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**DATE:** May 14, 2021

**TO:** ALL MEDI-CAL DENTAL MANAGED CARE PLANS

**SUBJECT: APL 21-001: STANDARDS FOR DETERMINING THRESHOLD LANGUAGES, NONDISCRIMINATION REQUIREMENTS, AND LANGUAGE ASSISTANCE SERVICES**

**PURPOSE:**

This All Plan Letter (APL) serves to inform all Medi-Cal Dental Managed Care (DMC) plans of the dataset for threshold and concentration languages and clarifies the threshold and concentration standards specified in state and federal law and DMC contracts. This dataset identifies the threshold and concentration languages in which, at a minimum, DMC plans 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),<sup>1</sup> Title 42 of the Code of Federal Regulations (CFR) Part 438,<sup>2</sup> Senate Bill (SB) 223 (Atkins, Chapter 771, Statutes of 2017),<sup>3</sup> and SB 1423 (Hernandez, Chapter 568, Statutes of 2018).<sup>4</sup>

**BACKGROUND:**

DHCS Threshold and Concentration Standard Languages

Federal law<sup>5</sup> requires the Department of Health Care Services (DHCS) to establish a methodology for identifying the prevalent non-English languages spoken by eligible beneficiaries throughout the state, and in each DMC plans service area, for the purpose of requiring DMC plans to provide written translations of member information in these languages.<sup>6</sup> State law<sup>7</sup> requires DHCS to identify these languages by calculating

<sup>1</sup> 45 CFR, Part 92 is available at: [https://www.ecfr.gov/cgi-bin/text-idx?SID=5294f5df71aa8d51bd6be5f16bb9aab2&mc=true&node=pt45.1.92&rgn=div5#\\_top](https://www.ecfr.gov/cgi-bin/text-idx?SID=5294f5df71aa8d51bd6be5f16bb9aab2&mc=true&node=pt45.1.92&rgn=div5#_top)

<sup>2</sup> 42 CFR, Part 438 is available at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=9a6ca82b62335f91daacca12e91a0c5c&mc=true&node=pt42.4.438&rgn=div5>

<sup>3</sup> SB 223 is available at: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB223](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB223)

<sup>4</sup> SB 1423 is available at:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB1423](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB1423)

<sup>5</sup> 42 CFR 438.10(d)(1)

<sup>6</sup> 42 CFR 438.10(d)(2)-(3)

<sup>7</sup> Welfare and Institutions Code (WIC), Section 14029.91 is available at:

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=WIC&sectionNum=14029.91](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WIC&sectionNum=14029.91)

whether individuals who speak a non-English language meet certain numeric thresholds, or are geographically concentrated in certain ZIP codes. Pursuant to these laws, DHCS determines the languages in which, at a minimum, DMC plans must provide translated written member information. DHCS refers to these languages as the threshold and concentration standard languages.

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

Section 1557 (Title 42 of the United States Code (USC), Section 18116)<sup>8</sup> is the nondiscrimination 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 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). Section 1557 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.<sup>9</sup> Covered programs include any health program or activity, any part of which receives federal financial assistance from the United States Department of Health and Human Services (HHS); any program or activity administered by HHS under Title I of the ACA; or any program or activity administered by any entity established under such Title. These requirements apply to DMC plans Medi-Cal lines of business.

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 replacing them with a four-factor analysis that a covered program must engage in to determine the level of language assistance required under federal law.<sup>10</sup>

<sup>8</sup> The USC is searchable at: <http://uscode.house.gov/>

<sup>9</sup> See, e.g., 45 CFR 92.101 and 92.102 (HHS regulations issued pursuant to Section 1557).

<sup>10</sup> 45 CFR 92.101

Although the specific federal requirements relating to nondiscrimination notices and language taglines in Part 92 of Title 45 of the CFR have been repealed, DMC plans must continue to provide nondiscrimination notices and language taglines under the four-factor analysis and state law, consistent with APL 20-003<sup>11</sup> and this APL. In addition, 42 CFR Part 438 contains complementary language assistance requirements specific to DMC plans, such as the requirement to provide taglines 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.<sup>12</sup>

DMC plans are also subject to federal requirements contained in the Americans with Disabilities Act (ADA), including standards for communicating effectively with people with disabilities to ensure they benefit equally from government programs.<sup>13</sup> Additional communication-related regulations are set forth in Title 42 CFR section 438.10.

