



Connecticut Medical Assistance Program
Policy Transmittal 2016-45

Roderick L. Bremby, Commissioner

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Effective Date: July 18, 2016
Contact: Dr. Robert Zavoski @ 860-424-5583

TO: All Providers

RE: Interpreter Services for Individuals with Limited English Proficiency and Hearing Impairments

The purpose of this policy transmittal is to inform Connecticut Medical Assistance Program (CMAP) providers of their legal obligations to provide interpreter services for their patients and to notify providers of the Department's policy concerning interpreter services (including sign language interpreters). Over the past several years, the Department has offered some interpreter services to providers through its medical administrative services organization. The Department does not have funding for the provision of such services, however, and is no longer able to make these services available.

Summary

Longstanding federal and state laws require providers to offer appropriate interpreter services, as necessary to enable individuals with limited English proficiency (LEP) and individuals with hearing impairments to fully access health care services. Section 1557 of the Affordable Care Act established more specific requirements with respect to language access and interpreters. On July 18, 2016, federal regulations implementing section 1557 went into effect ("the 1557 regulations"). Other provisions of the 1557 regulations, such as requirements for providers to post notice of non-discrimination policies on their websites and in their offices, went into effect on October 16, 2016.

The 1557 regulations are not limited to LEP requirements; they broadly prohibit discrimination in impacted health care programs on the basis of race, color, national origin, sex, age, and disability. This policy

transmittal is not intended as a comprehensive summary of or guide to these regulations, which apply beyond CMAP. If they have not done so already, CMAP providers are encouraged to consult their professional associations and/or legal counsel on full compliance with these new regulations.

Discrimination in Health Care Programs

For several decades, Title VI of the federal Civil Rights Act has prohibited discrimination on the basis of national origin. In 2000 and again, in 2003, the federal Department of Health and Human Services (HHS) issued Title VI guidance to recipients of federal financial assistance. That guidance set forth the reasonable steps that providers must take to ensure that individuals with LEP have meaningful access to health care programs. The guidance provided some flexibility to providers in deciding what type of interpreter services were appropriate for their patients and afforded a number of options for how providers could meet the requirements to provide interpreters for patients.

In 2010, section 1557 of the federal Affordable Care Act added additional non-discrimination provisions to federal laws governing entities that receive federal financial assistance. Section 1557 supplemented, but did not supplant, existing federal laws that prohibit discrimination in federally funded health care programs, including Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and the Americans with Disability Act of 1990.

Also, the 1557 regulations do not supersede any additional or stricter state non-discrimination laws.

The 1557 regulations were published in the Federal Register on May 18, 2016 and are codified in 45 CFR Part 92. The full text of the regulations is available at: www.hhs.gov/civil-rights/for-individuals/section-1557. The regulations apply to recipients of federal financial participation as defined in the regulation (e.g., HHS grants, Medicare Parts A, C or D, Medicaid and CHIP (Children's Health Insurance Program)). Such recipients are deemed "covered entities" under the regulations. CMAP providers are "covered entities" and are subject to the 1557 regulations.

Individuals with Limited English Proficiency (LEP)

Under the 1557 regulations, a covered entity must take reasonable steps to provide meaningful access to their patients with LEP. Reasonable steps may include the provision of language assistance services, such as oral language assistance or written translations.

As covered entities, CMAP providers must make interpreter services available to all of the provider's patients, not just Medicaid members.

The LEP requirements reflect a widespread consensus that the use of untrained staff, including family members, friends and minors as interpreters raises safety risks and lessens the quality of patient care. Although those risks have been well-identified, a number of providers continue to use unqualified interpreters when qualified interpreters and translators are readily available in-person or remotely.

The regulations offer some flexibility to covered entities with respect to how they must meet the interpreter requirements. Also, a covered entity's compliance with the

LEP/meaningful access provision will be evaluated in a particular case, based on the nature and importance of the health service and the particular communication at issue and "other relevant factors," including whether a covered entity has prepared and implemented an effective written language access plan. 45 C.F.R § 92.201.

In addition to these federal obligations, state law requires acute care hospitals to "ensure the availability of interpreter services to patients whose primary language is spoken by a group comprising not less than five per cent of the population residing in the geographic area served by the hospital." Conn. Gen. Stat. § 19a-490i, as amended by P.A. 15-34.

Individuals with Hearing Impairments

Since 1991, The federal Americans with Disabilities Act has required providers to offer appropriate auxiliary aids and services (such as sign language interpreter services) as necessary for individuals with hearing impairments to access the providers' services. Section 1557 of the Affordable Care Act also requires covered entities to ensure that communications with individuals with hearing impairments are as effective as communications with other patients. The provider shall give primary consideration to the request of the individual in determining what aid or accommodation is appropriate. A covered entity is not required to take actions that would impose an undue financial and administrative burden. *See* 28 C.F.R. 35.160 through 35.164. Again these requirements apply to all of the provider's patients, not solely Medicaid members.

Providers' Responsibilities

The 1557 regulations set forth a number of requirements for the provision of LEP services. These include:

- A covered entity (including all CMAP providers) must offer a qualified

interpreter when oral interpretation is needed during a medical visit.

- Language services must be provided free of charge to patients and in a timely manner.
- A covered entity must follow certain quality standards in delivering language assistance services. For example, a covered entity may not:
 - Require an individual to provide his or her own interpreter.
 - Rely on a minor child to interpret, except in a life threatening emergency or other exigent circumstances.
 - Rely on interpreters that the individual prefers if this preference raises competency, confidentiality or other concerns.

Providers are further reminded that Medicaid payment constitutes payment in full. Providers are not allowed to seek any payment or reimbursement from Medicaid members for interpreter services. Regulations of Conn. State Agencies § 17b-262-526(2).

Enforcement

The HHS Office of Civil Rights (OCR) is responsible for enforcement of Section 1557. OCR will investigate complaints of alleged discrimination and if violations are found, a covered entity will be required to take corrective action and may be required to pay compensatory damages.

Resources Available to Providers

The 1557 regulations impose direct obligations on covered entities to provide interpreter services to their patients. CMAP,

through its administrative services organizations (ASOs), will provide technical assistance to help providers decide how to comply with the 1557 regulations, including how the provider decides to ensure that members can appropriately communicate with providers. Such technical assistance may include information about potential vendors/contractors of relevant services, such as video remote interpreting services, interpreting services, language lines, text telephones, and other aids and services that may help providers meet their obligations under the law.

For medical services (HUSKY Health), contact Community Health Network of Connecticut (CHNCT) at 1-800-440-5071 or send a secure e-mail by going to: www.huskyhealth.com, click on For Providers, then Contact Us.

For behavioral health services (Connecticut Behavioral Health Partnership or CT BHP), contact Beacon Health Options at 1-877-552-8247.

For dental services (Connecticut Dental Health Partnership or CT DHP), contact Benecare at 1-888-445-6665 or 1-866-420-2924

Distribution: This policy transmittal is being distributed to holders of the Connecticut Medical Assistance Program Provider Manual by Hewlett Packard Enterprise.

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