Health Plan Compliance with Language Assistance Requirements

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EXECUTIVE SUMMARY

The Department of Managed Health Care (DMHC) protects consumers' health care rights and ensures a stable health care delivery system. As part of its mission, the DMHC licenses 124 full-service and specialized health plans that provide health, behavioral, dental, vision, chiropractic, acupuncture or employee assistance services to over 25 million enrollees.

The DMHC reports biennially to the Legislature on health plan compliance with the language assistance requirements of Health and Safety Code section 1367.04 and its accompanying regulations, section 1300.67.04 of the Title 28 of the California Code of Regulations.[1]

Rule 1300.67.04, which became effective on January 1, 2009, requires California health plans, including specialized plans,[2] to provide limited-English-proficient (LEP) enrollees with language assistance services, including translation and interpretation services.[3] The DMHC monitors health plans' compliance with the statutory and regulatory requirements as part of its routine medical survey process, which occurs at least once every three years. In addition, the DMHC tracks consumer calls and complaints filed with the Department's Help Center to identify trends and potential compliance issues.

The 2017, fifth biennial report covers the period of January 1, 2015 through December 31, 2016. During this reporting period, the DMHC completed medical surveys of 65 full-service and specialized health plans. During the survey process, the DMHC identified 33 deficiencies by health plans in meeting language assistance requirements and required deficient health plans to implement corrective action. The DMHC Help Center received 11 consumer complaints and 298 phone calls regarding language assistance, during the reporting period.

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[1] Hereinafter, unless otherwise stated, all references to "Section" shall mean sections of the Health and Safety Code and all references to "Rule" shall mean sections of the Code of California Regulations, Title 28.

[2] Specialized health care service plans provide a single specialized area of health care, such as, for example, dental services, chiropractic services or vision services.

[3] The term "translation" is defined as replacement of a written text from one language (source language) with an equivalent written text in another language (target language), and "interpretation" means orally expressing in a target language something heard or read in another (source) language. (Rule 1300.67.04(b)(2)(6).)

INTRODUCTION

In 2003, the California Legislature passed Senate Bill 853, enacting Health and Safety Code section 1367.04, to improve health care access for non-English-speaking and LEP individuals enrolled in California health plans. Section 1367.04 directed the DMHC to develop and adopt regulations no later than January 1, 2006, that established standards and requirements to provide enrollees with access to language assistance services. Section 1367.04 set forth several specifications and parameters required to be included in the regulations.[4] Pursuant to this legislation, the DMHC promulgated Rule 1300.67.04, which requires health plans to:

- Assess the linguistic needs of enrollees;
- Provide translation and interpretation services to enrollees;
- Train staff in effectively providing language services to enrollees; and
- Provide oversight to ensure that enrollees receive the language assistance services needed in order to understand and communicate with health care providers.

For this reporting period, the DMHC's medical surveys did not identify any significant deficiencies in health plan compliance with language assistance requirements. However, the DMHC Help Center complaint/call data and information provided to the DMHC by consumer advocates indicates an ongoing need to educate providers about language assistance requirements and to inform enrollees of the availability of free and easily accessible language assistance services.

[4] Section 1367.04(b)(1)-(5).

PART I: LANGUAGE ASSISTANCE REGULATION REQUIREMENTS

Each health plan's language assistance program must be documented in written policies and procedures that address, at a minimum, the following elements:

- Standards for enrollee assessment;
- Standards for providing language assistance services;
- Standards for staff training; and
- Standards for compliance monitoring.[5]

Enrollee Assessment

Determination of Threshold Languages through Population Analysis

Because health plans serve different and diverse communities, Section 1367.04 permits health plans to tailor language assistance services to the needs of each health plan's enrollee population. Each health plan must complete an assessment of the linguistic needs of its enrollee population every three years. Based on health plan size and language needs assessment results, each health plan is required to determine its threshold languages and translate vital documents into its threshold languages.[6]

Vital documents include:

- Applications for coverage;
- Consent forms;
- Letters that contain important information regarding eligibility and participation criteria;
- Notices pertaining to the denial, reduction, modification, or termination of services and benefits;
- The right to file a grievance or appeal
- Notices of the availability of free language assistance services; and
- Summaries of benefits and coverage, explanation of benefits documents, and health plan disclosure forms that describe the principal benefits and coverage, exclusions, limitations, and cost-sharing requirements applicable under a health plan contract.[7]

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[5] Rule 1300.67.04(c)
[6] Section 1367.04(b)(1)(A)(i)-(iii).
[7] Section 1367.04(b)(1)(B)(i)-(vi); Rule 1300.67.04(b)(7)(A)-(G).

