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BEST PRACTICES

Serving Limited-English Proficient Medicare Part D Beneficiaries

October 2007

A joint project of:

The National Senior Citizens Law Center with
The National Health Law Program and
The California Medicare Part D Language Access Coalition

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INTRODUCTION

Private health plans offering Medicare prescription drug coverage, whether they are stand-alone prescription drug plans (PDPs) or Medicare Advantage plans with prescription drug coverage (MA-PDs) are responsible for providing prescription drug coverage to all qualified Medicare beneficiaries. This responsibility extends both to those who are proficient in English, and to those whose English proficiency is limited.

The Need

Limited English proficient (LEP) individuals, defined as those who speak English less than very well, include about 2.3 million individuals over 65 (7% of all seniors).¹ Over 38% of all Spanish speakers over 65 and 40.9% of all Asian and Pacific Island language speakers over 65 speak English “not well” or “not at all.”² Low-income beneficiaries are more likely to be LEP. In California, approximately 30% of dual eligibles (individuals who qualify for both Medicaid and Medicare) speak a primary household language other than English.³

It is essential that Medicare prescription drug plans develop strategies for serving this diverse population. Research shows that the lack of language services creates a barrier to and diminishes the quality of health care for limited English proficient individuals.⁴ Nowhere is this clearer than in the Medicare Part D context. The privatized structure of Part D demands that beneficiaries ‘shop around’ and find the plan that best suits their needs. If beneficiaries are not able to get information in a language they understand, they will not be able to evaluate plan changes and make informed decisions about their drug coverage. Once in a plan, beneficiaries who cannot get information may have difficulty accessing benefits, filing exceptions and appeals, and more.

The Requirement

Title VI of the Civil Rights Act of 1964 requires recipients of federal financial assistance to take reasonable steps to provide “meaningful access to benefits and services” to LEP

¹ American FactFinder (2000).

² See U.S. Bureau of Census, *Ability to Speak English: 2000* (Tables PCT62D and PCT62H) available at <http://factfinder.census.gov>.

³ California Department of Health Services, Medical Care Statistics Section. *Medi-Cal Beneficiaries by Age/Demographic*, July 2006, available at, <http://www.dhs.ca.gov/mcss/default.htm>.

⁴ See, e.g., Perkins, J. et al., *Ensuring Linguistic Access in Health Care Settings: Legal Rights and Responsibilities*, National Health Law Program & The California Endowment (Aug. 2003), available at: <http://www.healthlaw.org>; Flores G, Barton Laws M, Mayo SJ, et al., *Errors in Medical Interpretation and their Potential Clinical Consequences in Pediatric Encounters*, *Pediatrics* 2003, 111(1): 6-14; Ghandi TK, Burstin HR, Cook EF, et al. *Drug Complications in Outpatients*, *Journal of General Internal Medicine* 2000, 15:149-154; Pitkin Derose K, Baker DW, *Limited English Proficiency and Latinos’ Use of Physician Services*, *Medical Care Research and Review* 2000, 57(1): 76-91. See also, Jacobs, et. al., *Language Barriers in Health Care Settings: an Annotated Bibliography of the Research Literature*, The California Endowment (2003), available at <http://www.calendow.org/pub/publications/LANGUAGEBARRIERSAB9-03.pdf>.

persons.⁵ According to Title VI, the key to providing meaningful access to benefits and services for LEP persons is to ensure that the language assistance provided results in accurate and effective communication between the provider and LEP beneficiary regarding the beneficiary's circumstances and the types of services and/or benefits available to the beneficiary. In addition to the requirements of Title VI, the Centers for Medicare and Medicaid Services (CMS) requires that Medicare Part D plan call centers provide services to callers of any language and that plan written materials be available in translated languages in certain situations.⁶

Note: Pharmacies and other medical institutions receiving federal financial assistance are also required to comply with Title VI's language assistance provisions. However that arena, including the responsibility of a Part D plan to provide oversight of or require compliance by contracted pharmacies, is outside the scope of this document. For more information about pharmacies and language access, see the National Health Law Project's forthcoming issue brief, Should Pharmacies and Pharmacists Provide Language Services for People with Limited English Proficiency?, which will be available online at www.healthlaw.org.

