

DATE: March 30, 2016

SUBJECT: Guidance and Population Data for Exchanges, Qualified Health Plan Issuers, and Web-Brokers to Ensure Meaningful Access by Limited-English Proficient Speakers Under 45 CFR §155.205(c) and §156.250.

I. Background

The HHS Notice of Benefit and Payment Parameters for 2016 Final Rule (2016 Payment Notice) (80 FR 10750), among other things, amended language access requirements at 45 CFR § 155.205(c) for Exchanges, qualified health plan (QHP) issuers, and agents or brokers subject to § 155.220(c)(3)(i) (“web-brokers”). The 2016 Payment Notice also amended language access requirements at 45 CFR § 156.250 that apply to QHP issuers. The amended regulation at §155.205(c) also applies to the Basic Health Program (BHP), in accordance with BHP’s regulations at 42 CFR 600.150(a)(4). The following document provides guidance to Exchanges, QHP issuers, and web-brokers on how to comply with the amended language access requirements and on how these requirements interact with other language access requirements that may apply to the same entities. While the general standards under § 155.205(c) with respect to oral interpretation, written translations, and taglines continue to apply to all entities subject to § 155.205(c), this guidance will highlight specific requirements related to taglines and website translations for Exchanges, QHP issuers, and web-brokers. Additionally, this guidance provides language data and sample taglines in the top 15 languages spoken by the limited English proficient (LEP) population in each state for use by Exchanges, QHP issuers, and web-brokers as necessary.

II. Language Access Requirements

A. Oral Interpretation and Written Translations

We remind all entities subject to 45 CFR § 155.205(c) of their obligations with regard to providing oral interpretation and written translations to individuals who are limited English proficient at no cost to the individual, under § 155.205(c)(2)(i) and 155.205(c)(2)(ii). For Exchanges and QHP issuers, the oral interpretation standard also includes telephonic interpreter services in at least 150 languages. For web-brokers, beginning November 1, 2015, or when such entity been registered with the Exchange for at least one year, whichever is later, the oral interpretation standard also includes telephonic interpreter services in at least 150 languages.

B. Taglines

45 CFR § 155.205(c)(2)(iii) establishes a general standard, applicable to all entities subject to 45 CFR 155.205(c), to provide taglines in non-English languages indicating the availability of language services for individuals who are limited English proficient. Section 155.205(c)(2)(iii) further specifies that, beginning no later than the first day of the individual market open enrollment period for the 2017 benefit year, for Exchanges and QHP issuers, this general standard to provide taglines also includes a specific requirement to provide taglines on website content and documents that are critical for obtaining health insurance coverage or access to health care services through a QHP for qualified individuals, applicants, qualified employers, qualified employees, or enrollees. These taglines must be provided in at least the top 15 languages spoken by the LEP population of the relevant state. For web-brokers, the same specific requirement will apply beginning on the first day of the individual market

open enrollment period for the 2017 benefit year, or when the entity has been registered with the Exchange for at least one year, whichever date is later. The rule indicates that the Secretary of the Department of Health and Human Services (HHS) will publish guidance specifying the top 15 languages spoken by the LEP populations of each state, and CMS indicated in the preamble that it also planned to provide sample taglines in all languages triggered by this threshold (80 FR 10786).

C. Website Translation

45 CFR § 155.205(c)(2)(iv) requires Exchanges, QHP issuers, and web-brokers to provide translations of certain website content for individuals who are limited English proficient. Specifically, beginning no later than the first day of the individual market open enrollment period for the 2017 benefit year, certain content on a website maintained by an Exchange or QHP issuer must be translated into any non-English language that is spoken by an LEP population that reaches 10 percent or more of the population of the relevant state. For web-brokers, this standard will apply beginning on the first day of the individual market open enrollment period for the 2017 benefit year or when the entity has been registered with the Exchange for at least one year, whichever date is later. The rule and preamble indicate that HHS will publish guidance that identifies the applicable languages and the states that meet this threshold (see 80 FR 10789).

