


GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health Care Finance



DHCF Transmittal No. #14-35

Office of the Senior Deputy Director

TO: Home Health Agencies and EPD Waiver Providers

FROM: Claudia Schlosberg, JD 
Acting State Medicaid Director/ Senior Deputy Director

DATE: December 22, 2014

**SUBJECT: Language Access for Persons with Limited English Proficiency
receiving Medicaid funded services through Home Health Agencies**

Over the past few months, the Department of Health Care Finance (DHCF) has received a number of complaints from beneficiaries and advocates that Medicaid enrolled Home Health Agencies (HHAs) and EPD Waiver Case Management providers are refusing to provide services to Medicaid beneficiaries who speak Spanish and other non-English languages. The purpose of this transmittal is to remind HHAs of their legal obligations under Federal and District laws to take reasonable steps to provide individuals with Limited English Proficiency (LEP) with meaningful access to their services. The failure to provide meaningful access to Medicaid funded services may result in the termination of their provider agreement and prosecution under the D.C. Human Rights Act.

Background

As a recipient of federal funds through the Medicaid program, HHAs and EPD Waiver providers are required to comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d. This obligation is included in DHCF's provider agreement. Specifically, Section I.E. of the General Provisions states that a Medicaid provider agrees:

To comply with any amendments thereto and the rules and regulations there under including, but not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, 42 CFR Parts 80, 84 and 90, and the Americans with Disabilities Act, Pub. L. No. 101-336.

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on "race, color, or national origin." The prohibition against discrimination based upon national origin requires

that Medicaid providers take reasonable steps to provide LEP individuals with meaningful opportunity to participate in their programs and services. LEP individuals are individuals who do not speak English as their primary language and who have a limited ability to read, write, speak or understand English.

What must Home Health Agencies and EPD Waiver Providers do to Comply with the Law?

Providers have flexibility to determine how they will fulfill their obligations to take reasonable steps to ensure meaningful access for LEP persons. For example, some staffing agencies specialize in providing personal care aides and other health care personnel who speak Spanish and other non-English languages. An HHA might consider contracting with such a staffing agency to meet the needs of LEP persons. Alternatively, considering the nature of the relationship between customers and their personal care aides and case managers, it may be cost effective for HHAs and Case Management agencies to hire personal care aides and case managers who are bilingual in cases where the beneficiary does not speak English. In some situations, providing meaningful access might include referring the recipient to another service provider agency that is able to meet the particular language needs of the recipient. DHCF, however, would expect that such a referral would be made only to an agency with known capacity to accept and serve the LEP individual and only with the LEP individual's consent. It is never reasonable simply to refuse to serve individuals who are LEP and doing so not only may violate Title VI, but it also may violate the D.C. Human Rights Act that also bars discrimination based upon national origin.

The United State Department of Health and Human Services Office for Civil Rights (OCR), which enforces Title VI, has developed extensive guidance to help providers understand and comply with their obligations under the law. Among other things, the guidance directs providers to evaluate four factors to determine the type of oral and written language assistance that is needed and discusses the importance of ensuring that language assistance services are high quality and accurate. There is also extensive discussion of how to evaluate when translation of written documents is required. OCR encourages providers to document their evaluation and to develop written implementation plans and to monitor and update the plan as necessary. The OCR guidance, as well as other documents, is available at: <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/lep/index.html>.

Special Obligations for EPD Waiver Providers

While Federal guidance encourages Medicaid providers and other covered entities to develop a written self-assessment and compliance plan, providers participating in the District's Elderly & Persons with Disabilities (EPD) Waiver Program are required to do so. Specifically, the District's approved EPD Waiver states:

Each provider of Waiver services shall establish a plan to adequately provide services to non-English speaking participants. The provider shall identify the

necessary resources and individuals in order to implement the plan. Identification of necessary resources may include referring the recipient to another services provider agency or businesses with staff that is able to meet the particular language need of the recipient.

Accordingly, in order to ensure that EPD Waiver providers are in compliance with the terms of the District's waiver, DHCF is requiring that all EPD Waiver providers submit their current plan to DHCF Long Term Care Administration not later than **January 6, 2015**. Plans should be submitted to:

Ernestine Miles, Program Specialist
Department of Health Care Finance
Long Term Care Administration
441 4th Street NW Suite 900S
Washington D.C. 20001
Ernestine.Miles2@dc.gov
(202) 719-6604

Consequence of Non-compliance

At the Federal level, OCR investigates complaints alleging discrimination under Title VI. If an investigation results in a finding of non-compliance, OCR sends the provider a written notice that sets forth the areas of non-compliance and the steps that must be taken to correct noncompliance. If OCR is unable to secure voluntary compliance, OCR must, after providing notice and an opportunity for a hearing, terminate federal Medicaid funds. OCR may also refer the matter to the Department of Justice (DOJ) for injunctive relief or to pursue other enforcement actions.

DHCF also may take enforcement action that may include directing a plan of correction or terminating the Medicaid provider agreement.

It is essential that all District residents have equal access to health care services. Therefore, we strongly encourage all providers to undertake a self-assessment of their capacity to serve LEP individuals and to develop written compliance plans.

Thank you for your efforts to ensure that optimal, non-discriminatory services are provided to all District residents.

Questions regarding this transmittal should be directed to Yvonne Iscandari, Director, Long Term Care Administration at Yvonne.Iscandari2@DC.gov or by calling 202-442-5818.