Table 1 summarizes the standards for determining a health plan's threshold language(s) for vital document translation, as determined by each health plan's enrollment or needs assessment results.[8]

Table 1: Threshold Language Standards

Number of health plan enrollees	Required vital document translation	Additional languages for vital document translation[9]	
		Percent of health plan enrollees[10] prefer the language	Number of health plan enrollees[11] prefer the language
≥ 1,000,000	Top 2 non-English languages	0.75%	15,000
300,000 – 999,999	Top 1 non-English language	1%	6,000
< 300,000	no requirement	5%	3,000

Each health plan must apply statistically valid methods for population analysis in developing its demographic profile and must update its assessment of enrollee language needs and demographic profile at least once every three years.[12]

Language Assistance Services

Each health plan's language assistance program must be documented in written policies and procedures that include, among other things, a description of how the health plan will provide language assistance services at all points of contact where language assistance needs may be reasonably anticipated, a description of the resources needed and standards for providing translation services.[13] Further, health plans must have processes to inform enrollees of the availability of free language assistance services, how to access the services and ensure that LEP enrollees are informed of their grievance and independent medical review rights.[14] The policies and procedures must also include processes to ensure health plan providers are informed of health plan standards and mechanisms for providing free language assistance services and standards for proficiency of individuals providing translation and interpretation

[8] Section 1367.04(b)(1)(A)(i)-(iii).
[9] Only when the lesser of either threshold below is present as determined by the enrollee assessment
[10] Excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately.
[11] Excluding Medi-Cal enrollment and treating Healthy Families Program enrollment separately.
[12] Rules 1300.67.04(c)(1)(A) and 1300.67.04(e)(1).
[13] Rule 1300.67.04(c)(2)(A), (B), (F).
[14] Rule 1300.67.04(c)(2)(C), (D).

services by or on behalf of the health plan.[15] Grievance forms and procedures in threshold languages must be readily available to enrollees and contracting providers.

Translation

Each health plan is required to translate vital documents into its threshold languages. If a vital document contains enrollee-specific information regarding the specific circumstances of an enrollee, a health plan is not required to translate the non-standardized portion of the document. However, the health plan must provide the enrollee with a notice of the availability of language assistance services[16] if the enrollee may need assistance to understand the non-standardized information.[17] If the enrollee requests translation, the translated document must be provided to the enrollee within 21 calendar days.[18] Non-English translations of vital documents must preserve the accuracy or meaning of the information provided in the English language version of those documents.

Interpretation Services

Health plans are required to provide interpretation services for *any* language requested by an enrollee, regardless of whether the language is identified as one of the health plan's threshold languages.

The range of interpretation services to be provided must be appropriate for the particular point of contact, and may include, but is not limited to, arranging for the availability of bilingual health plan or provider staff, hiring staff interpreters, contracting for outside interpreters through telephone, videoconferencing, or other telecommunication-based language services, or formally arranging for the services of volunteer community interpreters.[19] In any case, all interpreters must be trained and competent to provide interpreter services.

Health plans must both develop and apply appropriate criteria for ensuring the proficiency of translation and interpretation services. Alternatively, health plans may adopt standards, issued by an association acceptable to the DMHC, to certify

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[15] Rule 1300.67.04(c)(2)(E).
[16] The Industry Collaboration Effort developed a Notice of Language Assistance (NOLA) to be provided in the enrollee's primary language and included with all non-standardized vital documents containing enrollee specific information. "IMPORTANT: Can you read this letter? If not, we can have somebody help you read it. You may also be able to get this letter written in your language. For free help, please call right away at [HEALTH PLAN-SPECIFIC OR DELEGATED LAP SERVICES PHONE#]."
[17] Section 1367.04(b)(1)(C)(i).
[18] Section 1367.04(b)(1)(C)(i)-(ii).
[19] Rule 1300.67.04(c)(2)(G)(vi).

proficiency of the individuals providing translation and interpretation services.[20] At a minimum, a health plan's language assistance proficiency standards must require its interpreters to have:

- A documented and demonstrated proficiency in both English and the target language;
- A fundamental knowledge in both languages of health care terminology and concepts relevant to health care delivery systems; and
- Education and training in interpreting ethics, conduct, and confidentiality.