For Exchanges and web-brokers, this requirement applies to all content that is intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees that is on a website that is maintained by the Exchange or web broker, and is not limited to information that is critical for obtaining health insurance coverage or access to health care services through a QHP. In contrast, QHP issuers are not required to translate all website content that is intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees; rather, the type of website content that must be translated by QHP issuers aligns with the definition of “critical” information to which QHP issuers must provide meaningful access under § 156.250. In addition, an entity that is required to translate website content consistent with § 155.205(c)(2)(iv) must also still include taglines, in accordance with § 155.205(c)(2)(iii), on its English version web pages. This entity would not, however, be required to include taglines on translations of its English version web pages, but it could do so voluntarily.

D. Critical Documents

Documents are considered to be “critical” for obtaining health insurance coverage or access to health care services through a QHP under § 156.250 and § 155.205(c) if state or federal law or regulation requires that the document be provided to a qualified individual, applicant, qualified employer, qualified employee, or enrollee.

Under § 156.250, QHP issuers must ensure meaningful access to at least the following essential documents:

- Applications;
- Consent, grievance, appeal, and complaint forms;
- Correspondence containing information about eligibility and participation criteria;
- Notices pertaining to the denial, reduction, modification, or termination of services, benefits, non-payment, and/or coverage;
- A plan’s explanation of benefits or similar claim processing information;
- Rebate notices;

- Notices advising individuals of the availability of free language assistance;
- Summary of benefits and coverage disclosures;
- Formulary drug lists;
- Provider directories;
- The policy, insurance contract, evidence of coverage, or similar legally-required document; and
- Documents that require a signature or response from the qualified individual, applicant, qualified employer, qualified employee, or enrollee.

CMS does not consider marketing materials that are available for advertising purposes only, and not otherwise required by law, to be critical for obtaining health insurance coverage or access to health care services through the QHP. Therefore, an issuer would not be required to make such materials accessible to individuals with limited English proficiency.

III. Relation to Other Language Access and Nondiscrimination Laws

We note that QHP issuers are also responsible for complying with the culturally and linguistically appropriate standards set forth in the internal claims and appeals and external review processes under the rules implementing section 2719 of the Public Health Service Act and in the summary of benefits and coverage and uniform glossary rules implementing section 2715 of the Public Health Service Act. These provisions require that group health plans and health insurance issuers offering group and individual health insurance coverage provide taglines in a particular non-English language if 10 percent or more of the population residing in the county is literate only in that same non-English language. HHS's 2016 guidance on the languages and counties that meet this threshold is available here: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/CLAS-County-Data_Jan-2016-update-FINAL.pdf.

In the majority of states, the languages meeting this threshold are also among the top 15 languages spoken by the LEP populations of that state. However, where a language spoken by at least 10 percent of the population in the claimant's county (such as Navajo) is not among the top 15 languages spoken by the LEP population of the state, QHP issuers nevertheless must comply with both standards, when applicable.

We also remind Exchanges and QHP issuers of their obligations to provide information in an accessible manner to individuals with limited English proficiency under federal civil rights laws that also might apply, including Section 1557 of the Affordable Care Act and Title VI of the Civil Rights Act of 1964 and implementing regulations.

A. Summary of Benefits and Coverage Page Limit

As discussed above, QHP issuers must include an addendum with language taglines in the top 15 languages spoken by the LEP populations of that state in their summaries of benefits and coverage (SBCs) for QHPs offered through a Marketplace. Any additional taglines required under Public Health Service Act 2715 and its implementing regulations must also be included in this addendum. The addendum, which must only include tagline information required by the applicable language access standards, will not count towards the four double-sided page limit for the SBC.

IV. Population Data and Sample Taglines for Languages Spoken Within Each State

A. Methodology

The list in Appendix A identifies the top 15 languages spoken by the LEP populations of each state, and also denotes with double asterisks which of these languages are spoken by 10 percent or more of the state's population. This information is based on American Community Survey (ACS) data published by the United States Census Bureau. These data are applicable for 2017 and are calculated using a combination of the 2010-2014 ACS 5-year Estimates¹ and, where more detail was required to unbundle language groups, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013.² Appendix B provides sample taglines translated in each of these languages.

As we note in the preamble to the 2016 Payment Notice Final Rule, if an entity's service area covers multiple states, the top 15 languages spoken by LEP individuals may be determined by aggregating the top 15 languages spoken by all LEP individuals among the total population of the relevant states. To facilitate this process, we have also included how many LEP speakers speak each non-English language listed, as reflected in applicable ACS data.