Current Gaps in Services

Unfortunately, it appears that plans generally are not meeting these requirements. A "secret shopper" survey by the California Medicare Part D Language Access Coalition conducted in the Fall of 2006 ("LEP survey") revealed that plan call centers are not regularly able to serve LEP beneficiaries.⁷ The results of the study indicated that sponsors of benchmark plans in California are only able to serve limited English proficient dual eligible beneficiaries in their primary language 54.7% of the time. Excluding data for Spanish speakers shows that non-Spanish speaking LEP beneficiaries have even less success communicating with their plans. Plan sponsors are only able to serve non-Spanish speaking LEP dual eligible beneficiaries in their primary language 36.6% of the time. The study revealed that call centers were ill equipped to identify LEP callers, to recognize the language spoken and to provide quality, accurate information to those callers. The study also found that when LEP callers requested written materials in translated languages, such materials were not provided.

⁵ 42 U.S.C. § 2000d, 45 CFR § 80.3, 68 Fed. Reg. 47313.

⁶ Centers for Medicare and Medicaid Services, "Medicare Marketing Guidelines for MA, MA-PDs, PDPs and 1876 Cost Plans," at 115; *see also* Addendum 2, Customer Service Call Center Requirements, available at <http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf> The Prescription Drug Plan Call Letter defines the obligations and requirements of plans participating in Part D and reiterates this requirement. *See* "Instructions for 2007 Contract Year," April 3, 2006 at <http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/2007PDPCallLetter.pdf>.

⁷ Scalia, Kendra N., "Medicare Prescription Drug Plans Fail LEP Beneficiaries," available at: http://www.nscle.org/areas/medicare-part-d/area_folder.2006-09-28.5758698482/area_folder.2006-10-18.4955802464/article.2007-02-27.2718724527/at_download/attachment.

The Best Practices Guide

In light of these failures, this Best Practices Guide provides ideas and guidance to plans on how best to meet their obligations to LEP beneficiaries. The Best Practices found in this guide are drawn from the experience of advocates and beneficiaries, the practices of health plans operating under Medicaid and the State Children's Health Insurance Program ("SCHIP"), and the guidance issued by the Office for Civil Rights ("OCR") of the U.S Department of Health and Human Services ("DHHS") for all federal fund recipients ("OCR LEP Guidance").⁸

BEST PRACTICES

The OCR Guidance serves as a starting point for addressing language access issues. According to the OCR guidance each organization receiving federal funds should: 1) develop and maintain a periodically updated written plan on language assistance for LEP persons; 2) assess and identify LEP individuals who need language assistance; 3) determine the language assistance measures the plan will employ to serve these individuals; 4) train staff on these measures; 5) provide notice to LEP persons, and 6) monitor and update the LEP plan.⁹ This discussion will follow the outline established by the OCR guidelines and provide recommendations for how Part D plans can best implement the guidance.

1. Develop a Plan

It is essential that each Part D sponsor develop and maintain a detailed, written language access plan setting forth the organization's commitment to serving LEP individuals and the policies, practices and procedures it has designed to fulfill that commitment. The plan, which should be updated periodically, will be used by plan employees who serve or interact with LEP beneficiaries to ensure the provision of timely and reasonable language assistance services. Effective language assistance plans set clear and meaningful goals and establish management accountability while providing opportunities for community input, planning and evaluation.

A comprehensive, successful plan will:

- State clearly the organization's commitment to serving LEP beneficiaries, recognizing the regulatory, legal and market forces which require this service.

⁸ "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 68 Fed. Reg. 47311, 47313. The most recent OCR LEP Guidance was issued on August 8, 2003 (68 Fed. Reg. 47311-23.) This revised version reflects DHHS' consideration of the Department of Justice's LEP Guidance (67 Fed. Reg. 41455 (June 18, 2002)). Our recommendations have been taken from the various versions of the OCR LEP Guidances, since OCR has explained that the latest final revised guidance does not significantly alter its earlier interpretations of Title VI. OCR has also identified itself as a resource to federal fund recipients striving to comply with their obligation under Title VI.

OCR can help identify best practices and successful strategies used by other federal fund recipients, and point providers to other resources, *see* <http://www.lep.gov>.

⁹ *Id.* at 47319-21.

- Provide detailed policies and procedures explaining how services will be provided, how staff will be trained to provide those services and how the performance will be evaluated.
- Assign responsibility for overseeing, monitoring and evaluating the implementation of the plan to a primary department, headed by a staff member with sufficient experience and authority to resolve any problems or compliance issues.
- Be available to the public.
- Include all of the elements described in Sections 2 – 5, below.¹⁰

2. Assess and Identify the Needs of the Population and the Organization’s Current Ability to Meet Those Needs

There are two levels of assessment and identification that a plan should undertake. The first is assessment and identification of the language needs of the population to be served. The second is assessment of the plan’s current ability to serve that population.