Interpretation services must be offered to the enrollee even if the enrollee is accompanied by a family member or friend who may be able to provide interpretation services. If the enrollee declines the offer of interpreter services, the declined offer must be noted in the enrollee's file.[21]

Notice of the Availability of Language Assistance Services

Health plans must include a notice of the availability of free language assistance services[22] with the following documents: all English versions of vital documents, all enrollment materials, all correspondence from the health plan confirming a new or renewed enrollment, brochures, newsletters, outreach and marketing materials, and other materials routinely disseminated to enrollees. Health plans may develop their own language assistance notices, subject to the DMHC's approval, that include information sufficient to advise LEP enrollees of the availability of free language assistance services.

To assist the health plans in meeting the language assistance notice requirements, the DMHC developed the following sample notice of the availability of language assistance:

> **"IMPORTANT**: You can get an interpreter at no cost to talk to your doctor or health plan. To get an interpreter or to ask about written information in (your language), first call your health plan's phone number at 1-XXX-XXX-XXXX. Someone who speaks (your language) can help you. If you need more help, call the HMO Help Center at 1-888-466-2219."

[20] Rule 1300.67.04(C)(2)(H).
[21] Rule 1300.67.04(c)(2)(G)(iii).
[22] Rules 1300.67.04(c)(2)(C)(ii-iii).

The DMHC translated the above language assistance notice in Spanish, Chinese (traditional), Arabic, Armenian, Khmer, Farsi, Hmong, Korean, Laotian, Russian, Tagalog, and Vietnamese.

Health plans were encouraged to use these notices even if some of the languages are not among the plan's threshold languages. During the DMHC's review of plan filings, analysts confirmed that many health plans are using the DMHC's notice (or slightly modified versions of the notice) to achieve compliance with the language assistance notice requirements.

Timely Access to Qualified Interpreters[23]

Health Plans must have processes and standards for providing enrollees with access to timely interpretation services, including services provided in a hospital, facility, or provider office. Health Plans must ensure that LEP enrollees can obtain the health plan's assistance in arranging for the provision of timely interpretation services at all points of contact at which an enrollee accesses health care services. The term "timely" is defined to mean in a manner appropriate for the situation in which language assistance is needed. Interpretation services are not considered timely if a delay effectively results in the denial of the service, benefit, or right at issue. Each health plan's program must specify quality assurance standards for timely delivery of language assistance services for emergency, urgent, and routine health care services, as well as standards for coordinating interpretation services with appointment scheduling.

Specialized plans providing dental, vision, chiropractic, acupuncture or employee assistance services that demonstrate adequate availability and accessibility of qualified bilingual providers and office staff are deemed to be compliant with language assistance requirements if all of the following conditions are met:

- The specialized plan's provider directories identify bilingual providers or providers who employ bilingual providers and/or staff, based on fluency attestations and signed language capability forms;
- The specialized plan requires its providers to provide quarterly updates regarding any changes in the language capabilities of currently employed providers; and
- The specialized plan's quality assurance audits of contracting providers confirm and document the accuracy of provider language capability disclosure forms and attestations.

[23] Rule 1300.67.04(c)(2)(G)(i)-(v).

Staff Training

Health plans must implement a system to provide language assistance training to all health plan staff that have routine contact with LEP enrollees.[24] The training must include instruction on:

- The health plan's policies and procedures for language assistance;
- Working effectively with LEP enrollees;
- Working effectively with interpreters in person and through video, telephone, and other media as may be applicable; and
- Understanding the cultural diversity of the health plan's enrollee population and sensitivity to cultural differences relevant to delivery of health care interpretation services.

Compliance Monitoring

Each health plan's language assistance policies and procedures must include provisions that ensure the health plan monitors its language assistance program, including language assistance programs provided by a health plan's delegated provider group(s), and makes modifications as needed to comply with the language assistance requirements.[25]

Health plans that participate in California's Medi-Cal program were required to provide language assistance services prior to enactment of Senate Bill 853. The Medi-Cal requirements generally meet or exceed Knox-Keene Act standards for language assistance. In recognition of this, health plans that comply with the Medi-Cal language assistance requirements will be deemed to be compliant with the Knox-Keene Act language assistance requirements, if:

- The health plan makes a request to the DMHC to be considered in compliance because of its adherence to the Medi-Cal standards;
- The Medi-Cal standards are equivalent to or exceed the standards of the Knox-Keene Act regulation;
- The health plan applies the Medi-Cal standards for language assistance to the health plan's non-Medi-Cal lines of business; and
- The health plan is in compliance with Medi-Cal standards as shown through audits, reports or other oversight and enforcement methods utilized by the Department of Health Care Services (DHCS).[26]

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[24] Rule 1300.67.04(c)(3).
[25] Rule 1300.67.04(c)(4).
[26] See Health & Safety Code section 1367.04(h)(2),(3); Rule 1300.67.04(a)(2)(A)-(C).

