



Communication for People with Disabilities (Section 504)



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Polling Question

Can your organization communicate with disabled individuals, including alternate formats such as Braille or large print?

Yes or No

Introduction

No individual shall, on the basis of a handicap or disability, be excluded from participation in, be denied the benefit of, or otherwise be subject to discrimination under, any program or activity receiving Federal financial assistance.

Section 1557 or Section 504?

- Section 1557 is the nondiscrimination law in the Affordable Care Act (ACA).
- Section 1557 ***prohibits discrimination on the basis of race, color, national origin, sex, age, or disability*** in certain health programs and activities.

Section 1557 or Section 504? (cont.)

- Section 1557 builds upon longstanding nondiscrimination laws and provides new civil rights protections.
- Section 504 of the Rehabilitation Act of 1973 specifically prohibits discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

Section 1557 or Section 504? (cont.)

- Effectively, §1557 carries the requirements of Section 504 (and others) forward, along with its requirements, and adds one new basis upon which discrimination can be claimed.

Must Medicare Plans Comply with §504?

YES.

Communication Accessibility

- A covered entity must provide auxiliary aids and services to individuals with disabilities free of charge and in a timely manner when necessary to ensure an equal opportunity to participate and benefit from the entity's health programs or activities.

Communication Accessibility (cont.)

Auxiliary aids and services include, but are not limited to:

- Large print materials
- Braille
- Text telephones (TTYs)
- Video remote interpreting service
- Qualified sign language interpreters

Communication Accessibility (cont.)

Communication is a two-way street. Plans must ensure that individuals with disabilities can access and use all health programs and activities provided electronically, including (but not limited to):

- Online appointment systems
- Electronic billing
- Information kiosks
- Internet applications/web sites

Communication Accessibility: Alternative Formats

- CMS offers five “standard” format options:
 1. Braille
 2. Large Print (18pt font)
 3. Audio CD
 4. Data CD
 5. Qualified Reader
- However, we give primary consideration to the request of the individual, even if it's not one of these five.

Communication Accessibility: Alternative Formats (cont.)

- Not required to take action(s) that can be demonstrated to result in a fundamental alteration or undue financial/administrative burden.
- This is a very high standard.

Communication Accessibility: Highlights

- Cannot discriminate on the basis of disability
- Take appropriate steps to ensure effective communications (incoming and outgoing)
- Notice
- Electronic/IT accessibility
- Effective mechanisms to respond, including grievance procedures

FAQ – Question 1

Do Parts C and D plans have to give notice that, upon request, they will provide communications and publications in alternate formats?

FAQ – Answer 1

Yes. Each plan must take steps to notify enrollees, applicants, and members of the public, including potential enrollees. See 45 CFR 92.8 for a full list of requirements established under the §1557 regulations. Plans are required to provide the notice required by §1557 regarding non-discrimination (and taglines for §1557 purposes).

See 45 CFR 92.8 for a full description of the posting and tagline requirements.

FAQ – Question 2

What is the expected turn-around time for providing information in an alternate format?

FAQ – Answer 2

Enrollees, applicants, and members of the public, including potential enrollees, should not be disadvantaged because they have requested communications in alternate formats. Delays in providing materials in alternate formats can impact timeframes that enrollees and potential enrollees may have to take certain actions.

FAQ – Question 3

Will Parts C and D plans have to have the same menu of standard alternate formats available as CMS has available?

FAQ – Answer 3

No. Plans must have a timely process for adjudicating requests, giving weight to each individual's request. Plans could have a standard menu of alternate formats available that is likely to address what the plan believes will be a majority of requests for alternate formats; but must also have a process to timely adjudicate requests not satisfied by the standard menu.

FAQ – Question 4

Will enrollees have to make their request for an alternate format each time the enrollee wants to receive a communication in an alternate format?

FAQ – Answer 4

No. We expect that an enrollee need only make the request of a plan once during the time that the beneficiary is enrolled in the plan. If the enrollee leaves the plan and returns, the individual may need to request the preference again.

A **potential enrollee** (or member of the public) may need to make the request each time the individual requests a document (until/unless they enroll).

FAQ – Question 5

What evidence is needed to prove a disability in order to receive communications in an alternate format?

FAQ – Answer 5

None.