Assessing and Identifying the Language Needs of the Population Served

Any plan for serving LEP individuals must include an ongoing assessment of the community served by the organization (including both potential and current enrollees). Only by assessing the needs of the LEP persons with whom it may come into contact will the plan be able to determine the number and proportion of LEP individuals eligible to be served and the types of service required. The assessment should identify both the languages spoken by beneficiaries and the ways in which beneficiaries are likely to come in contact with the plan.¹¹

Organizations should develop a plan for collecting, on an ongoing basis, demographic and language data of the communities in which the organization operates and markets its services. As the OCR LEP Guidance explains, the plan’s assessment should include both LEP populations it has prior experience with as well as those populations it may have underserved in the past due to existing language barriers.¹² As a result, plans should look to both internal and external data sources when conducting the assessment.

¹⁰ For additional resources on creating a plan, see U.S. Department of Health and Human Services, Office of Minority Health, National Standards on Culturally and Linguistically Appropriate Services (CLAS), March 2001, available at <http://www.omhrc.gov/assets/pdf/checked/finalreport.pdf>. (The mandates and recommendations described under Standards 4-7 of the OMH CLAS Standards reflect the requirements pursuant to Title VI.) *See also* The Commonwealth Fund, Providing Language Services in Small Health Care Provider Settings: Examples from the Field, April 2005, available at, http://www.cmwf.org/usr_doc/810_Youdelman_providing_language_services.pdf.

¹¹ Plans may be able to adapt self-assessment plans developed for health care providers. *See, e.g.*, n. 7, *supra* (referring to the OCR website at <http://www.lep.gov>) and Anderson, Charles, Linguistically Appropriate Access and Services: An Evaluation and Review of Healthcare Organizations, available at http://ncihc.org/NCIHC_PDF/LinguisticallyAppropriateAccessandServicesAnEvaluationandReviewforHealthcareOrganizations.pdf.

¹² OCR LEP Guidance at 47314.

Assessing Language Needs of Current Members

There are a number of best practices plans can employ to assess the language needs of members:¹³

- Enrollment forms could contain fields for primary written language and primary spoken language, as well as fields for collecting information on the need for alternative formats, such as need for large print materials, audio materials and/or Braille.
- Outbound welcome calls to members could collect language preference data. The organization could collect member's language needs/preferences via outbound welcome calls to members.
- Work with pharmacies. Pharmacies in the plan network may have information about the language needs of particular plan members. Pharmacy usage may also provide helpful, more general information about the language needs of members. For example, members who visit providers that are geared towards serving particular ethnic communities may be more likely to be LEP.

Any information the organization collects about individual members should be used to better serve the language needs of those individuals and to better understand the language needs of its membership as a whole. In order to ensure that the information can be used to better serve the individual, organizations' member records must be capable of retaining, recording and updating (in the case of errors or changing proficiencies) the language (written and spoken) and ethnicity information of members.

Assessing Language Needs of the Target Population

In order to assess the needs of beneficiaries the plan is not yet serving, but who are eligible for its services, the plan sponsor will also need to collect data from a variety of external sources. Helpful sources of information include:

- Census data for the area served.
- Data from federal agencies, including CMS and the Social Security Administration.
- Data from state and local governments (for example, the California Department of Health Care Services is required to collect language data for its Medi-Cal recipients).
- Community-based organizations (CBOs), religious organizations and legal aid offices and others can be particularly helpful in identifying communities that have traditionally been underserved due to existing language barriers and that could benefit from the plan's products if language services were provided.¹⁴ Plans should collaborate with community-based organizations by, for example, working with CBOs to conduct community assessments.

¹³ The American Hospital Association's Health Research and Educational Trust recently released an updated toolkit for health plans and providers to use in collecting race, ethnicity and primary language information, available online at <http://www.hretdisparities.org/>.

¹⁴ OCR LEP Guidance at 47314.

Assessing Interaction Between Plans and Beneficiaries

The needs assessment should look not only at the languages spoken in the communities served, but also at the ways the communities need to interact with the plan. Part D plans typically interact with Medicare beneficiaries in four ways: 1) over the telephone via customer service call centers; 2) in writing via various marketing and enrollment materials; 3) on the internet via a plan website and 4) in person via sales and marketing agents and brokers. If organizations interact with beneficiaries in any other ways, those should be included in the assessment.

