



June 13, 2018

Frequently Asked Questions (FAQs) Regarding Spanish Translation and Audit Requirements for Enhanced Direct Enrollment (EDE) Entities Serving Consumers in States with Federally-facilitated Exchanges (FFE)

The following FAQs and answers provide additional detail and clarification regarding website and critical communication translation requirements for Direct Enrollment (DE) Entities that plan to use the EDE pathway in plan year 2019 to offer qualified health plans (QHPs) and enroll consumers through the FFEs.¹

1. What are the requirements for Spanish translation of website content for the EDE pathway?

Per 45 C.F.R. § 155.205(c)(2)(iv), Health Insurance Exchanges (Exchanges, also referred to as Marketplaces), QHP issuers, and web-brokers² must translate certain website content for individuals who are limited English proficient (LEP).³ Specifically, beginning no later than the first day of the individual market open enrollment period (OEP) for the 2017 plan 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, as determined in guidance published by the Secretary of the Department of Health & Human Services (HHS).⁴ For web-brokers, this standard applied beginning on the first day of the individual market OEP for the 2017 plan year or when the entity has been registered with the Exchange for at least one year, whichever date is later.

¹ While this document focuses on website and critical communication translation requirements for DE Entities that plan to use the EDE pathway to facilitate enrollment of consumers through the FFEs, the meaningful access requirements at 45 C.F.R. § 155.205(c) generally apply nationwide to Exchanges, QHP issuers, and web-brokers.

² CMS uses the term “web-broker” to describe an individual agent or broker, group of agents and brokers, or company that provides a non-FFE website to assist consumers in the selection of and enrollment in QHPs offered through an Exchange as described in 45 C.F.R. § 155.220(c)(3).

³ A DE Entity that is required to translate website content consistent with 45 C.F.R. § 155.205(c)(2)(iv) must also include taglines, consistent with 45 C.F.R. § 155.205(c)(2)(iii), on its English version webpages. This entity is not, however, required to include taglines on translations of its English version webpages, but it could do so voluntarily.

⁴ *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* (March 30, 2016) <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Language-access-guidance.pdf> and “Appendix A- Top 15 Non-English Languages by State” https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Appendix-A-Top-15-non-english-by-state-MM-508_update12-20-16.pdf

These provisions require that issuers must translate website content that is critical for obtaining health insurance coverage or access to health care services through a QHP, and web-brokers must translate website content intended for qualified individuals, applicants, qualified employers, qualified employees, or enrollees for states that meet LEP thresholds according to regulation and guidance. With respect to the EDE pathway, the website content required to be translated includes, but is not limited to, the application user interface (UI).

For example, because the Spanish language is spoken by 10 percent or more of Texas' LEP population, for plan years 2018 and 2019, pursuant to 45 C.F.R. § 155.205(c)(2)(iv) and current Centers for Medicare & Medicaid Services (CMS) guidance,⁵ both issuers and web-brokers that offer an EDE pathway serving consumers in Texas must make available to Texas consumers a Spanish-language version of the application UI. Per EDE program requirements, an Auditor must verify that the Spanish-language version of the application UI is compliant with the FFE requirements.⁶ CMS expects to release the Spanish-language version of the FFE application UI as a resource for DE Entities subject to these requirements along with other FFE application UI reference materials.

A DE Entity using the EDE pathway cannot offer the EDE pathway for consumers in Texas until an independent, third-party Auditor has audited the Spanish-language version of the application UI and associated critical communications for compliance with applicable FFE requirements (see FAQ #2 for more information about critical communications). The DE Entity must submit the audit results to CMS for approval as part of the DE Entity's operational readiness review (ORR) or as a supplemental submission after the initial ORR submission.

2. What communications must be translated into Spanish by DE Entities using the EDE pathway?

For plan year 2019, a DE Entity must inform consumers of the availability of Exchange-generated Eligibility Determination Notices (EDNs), as well as generate and send other critical communications⁷ that will no longer be generated and sent by the Exchange for consumers utilizing an EDE pathway.⁸

⁵ Please refer to the guidance referenced in footnote 4 above.