FAQ – Question 6

Will Parts C and D plans have to convert all documents into various alternate formats in anticipation of a request?

FAQ – Answer 6

No. Plans need only make documents available in alternate formats upon request. Plans should keep in mind that if a potential enrollee asks for marketing or enrollment documents in an alternate format, the plan must provide them in a timely manner to ensure that the individual has equal access to the plan's information. Further, materials available on-line must be accessible.

FAQ – Question 7

Are plans required to provide both the standard and alternate format?

FAQ – Answer 7

Ultimately a plan must be able to effectively communicate with individuals with disabilities so that these individuals have equal access to the plan's benefits. A plan could consider a process similar to the process CMS utilizes, which generally provides both the standard and requested alternate format for custom notices or letters. This is because some notices/letters may be used to take a subsequent step, such as submission of an appeal for a claim denial.

FAQ – Question 8

What should a plan do if it has questions about the provision of communications and publications in alternate formats to disabled individuals under §504?

FAQ – Answer 8

To promote consistency and ensure a timely response to §504 questions, please contact your CMS account manager. Your account manager will work with the CMS' Alternate Format team to provide you an answer.

Resources

- Your CMS Account Manager
 - Through them, the CMS Accessibility staff
- FAQ's to be distributed via HPMS shortly

Questions



Communication for People with Limited English Proficiency (Section 1557)



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Section 1557 Marketing Requirements

Poll Question

Do you have concerns with the implementation of Section 1557 of the Affordable Care Act, as it relates to Marketing?

☐ Yes

☐ No

☐ Are you kidding me, YES!

What is Section 1557

- Section 1557 is the nondiscrimination provision of the Affordable Care Act (ACA).
- The law prohibits discrimination on the basis of race, color, national origin, sex, age, or disability.

Impact on Communication Materials

Plans/Part D Sponsors are required to include a nondiscrimination Notice or Tagline on Significant Communications and Publications.

Sample Notice

Must include:

- A notice that the Plan/Part D Sponsor does not discriminate on the basis of race, color, national origin, sex, age, or disability.
- A statement that the Plan/Part D Sponsor provides auxiliary aids and services, free of charge, in a timely manner, to individuals with disabilities.
- A statement that the Plan/Part D Sponsor provides language assistance services, free of charge, in a timely manner, to individuals with limited English proficiency.

Sample Notice (cont.)

Must include:

- Information on how to access aids and services.
- Contact information for the Compliance Coordinator individual or department coordinating compliance with Section 1557
- A notice that states there is a grievance procedure and information on how to file a grievance.
- Information on how to file a complaint with OCR.

Sample Statement

[Name of covered entity] complies with applicable Federal civil rights laws and does not discriminate on the basis of race, color, national origin, age, disability, or sex.

Alternate Language Tagline

Plans/Part D Sponsors are required to post taglines in the top 15 languages spoken by individuals with LEP by State or States, advising individuals of the availability of free language assistance services.

ATTENTION: If you speak [insert language], language assistance services, free of charge, are available to you. Call 1-xxx-xxx-xxxx (TTY: 1-xxx-xxx-xxxx).

Poll Question

“Help! I’ve already submitted my 2017 Multi-Language Insert! What do I do?”

- ☐ Resubmit the MLI
- ☐ Withdraw the MLI
- ☐ Nothing

Poll Question

“I already have existing stock! Can I use it?”

☐ Yes

☐ No

☐ Not Sure

Grievance Procedure

Organizations with 15 or more employees are also required to have a civil rights grievance procedure and a designated employee to coordinate their compliance efforts.

Permissible Activities

Plan/Part D Sponsors may:

- Exhaust their existing publications.
- Use sample language provided by OCR (See appendix A of Final Rule).
- Incorporate grievance process in existing process.
- Include the name of a specific department in lieu of a specific Compliance Coordinator.

Not Required

Plan/Part D Sponsors are not required to:

- Resubmit previously approved 2017 Marketing material when adding the applicable nondiscrimination notice or tagline.
- Require enrollees to exhaust internal grievance process prior to filing a complaint with OCR.

In addition, changes made to your marketing materials relating to Section 1557 do not have to be reviewed by CMS prior to their use.

For Assistance

- Section 1557 related questions:
1557@hhs.gov
- Marketing-related Section 1557 questions:
Marketing@cms.hhs.gov

Questions?