoid stereotypes when interacting with consumers. To keep the following in mind to make sure you avoid stereotypes— consumers may have their own personal stories, beliefs, ways to communicate, and health histories. Each consumer is unique and comes with different experiences. Consumers may have different incomes or education levels, and these backgrounds can affect their beliefs and opinions about health and coverage. Consumers from the same country, even from the same region, may differ greatly in their traditions, customs, and opinions about health care and coverage.

Key Points

Let's go over a few key points from today's presentation. Remember, you are not permitted to discriminate against consumers because of their race, color, national origin, disability, age, sex, religion, or sexual orientation. There are a number of unique factors that can affect how consumers think about health care and the coverage choices they make. Remember, all consumers are different and you should avoid stereotyping.

Key Points (Cont.)

This presentation also covered effective communication with Limited English Proficiency (LEP) Consumers. The key points to remember are:

Federal laws and regulations protect consumers with LEP from discrimination in programs and activities that receive FFA or federal financial assistance.

Discrimination can occur if you're subject to these laws and regulations and you fail to provide adequate access through the provision of language assistance services.

Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services; however, you must offer interpretation services at no cost first and the consumer must request the use of family or friends as a preferred alternative to that offer.

Providing appropriate language services is very important. It can help reduce health disparities for consumers from diverse racial, ethnic, and cultural backgrounds and improve quality of services and health care outcomes.

It is recommended that you conduct an individualized assessment of your program to determine CMS CLAS standards that you're legally required to follow, as well as LEP needs in your organization's service area. You should align your resources to best meet those needs.

Assister Readiness Webinar Series Resources

Congratulations on completing the *Providing Effective Communication and Language Assistance Services* module of the Assister Readiness Webinar Series! Please proceed to the next Week 4 module *Understanding Disability Laws and Regulations*.

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.