Assessing the Organization's Current Ability to Meet LEP Needs

The plan should conduct a thorough internal assessment of its systems and capability to provide services appropriate to the demographics of its membership. Identifying already existing resources, such as bilingual staff¹⁵, as well as obvious service gaps will allow the organization to plan and direct its resources appropriately. After any initial assessment, future assessments should be conducted regularly, no less frequently than on an annual basis (see Section 6 below).¹⁶

3. Determine the Language Assistance Measures the Plan Will Employ to Serve LEP Individuals

The language assistance plan must include written details about language access service delivery mechanisms. As mentioned above, Part D plans typically interact with Medicare beneficiaries in four ways: 1) over the telephone via customer service call centers; 2) in writing via various marketing and enrollment materials; 3) on the internet via a plan website and 4) in person via sales and marketing agents and brokers. The organization's language access plan must include specific details describing how language assistance services will be delivered in each of these settings.

Call Centers

CMS requires that the call centers of Part D plans serve LEP callers. In order to provide this service, customer service representative must be able to 1) identify an LEP individual, 2) identify the individual's primary language and 3) provide that individual with language appropriate services.

¹⁵ However, it is important to note that a plan should undertake an evaluation of a person's bilingual ability prior to relying on them to provide services in a non-English language. Self-identification as bilingual is insufficient to determine if a person has the appropriate knowledge of both English and the target language as well as the specialized medical terminology likely needed to communicate regarding a Part D plan. Also, many individuals who are bilingual do not have the necessary skills to serve as interpreters (without additional training regarding, for example, medical terminology, HIPAA, ethics and the role of an interpreter).

¹⁶ The California Endowment has compiled a variety of resources to assist organizations seeking to assess and improve their ability to provide language services. See www.calendow.org/Collection_Publications.aspx?coll_id=22&ItemID=312

Identifying an LEP individual

The LEP survey identified instances in which Customer Service Representatives (CSRs) were unable to recognize that a caller was LEP. In order to provide services to LEP beneficiaries, CSRs must be trained to identify callers who are LEP. This includes identifying individuals who call requesting services in another language (i.e., repeating the name of a country or language), those who try their best to communicate in English but would likely be more comfortable in another language and those for whom an English speaking family member or friend is calling.

Best practices organizations can utilize for identifying LEP individuals include:

- Training CSRs to be prepared for potential LEP callers will help them recognize LEP speakers (see below). If a CSR is unable to identify a client's language, the CSR should be able to utilize another CSR or a telephone language company to assist.
- Once an organization has identified key languages via a community assessment, it can create an automated phone system, which would help identify these callers. For example, if Mandarin was identified as a key language, the call center's automated answer system could include a prompt for Mandarin. If the prompt is followed, the caller would be sent directly to a Mandarin speaking employee/interpreter. If this is not possible, the prompt could appear as an indication to the CSR who answers the call that the individual is a Mandarin speaker.
- Individual-specific data the organization has collected could also help identify the caller as LEP. Many plan call centers have caller ID systems, which automatically display an enrollee's record as the call is received. If organizations collect information about language preference in enrollment forms and previous calls, this information can be loaded into the caller ID system and displayed as the CSR receives the call.
- If a caller who is LEP is having trouble communicating with the CSR, the CSR should notify the caller that free language assistance services are available and ask whether the individual would like to utilize these services. If the individual does not understand the question, the CSR should identify the caller's primary language (see below) and provide services in that language (see below).
- If an individual indicates that he or she is calling on behalf of a beneficiary who is LEP, the CSR should notify the caller that free language assistance services are available and ask the caller whether the beneficiary would like to utilize these services.

Identifying the language of an LEP individual

The LEP survey also identified instances in which CSR's identified callers as LEP, but could not identify correctly the language spoken. CSRs should be provided a variety of tools to help them identify the language of the caller.

Two of the strategies above (automated prompts for key languages and utilizing data collected in earlier contacts) can be used to identify the language of the caller. Additional best practices for identifying the language of a LEP caller include:

- Providing CSRs with a list of languages and the countries in which they are spoken. The list serves as a valuable tool for identifying the language of a caller who can pronounce the English name of a language or country.
- Contracting with interpretation services that include language identification as part of their service. CSRs must be trained on connecting to these services.
- Once the caller's language has been identified, it should be noted in that caller's record so that the identification step can be skipped in subsequent communication.