⁶ The *Third-party Auditor Operational Readiness Reviews for the Enhanced Direct Enrollment Pathway and Related Oversight Requirements* guidelines (February 22, 2018) contain an overview of audit requirements for DE Entities applying to use the EDE pathway. The guidelines are available at: <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Third-party-Direct-Requirements.pdf>

⁷ Documents are considered to be "critical" for obtaining health insurance coverage or access to health care services through a QHP under 45 C.F.R. §§ 155.205(c) and 156.250 if state or federal law or regulation requires that the document be provided to a qualified individual, applicant, qualified employer, qualified employee, or enrollee.

⁸ CMS will make available more information about the EDE communications requirements for web-brokers and QHP issuers on the EDE Documents and Materials page on CMS zONE. Specifically, the Communications Toolkit will outline the types of non-website communications that DE Entities must send to consumers and also information that must be communicated to consumers in the DE Entity's UI: <https://zone.cms.gov/document/enhanced-direct-enrollment-edo-documents-and-materials>.

A DE Entity must translate non-website communications 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, as determined in current guidance,⁹ when a consumer has selected an eligibility application in a state that meets this threshold and has selected the language that meets the 10 percent threshold as his or her preferred language.¹⁰

Specifically, a DE Entity must translate the following communications: communications informing consumers of the availability of Exchange-generated EDNs, critical communications that the consumer will no longer receive from the Exchange (to be identified by CMS), and any other critical communications that the DE Entity is providing to the consumer in relation to the consumer's use of its EDE pathway.

For example, when the Exchange produces an EDN for a consumer using the EDE pathway in Texas who selected a preference for electronic notices and Spanish as his or her preferred language, the DE Entity would be required to provide the EDN to the consumer in the DE Entity's UI. The DE Entity would also be required to send a Spanish-language communication to the consumer (i.e., an email or text message, consistent with the consumer's preference for electronic notices) that the notice is available in the DE Entity's UI.

Auditors must verify that all EDE communication translation requirements are met.

3. How should the DE Entity's Auditor review the Spanish-language version of the application UI?

The Auditor must review the DE Entity's Spanish-language version of the application UI and associated critical communications as part of the ORR prior to making the EDE pathway available to consumers. In the case that the DE Entity translates the English-language version of its application UI—and the auditor has confirmed the English-language version is compliant with FFE requirements—the Auditor must confirm the Spanish-language version of the application UI has the same meaning as its English-language version. Alternatively, the DE Entity may use the FFE application UI translations provided by CMS, when available, to develop its Spanish-language version of the application UI and in this case the Auditor must confirm the language is accurately replicated.

4. What experience must an Auditor possess to demonstrate sufficient expertise to review the Spanish-language version of the application UI and associated critical communications?

The Auditor selected by a DE Entity to review the Spanish-language version of the DE Entity's application UI and associated critical communications materials for its EDE pathway must possess relevant experience and expertise, which an Auditor may demonstrate through

⁹ "Appendix A- Top 15 Non-English Languages by State" https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Appendix-A-Top-15-non-english-by-state-MM-508_update12-20-16.pdf

¹⁰ This requirement is consistent with the threshold for translation of website content set forth in 45 C.F.R. § 155.205(c)(2)(iv). The revised EDE Business Agreement, released on June 13, 2018, requires DE Entities to translate non-website critical communications 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.

work or educational experience with Spanish. Examples of acceptable experience demonstrating Spanish fluency include any of the following: advanced degree(s) that required Spanish fluency, professional certification or accreditation in English-to-Spanish translation, and proven work experience that required Spanish fluency. CMS strongly encourages professional certification or accreditation in Spanish translation.

The Auditor should have an ability to distinguish nuances and interpret whether the meaning of the translation is preserved. To do this, the Auditor will need to be or become familiar with the English-language version of the FFE application UI.

Finally, consistent with CMS's existing guidance, nothing in these FAQs or CMS's rules would prohibit a DE Entity from engaging multiple Auditors to the extent necessary to conduct all aspects of its ORR, including the review of the Spanish-language version of a DE Entity's application UI and associated critical communications materials for compliance with EDE language access requirements. DE Entities must be sure to identify all Auditors in their ORRs.