In California, SB 223 and SB 1423 codified into state law certain nondiscrimination and language assistance service requirements specific to DHCS<sup>14</sup> and DMC plans.<sup>15</sup> 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.<sup>16</sup>

## **POLICY:**

### **DHCS Threshold and Concentration Language Requirements**

Member information<sup>17</sup> is essential information regarding access to and usage of the plans services. DMC plans are required to provide translated written member information,

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<sup>11</sup> APLs are available at: <https://www.dhcs.ca.gov/services/Pages/DentalAllPlanLetters.aspx>

<sup>12</sup> 42 CFR 438.10(d)(2)-(3).

<sup>13</sup> ADA Title II Regulations are available at: [https://www.ada.gov/reg2010/titleII\\_2010/titleII\\_2010\\_regulations.htm](https://www.ada.gov/reg2010/titleII_2010/titleII_2010_regulations.htm).

<sup>14</sup> WIC 14029.92, which is available at: [http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=14029.92.&lawCode=WIC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=14029.92.&lawCode=WIC)

<sup>15</sup> WIC 14029.91

<sup>16</sup> WIC 14029.92 and 14029.91. For additional state-law-protected characteristics, see Government Code (GOV), section 11135, which is available at:

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=11135.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11135.&lawCode=GOV)

<sup>17</sup> 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/Evidence of Coverage; 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 LEP persons of free language assistance; and newsletters.

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 eligible beneficiaries<sup>18</sup> residing in the plans service area who indicate their primary language as a language 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 eligible beneficiaries residing in the plans 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).

The updated dataset attached to this APL delineates the required threshold and concentration languages, as determined by DHCS, for the above-mentioned groups within each DMC plans 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. DHCS is providing an updated dataset with this APL iteration and DMC plans must comply with the update within 180 days of the publication of this APL.

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

DMC plans must comply with all of the nondiscrimination requirements set forth under federal and state law and this APL. This includes the posting of the nondiscrimination notice in member information and all other informational notices, and the provision of the required taglines that inform LEP individuals of the availability of free language assistance services and auxiliary aids and services for people with disabilities.

DHCS has updated its template of the nondiscrimination notice to conform with state law, including SB 223 and SB 1423, and the requirements in this APL, as well as to include contact information for members to file a discrimination grievance directly with the DHCS OCR. DHCS has also updated its taglines template to conform to changes in federal law and to include additional languages to maintain consistency in translation with Medi-Cal fee-for-service (FFS).

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<sup>18</sup> “Eligible beneficiary” is defined in the DMC plans contract as any Medi-Cal beneficiary who is residing in the DMC plans service area and has met all the qualifications with one of the covered aid codes. Note: threshold language calculations include all Medi-Cal beneficiaries who are “eligible” to enroll, either mandatorily or by choice, in the plan in the county and are not based on actual DMC plan enrollment.

DHCS does not require DMC plans to use the DHCS- provided template language verbatim as long as all notices and associated taglines are compliant with federal and state law and the requirements contained in this APL. All DMC plans nondiscrimination notices must include information about how to file a discrimination grievance directly with DHCS OCR, in addition to information about how to file a discrimination grievance with the DMC plans and HHS OCR (i.e., file a grievance with HHS OCR if there is a concern of discrimination based on race, color, national origin, age, disability, or sex).

DMC plans must immediately, but in no event later than 180 days following the publication of this APL iteration, update their nondiscrimination notices and taglines to align with the templates language provided with this APL. DMC plans must submit these deliverables to DHCS for review and approval prior to use.<sup>19</sup>

DMC plans are required to make the nondiscrimination notice available, upon request or as otherwise required by law, in the threshold and concentration languages,<sup>20</sup> or in an ADA-compliant, accessible format.<sup>21</sup>

### **Nondiscrimination Notice**

DMC plans must post a nondiscrimination notice (see the attached DHCS template for the nondiscrimination notice) that informs members, potential enrollees,<sup>22</sup> and the public about nondiscrimination, protected characteristics, and accessibility requirements, and conveys the DMC plans compliance with the requirements. DMC plans 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.

The nondiscrimination notice must be posted in at least a 12-point font<sup>23</sup> and be included in the Member Handbook/Evidence of Coverage, member information, and all other informational notices targeted to members, potential enrollees, and the public.<sup>24</sup>

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<sup>19</sup> The DHCS templates for the nondiscrimination notice and taglines are provided as attachments to this APL.