The organization should also take steps to share language information it has about individuals with pharmacies in its network. Organizations could directly inform the pharmacies utilized by the beneficiary of the beneficiary's unique language needs. Alternatively, the plan could include the primary oral and written language of the beneficiary on the membership card so that when he or she brings the card to the pharmacy, the language needs of the beneficiary will be clear.

Providing language appropriate services to an LEP individual.

The organization must have a strategy for providing language appropriate services once the caller's language has been identified. Generally the organization has two options for providing services: bilingual CSRs or third-party interpreters.¹⁷ Third party interpreters may either be in-house employees or contracted interpreters. Different options may be utilized for different languages. Whether using internal or external interpreters, organizations should be prepared to provide language appropriate services in any language any time the plan call center is open.

Use of Bilingual CSRs. The preferred method of serving LEP beneficiaries is to employ bilingual CSRs. Bilingual staff can provide direct, one-on-one communication with members. This option may not be realistically attainable for all languages, but should be considered a priority for key languages.

It is of the utmost importance that customer service staff utilized for this purpose be determined to be "qualified" through a formalized assessment prior to communicating with callers. This "qualified" staff should be regularly monitored and evaluated throughout their time in this role (See Section 4 below for a discussion of the requirements for "qualified" bilingual staff).

Third-Party Interpreters. While organizations are urged to develop their own staff of interpreters and bilingual CSRs, most will find it necessary to contract with a telephone

¹⁷ The organization may also consider establishing separate lines or contact numbers for key languages. These lines would allow callers to link directly to someone speaking their language. However, dedicated language lines must not be the only point of entry for LEP callers. The main customer service line must still be equipped to identify and serve LEP callers. Furthermore, a specialized line must have strategies in place for serving callers who are not proficient in the language of the operators answering the calls.

interpreter services in order to cover the full range of languages needed.¹⁸ Organizations have an obligation to ensure that third-party contractors guarantee that all such interpreters are trained and “qualified” with demonstrated linguistic proficiency and knowledge of health systems and Part D terminology (see Section 4). In addition, plans must ensure that CSRs are trained on how to connect to and work with interpreters (see Section 4).

Use of In-House Interpreters. In some cases, plans may have in-house staff (in positions other than that of CSR) available to interpret for CSRs in particular languages. In this instance, it is important that this staff meet the same standards that in-house CSRs and third-party interpreters must meet.

Written Materials

A successful language access plan will also take into account the translation needs of the LEP beneficiaries. The Medicare Part D program is extremely complicated. As a result, many beneficiaries rely on written materials to fully understand their rights and benefits in a particular plan. Beyond providing language appropriate services at call centers, organizations should develop strategies for providing written materials to both current and potential enrollees in their primary language.

In order to provide language appropriate written materials, plans should:

- Identify vital documents that need to be translated.¹⁹ Many of the materials prescription drug plans share with members or potential members (enrollment forms, the Evidence of Coverage, the Annual Notice of Change, the Explanation of Benefits, premium statements and more) are critical documents since they describe the benefits to which enrollees are entitled. It is extremely important that beneficiaries receive this information in languages they understand.
- Identify the languages into which documents need to be translated. Per the ‘safe harbor’ provision of the OCR Guidelines, plans should translate documents for any LEP language group that constitutes 5% of those in the potential service pool or 1,000 beneficiaries (whichever is less).²⁰
- Notify beneficiaries of the availability of translated written materials (see Section 5).

¹⁸ The California Endowment has created a helpful guide for providers looking to contract with third party interpretive services. Roat, Cynthia “How to Choose and Use a Language Agency: A Guide for Health and Social Service Providers Who Wish to Contract with Language Agencies.” available online at www.calendow.org/Collection_Publications.aspx?coll_id=22&ItemID=312#

¹⁹ OCR LEP Guidance at 47318. The Guidance explains that the recipient should create a plan to determine if a document is “vital,” which depends on the importance of the program, information, encounter, or service, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. *Id.* Examples of vital written materials include: agent authorization forms, complaint forms, written notices of eligibility criteria, rights, denial, loss or decreases in benefits or services, notices advising LEP persons of free language assistance, applications to participate in the recipient’s program, or to receive benefits or services, and vital information contained in large documents.

Id.

²⁰ *Id.*

- Provide translated documents to beneficiaries. Organizations should have a process for providing the language appropriate version of the document when the language preference of the beneficiary is known and the document is available in that language. A process should also be established to ensure that beneficiaries who call to request a document in a particular language will receive it.
- Prepare to provide oral translations via call centers for documents that have not been translated into the language of the caller. Documents that have not been translated should include a translated notice, placed prominently on the first page of the document in multiple languages, regarding the availability of oral translation via the call center.

