

Assister Tip Sheet: Dos and Don'ts for Providing Non-discriminatory, Culturally and Linguistically Appropriate Services, and Services Accessible for Consumers with Disabilities in Federally-facilitated and State Partnership Marketplaces

The policies governing the Marketplaces and assisters generally help ensure that Navigators, in-person assisters,ⁱ and certified application counselors (CACs) in Federally-facilitated Marketplaces (FFMs) and State Partnership Marketplaces (SPMs) do not discriminate against consumers seeking assistance. Additionally, Navigators and in-person assisters have a duty to ensure that services are provided in a culturally and linguistically appropriate manner, and to ensure that services are accessible for consumers with disabilities. CACs are encouraged, but not required, to provide language access for consumers, and are expected to provide appropriate referrals to another assister organization or to the Marketplace Call Center for consumers who need these services. CACs are required to ensure services are accessible for consumers with disabilities, although this duty may be satisfied through an appropriate referral.

Remember that as a Navigator, in-person assister, or CAC in an FFM or SPM (collectively referred to as “assisters” or “you” in this document), you generally must serve all consumers seeking assistance. If you or your organization cannot directly assist everyone who seeks help, due to limited time, staff, or resources, you should refer consumers you aren't able to assist to the Marketplace Call Center or another assister who is available, with the goal of helping consumers find help with minimum effort or disruption for the consumer.ⁱⁱ

This tip sheet provides, for each type of assister, details on these non-discrimination requirements, culturally and linguistically appropriate services standards, and language and disability access standards under the federal regulations governing the Marketplaces and assisters. It also advises assisters on how to comply with these requirements. Independent of these obligations, certain federal civil rights laws may also apply to assisters and consequently may require such assisters to provide language assistance services to consumers with limited English proficiency and auxiliary aids and services to persons with disabilities.ⁱⁱⁱ

Non-discrimination Standards

All assisters are prohibited from discriminating based on race, color, national origin, disability, age, sex, gender identity, or sexual orientation.^{iv}

- However, CAC organizations that receive federal funds to provide services to a specific population, such as a Ryan White HIV/AIDS program or an Indian health provider, may

limit their provision of certified application counselor services to that population, as long as they do not discriminate within that specific population. If CACs providing these limited services are approached by consumers outside of this specific population, they must refer these consumers to Marketplace-approved resources, such as Navigators, in-person assisters, or other CACs, who can provide assistance.^v

Finally, all assisters must also comply with any other applicable state or federal non-discrimination laws.^{vi}

Standards for Navigators and In-person Assisters

Navigators and In-person Assisters in FFM and SPMs: Providing Consumers with Culturally and Linguistically Appropriate Services

As a Navigator or an in-person assister in an FFM or SPM, you must provide services that are culturally and linguistically appropriate to the consumers you are helping, including consumers with limited English proficiency. This means that Navigators and in-person assisters in FFM and SPMs **must**:

1. Have a general understanding of the racial, ethnic, and cultural groups in your service area, including each group's cultural health beliefs and practices, preferred languages, health literacy, and other needs.^{vii}
2. Collect demographic information about the communities in your service area, such as the primary languages spoken, and keep this information up to date.^{viii}
3. Help consumers in their preferred language. Provide oral interpretation services and translation of written documents if it's necessary in order to communicate with the consumer effectively, or if the consumer requests it.
 - This help must be free of charge to the consumer.
 - A consumer's family or friends may provide oral interpretation for the consumer as an alternative to the Navigator or in-person assister providing translation services **only** if the consumer requests such family member or friends to interpret in lieu of oral interpretation services offered by the Navigator or in-person assister.^{ix}
4. When helping consumers who have limited English proficiency, give them oral and written notice in their preferred language of their right to receive translation and other language assistance services. Also give guidance on how to obtain these services.^x
5. Receive ongoing training on how to provide culturally and linguistically appropriate services.^{xi}
6. Take steps to recruit, support, and promote a staff who share demographic

characteristics with the communities you are serving, including hiring staff members who speak the primary languages spoken in your service area.^{xii}

Navigators and In-person Assisters: Assisting Consumers with Disabilities

As Navigators and in-person assisters in an FFM or SPM, you must do the following to ensure that consumers with disabilities have access to your services:

1. Ensure that consumer education materials, Web sites, and other consumer assistance tools are accessible to people with disabilities. This requirement extends to consumers with all types of disabilities, including visual or hearing impairments; mental illness or addiction; and physical, intellectual, or developmental disabilities.^{xiii}
2. Provide auxiliary aids and services for consumers with disabilities if these services are necessary in order to communicate with the consumer effectively, or if the consumer requests them.
 - This help must be free of charge to the consumer.
 - A consumer's family or friends may provide auxiliary aids and services for the consumer. This option can be used as an alternative to you providing these services **only** if the consumer requests it, and **only** if the consumer prefers this option to other services.^{xiv}
 - ✓ **TIP:** For consumers who are blind or have vision loss, we recommend that you have someone read aloud or provide information in large print, Braille, or electronically for use with a computer screen-reading program. Ask the individual what works for them.
 - ✓ **TIP:** For consumers who are deaf or have hearing loss, we recommend that you provide a sign language interpreter, written materials, or a note taker. Ask the individual what works for them.
 - ✓ **TIP:** To find a sign language interpreter near you, try searching the Registry of Interpreters for the Deaf at <http://www.rid.org/>. States also maintain their own lists of licensed and certified ASL interpreters.
3. Provide assistance in a location and a manner that is accessible to consumers with disabilities.^{xv}
 - ✓ **TIP:** If your location has stairs outside or inside, we recommend that you make sure it has other accessibility options such as ramps or elevators. Other accessibility considerations include: accessible parking, if parking is provided at your location, and availability of accessible restrooms nearby.

4. Allow authorized representatives to help consumers with disabilities make informed decisions.^{xvi}
5. Have enough knowledge about local, state, and federal long-term services and support programs so that you can refer consumers with disabilities to these programs when appropriate.^{xvii}
6. Be able to work with all individuals regardless of age, disability, or culture. Ask for advice or help from experts if you need to.^{xviii}

Standards for Certified Application Counselors

CACs **are** required to provide assistance that is accessible to individuals with disabilities. CACs can meet this requirement either by providing this assistance directly, or by making an appropriate referral to a local Navigator, in-person assister, or the Marketplace Call Center.^{xix} To be sure that the referral is appropriate, CACs should consider whether the assister to whom the consumer is referred is nearby and can be reached with minimal time and effort on the consumer's part, and whether the assister to whom the consumer is referred specializes in or is capable of providing the disability access services needed or requested by the consumer.

CACs **are not** required, but are encouraged, to provide translation and other language access services.

- CMS expects that if a CAC cannot assist a consumer with limited English proficiency, the CAC will refer the consumer to a local Navigator, in-person assister, or the Marketplace Call Center.
- Many organizations are required by federal, state, or local laws to provide accessible and appropriate services to the consumers they serve. Check with your organization if you are unsure of your responsibilities.^{xx}

Note: The examples above are not exhaustive. If you have specific questions, please contact the following:

- **Certified application counselors:** CACQuestions@cms.hhs.gov
- **Navigators:** Your Navigator grantee Project Officer or NavigatorGrants@cms.hhs.gov

ⁱ By “in-person assister,” we mean non-Navigator assistance personnel carrying out consumer assistance functions under §155.205(d) and (e) in a Federally-facilitated Marketplace (including a State Partnership Marketplace) and Non-Navigator Assistance Personnel funded through an Exchange Establishment Grant. “In-person assister” does not include an individual certified application counselor or his or her designated organization.

ⁱⁱ See 78 FR 42830 (“[W]hile Navigators and non-Navigator assistance personnel should have the ability to help any individual who presents him or herself for assistance, there may be some instances where a Navigator or non-Navigator assistance personnel lacks the immediate capacity to help an individual. In such cases, the Navigator or non-Navigator assistance personnel should be capable of providing assistance in a timely manner but must also refer consumers seeking assistance to other Exchange resources, such as the toll-free Exchange call center, or to another Navigator or non-Navigator assistance personnel in the same Exchange who might have better capacity to serve that individual more effectively. The same principle would apply to certified application counselor services.”) 78 FR 42839 (“While Navigators and non-Navigator assistance personnel are required to provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served, a referral may be the most appropriate method for complying with that requirement in some circumstances. For example, a Navigator or non-Navigator assistance personnel . . . may not have the resources to serve directly someone who speaks a language spoken by a specific individual within their service area and may need to refer the individual to another program. In such circumstances, the Navigator or non-Navigator assistance personnel should make reasonable efforts to make an appropriate referral for the consumer, with the goal of helping them find assistance with a minimum of effort and disruption.”).