<sup>20</sup> WIC 14029.91(a)(2)

<sup>21</sup> 45 CFR 92.101

<sup>22</sup> "Potential enrollee" is defined in the DMC contract as a Medi-Cal beneficiary who is subject to mandatory enrollment or may voluntarily elect to enroll in a given MCO, PIHP, PAHP, PCCM or PCCM entity, but is not yet an enrollee of a specific plan MCO, PIHP, PAHP, PCCM, or PCCM entity.

<sup>23</sup> Per 42 CFR 438.10, the font size must be no smaller than 12-point font.

<sup>24</sup> WIC 14029.91(f)

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 nondiscrimination notice must be posted in at least a 12-point font in conspicuous physical locations where the plan interacts with the public,<sup>25</sup> as well as on the plans website in a location that allows any visitor to the website to easily locate the information.<sup>26</sup> The nondiscrimination notice must include all legally-required elements,<sup>27</sup> as well as information on how to file a discrimination grievance directly with DHCS OCR, in addition to information about how to file a discrimination grievance with the DMC plans and HHS OCR, as provided in the DHCS nondiscrimination notice template.

DMC plans are not prohibited from posting the nondiscrimination notice in additional publications and communications.

### **Discrimination Grievances**

DMC plans must designate a discrimination grievance coordinator who is responsible for ensuring compliance with federal and state nondiscrimination requirements. The plans discrimination grievance coordinator must investigate grievances alleging any action that would be prohibited by, or out of compliance with, federal or state nondiscrimination laws.<sup>28</sup> DMC plans must also adopt grievance procedures that provide for the prompt and equitable resolution of discrimination-related grievances.<sup>29</sup> DMC PLANS discrimination grievance procedures must follow the requirements outlined in sections III (A) – (C) of APL 20-003, Grievance and Appeal Requirements and Revised Notice Templates and "Your Rights" Attachments, or any superseding APL, including timely acknowledgment and resolution of discrimination grievances. Members are not required to file a discrimination grievance with the DMC plans before filing a discrimination grievance directly with DHCS OCR or the HHS OCR.<sup>30</sup>

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<sup>25</sup> 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.

<sup>26</sup> WIC 14029.91(f)

<sup>27</sup> WIC 14029.91(e)(1)-(5); GOV 11135

<sup>28</sup> WIC 14029.91(e)(4); 45 CFR 84.7; 34 CFR 106.8; 28 CFR 35.107; California's Medicaid State Plan, Section 7, Attachments 7.2-A and 7.2-B. See also Gov. Code 11135.

<sup>29</sup> See, e.g., 45 CFR 84.7; 34 CFR 106.8; 28 CFR 35.107.

<sup>30</sup> WIC 14029.91(e)(4)-(5)

The DMC plans discrimination grievance coordinator must be available to:

1. Answer questions and provide appropriate assistance to plan staff and members regarding the plans state and federal nondiscrimination legal obligations.
2. Advise the plans about nondiscrimination best practices and accommodating persons with disabilities.
3. Investigate and process any ADA, section 504, section 1557, and/or Government Code section 11135 grievances received by the DMC PLANS.

DMC plans must ensure that all discrimination grievances are investigated by the plans designated discrimination grievance coordinator.<sup>31</sup> Plans are prohibited from using a medical peer review body to investigate and resolve discrimination grievances. DMC plans 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 DMC contract.

The DMC Plans are required to forward copies of all member grievances alleging discrimination on the basis of any characteristic protected by federal or state nondiscrimination law to DHCS. 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.

Within ten calendar days of mailing a discrimination grievance resolution letter to a member, plans must submit detailed information regarding the grievance to DHCS OCR's designated discrimination grievance email box. DMC plans must submit the following information in a secure format to

[DHCS.DiscriminationGrievances@dhcs.ca.gov](mailto: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 plans personnel responsible for the 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;

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<sup>31</sup> See, e.g., 45 CFR 84.7; 34 CFR 106.8; 28 CFR 35.107.

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 plans investigation, copies of any corrective action taken, and any other information that is relevant to the allegation of discrimination.

### **Language Assistance Taglines**

DHCS determined the tagline requirements in this APL based on a combination of federal and state law and DHCS policy. DMC plans are required to post taglines in a conspicuously visible font size (no less than 12-point font), in English and the top California languages as identified below in this APL and in the DHCS provided taglines template that is attached to this APL.<sup>32</sup> These taglines inform members, potential enrollees, and the public of the availability of no-cost language assistance services, including assistance in non-English languages and the provision of free auxiliary aids and services for people with disabilities.<sup>33</sup>

Like the nondiscrimination notice, these taglines must be posted in the Member Handbook/Evidence of Coverage, conspicuous physical locations where the plans interacts with the public, on the plans 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.<sup>34</sup>

DMC plans are not prohibited from including taglines in 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, are Arabic, Armenian, Cambodian, Chinese, Farsi, Hindi, Hmong, Japanese, Korean, Punjabi, Russian, Spanish, Tagalog,

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<sup>32</sup> WIC 14029.91(a)(3) requires that these taglines be provided in at least the top 15 languages spoken by LEP individuals in the state; however, DHCS requires DMC plans to provide these taglines in English, the top 15 non-English languages spoken by LEP individuals in the state, and Laotian, Ukrainian, and Mien.