Similar to the requirement to use “qualified” interpreters, translators employed by the organization should also be required to be “qualified” translators.

Website

As organizations and beneficiaries alike rely more and more on the internet for distributing and finding information, it is important that organizations have a strategy for serving LEP beneficiaries accessing their website. While it may not be practical to run full versions of the site in multiple languages, organizations should consider doing so in key languages such as Spanish, using “qualified” translators (See Section 4). Condensed versions of the site which provide basic information and contact numbers should be created in a variety of languages.

In Person Sales and Marketing

Plans also communicate with beneficiaries in person at sales and marketing events. It is important that sales and marketing staff, agents and brokers who communicate with beneficiaries directly receive clear guidance on communicating with beneficiaries in a language the beneficiaries understand. Numerous stories have been reported in the press of LEP beneficiaries signing up for plans they did not understand because the sales presentations (as well as the enrollment forms and other written materials describing the plan) were not in a language the beneficiaries understood.

As with the call centers, plans can assure language appropriate service during in person interaction with beneficiaries by using either qualified bilingual staff or “qualified” interpreters. Using community members, friends or family to interpret sales or marketing presentations is not appropriate. Untrained interpreters are not likely to understand the complexities of the information presented and are likely to inaccurately rephrase or simplify important principles. Any translated materials created by agents for presentations should be carefully reviewed by trained, “qualified” translators for accuracy before distribution.

4 . Train Staff and Contractors

A language access plan should include plans for ongoing cultural and language competence training for the organization's entire staff and any contractors. Through the training, staff should be made aware of the importance of LEP beneficiaries and communities, and the organization's commitment to serving them. While all staff members should receive basic training, staff members and contractors who deal directly with individuals should receive more detailed training (see below).

Training for All Staff

All staff should be required to master basic strategies for communicating competently with culturally and linguistically diverse communities. Even staff with little or no contact with LEP persons should be aware of the organization's language access plan and know how to access language assistance services. Management staff, even if they do not regularly interact with LEP persons, should be fully aware of and understand the language access plan so they can reinforce its importance and ensure its implementation by the staff.²¹

The training should be part of the orientation for new employees and conducted on a periodic basis (at least yearly) to remind staff about the language access plan and inform them of any changes to the plan. Given high turnover rates, the organization may find it useful to maintain a training registry that records the names and dates of employees' training. By keeping records of those trained, it will be easier for the organization to keep track of those employees requiring updated training.

Training for "Qualified" Customer Service Representatives

Although the organization may have a comprehensive LEP plan on paper, there is often a significant gap between the written policies and procedures and the actual practices of frontline staff interacting with LEP persons. Front line staff are often unaware of the policies or do not know how to, or, for some other reason, fail to, provide available language assistance services.

For example, all of the plans surveyed in the LEP survey were able to connect callers to a contracted interpreter at least once. There were, however, many more occasions in which callers were not successfully connected to an interpreter. The fact that some connections were made reveals that the problem is not a lack of contracts with interpreters. Instead, the problem appears to be that frontline staff did not know about the availability of these interpreters or did not know how to use them.

It is essential that all CSRs be properly and effectively trained on their obligation to provide meaningful access to information and services for LEP persons, the organization's policies and procedures for providing these services and how to work effectively with interpreters.²²

²¹ *Id.*

²² *Id.* at 47320

Specifically, the training for CSRs should include the following key components:

- CSRs should be trained on dealing with LEP callers in a culturally sensitive manner.
- CSRs should next be trained to utilize strategies identified by the organization for identifying the callers' language and connecting the caller to someone who speaks their language.
- If the organization elects to utilize third party interpreters to serve LEP callers, the CSRs must also be trained in basic techniques, principles and standards of interpreter-facilitated communication.
 - For example, CSRs must be trained in basic interpretation principles, e.g., speaking as if speaking directly to the caller and refraining from engaging in any un-interpreted communication with the interpreter.²³
 - In addition, to facilitate connection to an interpreter, CSRs should be trained to say "please hold" in at least the key languages served by the plan. A simple "cheat sheet" which CSRs could easily reference could provide a phonetic spelling of the phrase in multiple languages. It is important that LEP individuals not simply be placed on hold. If they are not told they are being put on hold, they may think they have been hung up on and abandon the call.