We have omitted the following language groups that could not be unbundled using the Detailed Languages 2009-2013 ACS data: "African"³ and "Mayan language."⁴ Even if these language groups could be unbundled, we expect that no single language in these groups would reach the top 15 languages in the affected states. After excluding each of these language groups, we moved on to the next language in the list. Although the language group "Kru, Ibo, and Yoruba,"⁵ could not be unbundled with the available data, because it identifies three discrete languages we have included each language and provided a translation for each. This methodology results in a list of more than 15 languages in the affected states.

For language headings that, even once unbundled, describe a group of dialects, we used the most commonly spoken or used dialect in our translations.⁶ Examples of this occurrence are Bantu,⁷ Cushite,⁸

¹ U.S. Census Bureau, American Community Survey, Summary File Data, <http://www.census.gov/programs-surveys/acs/data/summary-file.2014.html>.

² U.S. Census Bureau, Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over: 2009-2013, <http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html>.

³ This omission impacts South Dakota.

⁴ This omission impacts Mississippi and Nebraska.

⁵ This impacts Colorado, the District of Columbia, Maryland, Rhode Island, Virginia and Wyoming.

⁶ CMS worked with a language translation contractor to identify the most common occurring dialects spoken within language groupings with multiple dialects to determine the appropriate written tagline.

⁷ The written translation for the Bantu language grouping is provided in the Kirundi language. There are several hundred Bantu languages. Swahili is the most widely spoken, but the ACS data breaks Swahili out separately from Bantu.

⁸ The written translation for the Cushite language grouping is provided in the Oromo language.

Kru,⁹ Kurdish,¹⁰ Micronesian,¹¹ Nilotic,¹² Persian,¹³ and Sudanic.¹⁴ Additionally, because most speakers of Mandarin and Cantonese are fluent in traditional Chinese, where either Mandarin and or Cantonese fell within the top 15 languages in a state in addition to traditional Chinese, we provided a tagline in traditional Chinese and moved on to the next language in the list.

Where French Creole appears in the top 15 languages in a state, we interpret it as Haitian Creole and have provided this tagline instead. However, in the case of Louisiana, where French Creole and Cajun French are so similar to French, the French tagline is the only one of the three languages that is included in the list.

Where a primarily oral Native American language appeared in the top 15 languages of a state, we omitted it and moved on to the next language in the list, since most speakers of these languages read English. The oral languages omitted are Crow, Dakota, Inupik, Keres, Towa, Yupik, and Zuni. We have provided translated taglines in Choctaw, Navajo and Cherokee.

HHS will review the Detailed ACS Data for Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over as newer data become available to determine if and when changes in the top 15 languages spoken by LEP individuals in a state warrant HHS to update this guidance and make taglines available in additional non-English languages. Updates to this guidance will be posted on the Center for Consumer Information and Insurance Oversight (CCIIO) website at <http://www.cms.gov/cciiio/>.

B. Sample Taglines

General Tagline:

If you, or someone you're helping, has questions about [insert SBM program name], you have the right to get help and information in your language at no cost. To talk to an interpreter, call [insert number here].

Tagline for Notices:

This Notice has Important Information. This notice has important information about your application or coverage through [insert SBM program name]. Look for key dates in this notice. You may need to take action by certain deadlines to keep your health coverage or help with costs. You have the right to get this information and help in your language at no cost. Call [insert number here].

⁹ The written translation for the Kru language grouping is provided in the Bassa language.

¹⁰ The written translation for the Kurdish language grouping is provided in the Sorani language. Sorani is the official Kurdish language of Iraq and the most requested translation for Kurdish.

¹¹ The written translation for the Micronesian language grouping is provided in the Pohnpeian language. It is the second most spoken language of Micronesia. The most spoken language of Micronesia is Trukese, and that tagline is also provided.

¹² The written translation for the Nilotic language grouping is provided in the Dinka language. Dinka is the most commonly spoken dialect.

¹³ The written translation for the Persian language grouping is provided in the Farsi language.

¹⁴ The written translation for the Sudanic language grouping is provided in the Fulfulde language.