<sup>33</sup> 42 CFR 438.10(d)(2)-(3)

<sup>34</sup> WIC 14029.91(f)



Thai, and Vietnamese.<sup>35</sup> Although state law only requires that taglines be provided in the top 15 non-English languages in California, DHCS made a policy decision to align the plans required tagline 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 LEP individuals in California, as identified by HHS OCR in 2016, plans must also provide taglines in Laotian, Ukrainian and Mien (i.e.; English and 18 non-English languages).

### **Language Assistance Services**

Language assistance services must be provided free of charge, be accurate and timely, and protect the privacy and independence of the LEP individual. There are two primary types of language assistance services: oral and written. LEP individuals are not required to accept language assistance services, although a qualified interpreter may be used to assist in communicating with an LEP individual who has refused language assistance services.<sup>36</sup>

#### Oral Interpretation

DMC plans must provide oral interpretation services from a qualified interpreter (see qualifications below), on a 24-hour basis, at all key points of contact,<sup>37</sup> at no cost to members.<sup>38</sup> 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, plans are prohibited from using remote audio or VRI services that do not comply with federal quality standards,<sup>39</sup> or relying on unqualified bilingual/multilingual staff, interpreters, or translators. DMC plans 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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<sup>35</sup> 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>.

<sup>36</sup> See 45 CFR 92.101(c)

<sup>37</sup> Per the DMC contract, key points of contact include dental care settings (e.g., telephone, advice and urgent care transactions, and encounters with health care providers, including pharmacists) and non-medical care settings (e.g., member services, orientations, and appointment scheduling).

<sup>38</sup> WIC 14029.91(a) and 42 CFR 438.10(d)(2) and (d)(4)

<sup>39</sup> See 45 CFR 92.101(b)(3)(iii); 45 CFR 92.102; 28 CFR 35.160(d); and 28 CFR 36.303(f).

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 LEP individual. In order to be considered a qualified interpreter for an LEP individual, the interpreter must: 1) have demonstrated proficiency in speaking and understanding both English and the language spoken by the LEP individual; 2) be able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from the language spoken by the LEP individual and English, using any necessary specialized vocabulary, terminology, and phraseology; and 3) adhere to generally accepted interpreter ethics principles, including client confidentiality.<sup>40</sup>

DMC plans that provide a qualified interpreter for an individual with LEP through remote audio 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.<sup>41</sup>

DMC plans are prohibited from requiring LEP individuals to provide their own interpreters, or from relying on bilingual/multilingual staff members who do not meet the qualifications of a qualified interpreter.<sup>42</sup> 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 LEP individuals only when they have demonstrated to the plan that they meet all of the qualifications of a qualified interpreter listed above.<sup>43</sup>

Further, the use of family members, friends, and particularly minor children as interpreters may compromise communications with LEP individuals. LEP individuals 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 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 LEP individual's confidentiality, or reluctance on the part of the LEP individual to reveal critical information. DMC plans are prohibited from relying on an adult or minor child

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<sup>40</sup> WIC 14029.91(a) and 45 CFR 92.101(b)(3)

<sup>41</sup> 45 CFR 92.101(b)(3)(iii)

<sup>42</sup> WIC 14029.91(a)(1)(C) and CFR 92.101(b)(4)

<sup>43</sup> WIC 14029.91(a)(1)(C)

accompanying an LEP individual to interpret or facilitate communication except when: 1) there is an emergency involving an imminent threat to the safety or welfare of the individual or the public and a qualified interpreter is not immediately available; or, 2) the LEP individual 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.<sup>44</sup> Prior to using a family member, friend or, in an emergency only, a minor child as an interpreter for an LEP individual, DMC plans must first inform the individual 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 LEP individual's confidentiality. DMC plans must also ensure that the LEP individual's refusal of free interpreterservices 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. DMC plans must use a qualified translator when translating written content in paper or electronic form.<sup>45</sup> 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-Englishlanguage(s) in need of translation; and, 3) is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology, and phraseology.<sup>46</sup> At a minimum, plans must provide written translations of member information in the threshold and 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 Individuals with Disabilities**