Bilingual CSRs who will be providing direct assistance in languages other than English must receive additional assessment and training to ensure that they are "qualified" CSRs and are prepared to provide service in those languages. As the OCR LEP Guidance points out, "competency requires more than self-identification as bilingual."²⁴

"Qualified" bilingual CSRs should be assessed and trained to ensure:

- Linguistic and cultural proficiency. Bilingual CSR must be fluent in the languages in which they will provide direct, non-interpreter aided services and must be culturally competent.
- Health systems literacy. Bilingual CSRs should also be required to demonstrate health systems literacy and knowledge of relevant medical terminology in any language in which they will provide services.
- Customer service. Bilingual CSRs should receive the same customer service training that other CSRs receive.

"Qualified" Interpreters and Translators

The LEP survey indicated that many of the interpreters used by plans are not trained in basic interpreter standards that have been developed for health care interpreting. For example, some interpreters engaged in un-interpreted side conversations with CSRs.

²³ For resources on effectively working with interpreters see, the Health Industry Collaboration Effort, Cultural and Linguistic Workgroup, *Better Communication, Better Care: Provider Tools to Care for Diverse Population*, October 2005, available at, http://www.westernhealth.com/providers/downloads/ICE_C_L_Provider_Tool_Kit.pdf.

²⁴ *Id.* at 47316.

Others failed to interpret accurately between parties because they were not familiar with health care systems terminology and concepts such as ‘co-payment,’ ‘premium’ and ‘formulary.’ The report also indicated that callers were treated in a manner that was rude and condescending.

If the organization decides to rely on interpreters to provide language assistance services, it should assess and provide training to its interpreters to ensure that they are “qualified.” “Qualified” interpreters will demonstrate linguistic proficiency (interpreters must be fluent in any language they are working in), cultural competency, health systems literacy (interpreters must be familiar with Medicare Part D terminology and concepts such as ‘co-payment,’ ‘premium’ and ‘formulary’) and an understanding of and compliance with established ethics, HIPAA, and standards of interpretation.²⁵

If the organization contracts with an outside agency to provide interpreters, the organization must take steps to guarantee that the interpreters provided by the agency meet these standards. If the organization relies on bilingual staff members to interpret or translate for other staff members, bilingual staff members must receive the same training and be held to the same standard as contracted interpreters. Translators the organization relies on must also meet the same standards of fluency, knowledge of specialized terms and confidentiality and impartiality.

Network Provider Training

Training opportunities should also be made available for the organization’s provider network, including pharmacy providers, on a periodic basis, including those who use bilingual staff or contracted interpreters. Such training should include an overview of Title VI requirements for language access, as well as cultural and linguistic competency training.

5. Notify Beneficiaries of the Availability of Services and Receive Feedback

An effective language access plan should include a process for providing notice to LEP communities of the availability of language services, including bilingual staff, interpreter services and translated materials.²⁶ Once an organization has developed strategies for serving LEP individuals, it must ensure that its target population is aware of these services. If the LEP beneficiary does not know about the language assistance services available, he or she is not likely to utilize them.

²⁵ For a resource on hiring qualified interpreters see National Council on Interpreting in Health Care, *Guide to Initial Assessment of Interpreter Qualifications*, April 2001, available at, http://www.ncihc.org/NCIHC_PDF/InitialAssessmentofInterpreterfinalversionMay2001.pdf. See also OCR LEP Guidance at 47316

²⁶ OCR LEP Guidance at 47320.

Current enrollees should be notified in writing of the availability of language appropriate services from the organization. Organizations have many options for providing written notice. For example, organizations may:

- Provide as part of the plan's welcome packet a separate notice regarding the availability of language access services (e.g. a one page sheet announcing language services in a variety of languages placed on top of the welcome packet);
- Include a separate notice with all plan materials sent to enrollees (e.g. including the notice described above with plan newsletters, the Explanation of Benefits, the Annual Notice of Change and other plan materials);
- Include "tag lines" on all plan materials – one sentence at the top of the document in the plan's most common languages that states the notice/document is available in other languages and/or may be orally translated by the call center; and/or
- Incorporate the notice directly into the text of plan materials (e.g. by placing a statement in the first page of the Annual Notice of Change)

The notices should be in multiple languages and should be prominently displayed in the mailing or document. Any information necessary for actually accessing the services, such as a special toll-free number to call, should be included in the notices.