PART II: PLAN COMPLIANCE WITH STANDARDS

Overview of the DMHC Survey Process

The DMHC conducts routine onsite medical surveys of licensed health plans at least once every three years. Since 2009, the DMHC has incorporated review of each health plan's language assistance program into the routine medical survey.

Additionally, pursuant to Inter-Agency Agreements with the DHCS, in effect during the 2015-2016 reporting period, the DMHC evaluated health plan compliance regarding the provisioning of interpretation and translation services for the following:

- Seniors and Persons with Disabilities (SPDs) program (1115 Waiver project);
- Expansion of Medi-Cal managed care into rural counties that previously were Medi-Cal fee-for-service (Rural Expansion);
- SPDs who are dually eligible for both the state Medi-Cal program and the federal Medicare program (Cal MediConnect); and
- Geographic Managed Care (GMC) Plans and Prepaid Health Plans (PHP) contracted to provide dental services to Medi-Cal beneficiaries in Sacramento and Los Angeles counties.

These evaluations measured health plan compliance with the requirements to provide appropriate language assistance that are set forth in the contracts between the health plans and the DHCS, as well as the language assistance requirements of section 1367.04 of the Health and Safety Code, and its accompanying regulations, section 1300.67.04 of Title 28 of the California Code of Regulations.

The DMHC completed medical surveys of 65 full-service and specialized health plans during the reporting period. Thirteen of the 65 surveys included review of health plan contractual compliance with the DHCS. Per the Inter-Agency Agreements with DHCS, the DMHC issued summary reports to DHCS outlining potential contractual deficiencies.[27] The DHCS oversees corrective action plan monitoring for health plans cited for contractual deficiencies. The size of these health plans varied from commercial enrollment of less than 1,000 enrollees to health plans with more than a million enrollees and Medi-Cal enrollment between 150,000 and 900,000 enrollees.

[27] Potential deficiencies of contractual compliance are not included in any of the statistical analysis, as the commercial and SPD language programs are assessed differently.

Table 2 identifies the total number of surveys completed during this reporting period by health plan type, survey scope and year.

Table 2: Health Plan Type, Survey Scope and Number of Surveys Completed by Year

Health Plan Type	Survey Scope	2015	2016	Totals
Full Service Commercial	Knox-Keene Act	5	12	17
Full Service Commercial and Medi-Cal	Knox-Keene Act, Seniors and Persons with Disabilities, Rural Expansion, CalMediconnect	0	12	12
Full Service Medi-Cal	Seniors and Persons with Disabilities, Rural Expansion, CalMediconnect	3	0	3
Dental	Knox Keene-Act	8	7	15
Dental/Commercial/Medi-Cal	Knox-Keene Act	0	1	1
Behavioral Health	Knox-Keene Act	3	5	8
Vision	Knox-Keene Act	5	2	7
Chiropractic	Knox-Keene Act	0	2	2
Total		**24**	**41**	**65**

For the 65 full service and specialized surveys, the DMHC identified 33 deficiencies in 19 health plans' commercial and Medi-Cal language assistance programs, as noted in Table 3.

Table 3: Deficiencies by Health Plan Type

Health Plan Type	Number of Deficiencies
Full Service	12
Dental	11
Behavioral Health	5
Vision	4
Chiropractic	1
Total	**33**

Table 4 identifies the number of deficiencies based on the size of the commercial plan enrollment for the 2013, 2015 and 2017 biennial reporting periods.

Table 4: Survey Deficiencies by Health Plan Enrollment

Health Plan Enrollment	Number of Deficiencies 2013 Biennial Report	Number of Deficiencies 2015 Biennial Report	Number of Deficiencies 2017 Biennial Report
Large (≤ 500,000)	6	2	8
Medium (150,000 to 499,999)	3	7	9
Small (≥ 150,000)	16	8	16
Total	**25**	**17**	**33**

Table 5 identifies the 65 full service and specialized health plans that were surveyed in 2015 and 2016 for compliance with language assistance requirements.