ⁱⁱⁱ For instance, assisters who are recipients of federal financial assistance must comply with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin, and with Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability. See 42 U.S.C. § 2000d et seq. (Title VI statutory language); 45 C.F.R. Part 80 (HHS Title VI implementing regulation); 29 U.S.C. § 794 (Section 504 statutory language); 45 C.F.R. Parts 84-85 (HHS Section 504 implementing regulation). In addition, Section 1557 of the Affordable Care Act prohibits recipients of federal financial assistance and entities created under Title I of the ACA from discriminating on the basis of race, color, national origin, sex, age, or disability in any health program or activity. 42 U.S.C. § 18166. The HHS Office for Civil Rights enforces these laws. Visit <http://www.hhs.gov/ocr/office/index.html> for more information.

^{iv} 45 CFR 155.120(c)(1)(ii); 45 CFR 155.105(f).

^v 45 CFR 155.120(c)(1)(ii) and (2) (“an organization that receives Federal funds to provide services to a defined population under the terms of Federal legal authorities that participates in the certified application counselor program under §155.225 may limit its provision of certified application counselor services to the same defined population, but must comply with paragraph (c)(1)(ii) of this section with respect to the provision of certified application counselor services to that defined population. If the organization limits its provision of certified application counselor services pursuant to this exception, but is approached for certified application counselor services by an individual who is not included in the defined population that the organization serves, the organization must refer the individual to other Exchange-approved resources that can provide assistance. If the organization does not limit its provision of certified application counselor services pursuant to this exception, the organization must comply with paragraph (c)(1)(ii) of this section.”).

^{vi} 45 CFR 155.120(c)(1)(i).

^{vii} 45 CFR 155.215(c)(1) (“Develop and maintain general knowledge about the racial, ethnic, and cultural groups in their service area, including each group’s diverse cultural health beliefs and practices, preferred languages, health literacy, and other needs”).

^{viii} 45 CFR 155.215(c)(2) (“Collect and maintain updated information to help understand the composition of the communities in the service area, including the primary languages spoken”).



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- ^{ix} 45 CFR 155.215(c)(3) (“Provide consumers with information and assistance in the consumer's preferred language, at no cost to the consumer, including the provision of oral interpretation of non-English languages and the translation of written documents in non-English languages when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as oral interpreters can satisfy the requirement to provide linguistically appropriate services only when requested by the consumer as the preferred alternative to an offer of other interpretive services”).
- ^x 45 CFR 155.215(c)(4) (“Provide oral and written notice to consumers with limited English proficiency, in their preferred language, informing them of their right to receive language assistance services and how to obtain them”).
- ^{xi} 45 CFR 155.215(c)(5) (“Receive ongoing education and training in culturally and linguistically appropriate service delivery”).
- ^{xii} 45 CFR 155.215(c)(6) (“Implement strategies to recruit, support, and promote a staff that is representative of the demographic characteristics, including primary languages spoken, of the communities in their service area”).
- ^{xiii} 45 CFR 155.215(d)(1) (“Ensure that any consumer education materials, Web sites, or other tools utilized for consumer assistance purposes, are accessible to people with disabilities, including those with sensory impairments, such as visual or hearing impairments, and those with mental illness, addiction, and physical, intellectual, and developmental disabilities”).
- ^{xiv} 45 CFR 155.215(d)(2) (“Provide auxiliary aids and services for individuals with disabilities, at no cost, when necessary or when requested by the consumer to ensure effective communication. Use of a consumer's family or friends as interpreters can satisfy the requirement to provide auxiliary aids and services only when requested by the consumer as the preferred alternative to an offer of other auxiliary aids and services”).
- ^{xv} 45 CFR 155.215(d)(3) (“Provide assistance to consumers in a location and in a manner that is physically and otherwise accessible to individuals with disabilities”).
- ^{xvi} 45 CFR 155.215(d)(4) (“Ensure that authorized representatives are permitted to assist an individual with a disability to make informed decisions”).
- ^{xvii} 45 CFR 155.215(d)(5) (“Acquire sufficient knowledge to refer people with disabilities to local, state, and federal long-term services and supports programs when appropriate”).
- ^{xviii} 45 CFR 155.215(d)(6) (“Be able to work with all individuals regardless of age, disability, or culture, and seek advice or experts when needed”).
- ^{xix} 45 CFR 155.225(d)(5) (“Either directly or through an appropriate referral to a Navigator or non-Navigator assistance personnel authorized under §§ 155.205(d) and (e) or 155.210, or to the Exchange call center authorized under § 155.205(a), provides information in a manner that is accessible to individuals with disabilities, as defined by the Americans with Disabilities Act, as amended, 42 U.S.C. 12101 et seq. and section 504 of the Rehabilitation Act, as amended, 29 U.S.C. 794”).
- ^{xx} 78 FR 42824, 42847.
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