The organization should also publicize the availability of services to the broader community of potential enrollees. Methods for publicizing the availability of language assistance services include:

- Adding statements about the availability of the services to the front of outreach materials,
- Working with community-based agencies and other stakeholders;
- Providing notices to or placing advertisements in local ethnic newspapers and radio and television stations serving LEP populations;
- Conducting presentations and/or notices at senior centers, religious organizations, or other places where potential beneficiaries may be;²⁷ and
- Posting notices at network pharmacies.

Any publicizing should occur in the language of the intended audience and, as mentioned above, include any information necessary for actually accessing the services.

In addition to notifying beneficiaries and potential beneficiaries of the availability of language services, the organization should create mechanisms to regularly solicit and receive feedback from LEP individuals about the quality of language services provided. This feedback will provide essential information to assist with the processes in Section 6, below.

²⁷ *Id.*

6. Monitor and Update the LEP Plan

The organization should evaluate whether it is meeting its commitment to serve LEP callers on an ongoing basis, and conduct regular oversight of the language access plan to ensure that LEP persons have meaningful access to the benefits and services provided by the organization.

In reviewing its language access plan, the plan should consider changes in the needs of the population it serves and changes in its ability to meet those needs. When re-evaluating the language needs of the population, the organization should consider changes in:

- The language spoken by the population eligible for its services (e.g., new languages being spoken in the service area, a growth in the number of individuals speaking a particular language, etc.);
- The type or frequency of encounters between the plans and the LEP language group; and
- The type of materials that need to be made available to LEP beneficiaries.

When evaluating its ability to continue to meet the needs of the LEP population, the organization should examine:

- Whether existing assistance provided by the organization is meeting the needs of LEP persons;
- Whether organization staff know and understand the language access plan and how to implement it;
- Whether identified sources for assistance are available and functioning properly; and
- Whether there are any new resources available, including new technologies which may help plans improve service to LEP beneficiaries.²⁸

The plans evaluation can be accomplished through various mechanisms, including:

- Conducting staff and member satisfaction surveys;
- Seeking feedback from beneficiaries, advocates, and the community (see Section 5, above);
- Monitoring and reporting of complaints/grievances and resolution of complaints/grievances; and
- Periodically auditing Call Centers and network providers (e.g., by conducting “secret shopper surveys,” similar to what was done in the LEP survey conducted by California Medicare Part D Language Access Coalition).

While monitoring of the language access plan should be ongoing, a comprehensive evaluation and update of the plan need only occur once annually. The office in charge of

²⁸ *Id.* at 47321.

creating and monitoring the language access plan is likely also best suited to lead the effort to update the plan.

CONCLUSION

The Medicare Part D benefit, whether delivered by a PDP or an MA-PD, is a complex program that becomes all the more difficult to navigate for beneficiaries who cannot get information in a language they understand. As CMS has reminded beneficiaries, pharmacists, plans and other partners time and time again, plans are in the best position to supply information about the benefits they provide. It is essential, therefore, that these plans make a commitment to providing this information in a format which Medicare beneficiaries with limited English proficiency can understand.

This best practice guide was developed collaboratively by the California Medicare Part D Language Access Coalition, the National Senior Citizens Law Center and the National Health Law Program at the request of the Centers for Medicare and Medicaid Services (CMS). In early 2007, the Language Access Coalition produced a report entitled “Medicare Prescription Drug plans Fail Limited English Proficient Beneficiaries,” available at http://www.nsclc.org/areas/medicare-part-d/area_folder.2006-09-28.5758698482/area_folder.2006-10-18.4955802464/. The report, which demonstrates that Part D plan call centers fail to adequately provide language appropriate services to Limited English Proficient (LEP) beneficiaries, was shared with CMS in the spring of 2007. CMS staff asked the California Medicare Part D Language Access Coalition to provide recommended best practices for plans to better serve LEP beneficiaries. The Coalition applauds CMS for its willingness to improve services to LEP beneficiaries and thanks the agency for providing us the opportunity to offer recommendations.

The California Medicare Part D Language Access Coalition is a broad group of advocates in legal and community based organizations serving Limited English Proficient (LEP) and low-income communities in California. Kevin Prindiville of the National Senior Citizens Law Center is the primary author of this document, but was assisted by many members of the Coalition. Special thanks to Doreena Wong and Mara Youdelman (National Health Law Program), Jayne Burkman (Health Rights Hotline), Jennifer Cho (L.A. Care Health Plan), Irene Dokko (Korean Resource Center) and Yvonne Lee (Asian Pacific Islander American Health Forum) for their contributions to this document.