DMC plans must comply with all applicable requirements of federal and state disability law.<sup>47</sup> DMC plans are required to take appropriate steps to ensure effective communication with individuals with disabilities.<sup>48</sup> DMC plans must provide appropriate auxiliary aids and services

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<sup>44</sup> WIC 14029.91(a)(1)(D) and 45 CFR 92.101(b)(4)

<sup>45</sup> 45 CFR 92.101(b)(3)(ii)

<sup>46</sup> 45 CFR 92.101(b)(3)(ii)

<sup>47</sup> Without limitation, DMC plans must comply with Section 1557 of the ACA, Title II of the ADA, Section 504 of the Rehabilitation Act, and GOV 11135.

<sup>48</sup> 45 CFR 92.102(a); 28 CFR 35.160-35.164

to persons with impaired sensory, manual, or speaking skills,<sup>49</sup> including the provision of qualified interpreters and written materials in alternative formats, free of charge and in a timely manner, when such aids and services are necessary to ensure that individuals with disabilities have an equal opportunity to participate in, or enjoy the benefits of, the DMC plans services, programs, and activities.<sup>50</sup> Without limitation, plans 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, plans must give “primary consideration” to the individual’s request of a particular auxiliary aid or service.<sup>51</sup> DHCS’ expectation is that DMC plans collect and store members’ alternative format selections. DHCS is currently working on finalizing the necessary data elements that will be required for regular reporting of this information to DHCS. At this time, we are requesting that DMC plans begin tracking and recording the Beneficiary Client Index Number, name, date of request, and requested alternative format. DHCS will provide further guidance on the process for submitting the alternative format data in the near future. DHCS is also working on a process that will allow DHCS to share information with the DMC plans that the department collects as well.

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; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, 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 individuals 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 individuals who are blind or have low vision.<sup>52</sup>

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<sup>49</sup> 45 CFR 92.102(b)

<sup>50</sup> 28 CFR 35.160; 45 CFR 92.102

<sup>51</sup> 28 CFR 35.160

<sup>52</sup> 45 CFR 92.102(b)(1)

When providing interpretive services, DMC plans must use qualified interpreters to interpret for an individual with a disability, whether through a remote interpreting service or an on-site appearance. A qualified interpreter for an individual with a disability is an interpreter who: 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.<sup>53</sup> For an individual 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).

DMC plans that provide a qualified interpreter for an individual 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.<sup>54</sup>

DMC plans must not require an individual with a disability to provide their own interpreter. Moreover, plans are prohibited from relying on an adult or minor child accompanying an individual 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 individual or the public and a qualified interpreter is not immediately available; or, 2) the individual 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.<sup>55</sup> Prior to using a family member, friend, or, in an emergency only, a minor child as an interpreter for an individual with a disability, plans must first inform the individual 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. DMC plans must also ensure that the refusal of free interpreter services and the individual's request to use a family member, friend, or a minor child as an interpreter is documented in the medical record.

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<sup>53</sup> 45 CFR 92.102(b)(2)

<sup>54</sup> 28 CFR 35.160(d); 28 CFR 36.303(f); 45 CFR 92.102

<sup>55</sup> 28 CFR 35.160(c) 28 CFR 36.303(c)

In addition to requiring effective communication with individuals with disabilities, HHS OCR regulations pursuant to Section 1557 incorporate other long-standing requirements of federal law prohibiting discrimination based on disability.<sup>56</sup> DMC plans 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.

### **Policies and Procedures**

Within 180 days of the release of this APL, DMC plans must submit policies and procedures demonstrating their compliance with the ADA, Section 504 of the Rehabilitation Act, Section 1557, including the implementing federal regulations, SB 223/SB 1423, and GOV 11135, and must update and resubmit these policies and procedures to DHCS following any substantive change in federal or state nondiscrimination law. DMC plans 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 plan staff trainings.

DMC plans are responsible for ensuring that their 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 plan to all subcontractors and network providers.

If you have any questions regarding this APL, please send to mailbox:

[dmcdeliverables@dhcs.ca.gov](mailto:dmcdeliverables@dhcs.ca.gov).

Sincerely,

*Original signed by Carolyn Brookins for*

Alani Jackson, MPA  
Chief, Medi-Cal Dental Services Division  
Department of Health Care services

Enclosures

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<sup>56</sup> 45 CFR. 92.103-92.105