Table 5: Health Plans Surveyed for Knox-Keene Act Compliance

2015	2016
FULL SERVICE PLANS	
Blue Cross of California	Aetna Health of California, Inc.
DaVita Health Plan of California, Inc.	Alameda Alliance for Health
Heritage Provider Network, Inc.	Association Health Care Management, Inc.
Sistemas Medicos Nationales S.A. De C.V	California Health & Wellness Plan
Sutter Health Plan	California Physicians' Network
	Care First Health Plan
	Cigna HealthCare of California, Inc.
	Community Health Group
	County of Ventura
	Fresno-Kings-Madera Regional Health Authority
	Health Plan of San Joaquin Joint Powers Authority
	Inland Empire Health Plan
	Local Initiative Health Authority for L.A. County
	Medi-Excel, SA de CV
	Molina Healthcare of California
	Partnership HealthPlan of California
	PIH Health Care Solutions
	Primecare Medical Network, Inc.
	San Francisco Community Health Authority
	San Mateo Health Commission
	Santa Clara County (Valley Health Plan)
	Sharp Health Plan
	UHC of California
	Western Health Advantage

2015	2016
DENTAL PLANS	
Blue Cross of California (Dental)	ConsumerHealth, Inc.
California Dental Network	Dental Benefit Providers of California, Inc.
Cigna Dental Health of California, Inc.	Golden West Health Plan, Inc.
Dedicated Dental Systems, Inc.	Health Net of California, Inc. (Dental)
Delta Dental of California	Managed Dental Care
Dental Health Services	The CDI Group, Inc.
First Dental Health	United Concordia Dental Plans of California, Inc.
Jaimini Health, Inc.	Western Dental Services, Inc.
BEHAVIORAL HEALTH PLANS	
Blue Cross Of California	Avante Behavioral Health Plan
Cigna Behavioral Health of California	CONCERN: Employee Assistance Program
Magellan Health Services of California	Human Affairs International
	Managed Health Network
	U.S. Behavioral Health Plan, California
VISION PLANS	
EYEXAM of California, Inc.	Medical Eye Services, Inc.
For Eyes Vision Plan, Inc.	VisionCare of California
Vision First Eye Care, Inc.	
Vision Plan of America	
Vison Service Plan	
CHIROPRACTIC PLANS	
	Landmark Healthplan of California, Inc.
	ACN Group of California, Inc.

Table 6 identifies the deficiencies related to commercial and Medi-Cal health plan Implementation of the Language Assistance Requirements, Standards for Enrollee Assessment, Standards for Staff Training, Standards for Language Assistance Services and Standards for Compliance Monitoring.

Table 6: Commercial and Medi-Cal Health Plan Survey Deficiencies by Language Standard

Language Standard	Deficiencies
Implementation Of Language Assistance Requirements	1
Standards for Enrollee Assessment	8
Standards for Staff Training	8
Standards for Language Assistance Services	7
Standards for Compliance Monitoring	9
Total	**33**

When a deficiency in a commercial or a Medi-Cal health plan's language assistance program is identified, the health plan is required to submit a corrective plan to the DMHC within 45 calendar days describing the action taken to correct the deficiency and the results of such action. The DMHC then monitors the health plan's activities to

ensure implementation of the corrective plan to achieve compliance. Corrected and uncorrected deficiencies (including a description of the health plan's corrective action) are identified in the final public report. Some of the more complex deficiencies may require more than 45 days to correct. In those cases, the DMHC conducts a follow-up review of uncorrected deficiencies no later than 18 months following the release of the final report. If the health plan has not achieved compliance by the end of the follow-up period, the DMHC may take enforcement action such as issuing fines, penalties, injunctions, cease and desist orders, or other action.

DMHC Help Center: Calls and Complaints Related to Language Assistance Services

The DMHC Help Center provides information to consumers about how to access language assistance services through health plans, and facilitates communication between consumers and health plans to promptly arrange language services when needed. In 2015 and 2016, the DMHC Help Center received 11 complaints regarding language assistance. Seven of the 11 complaints related to interpreter access, and four were related to translation access.

Table 7 provides the types and number of calls the Help Center received from 2009 through 2016 related to language assistance.

Table 7: Language Assistance Calls to the DMHC Help Center

Type of Issue	Number of Calls 2009-2010	Number of Calls 2011-2012	Number of Calls 2013-2014	Number of Calls 2015-2016	Percentages 2009-2016
Consumer – Inquiry about how to obtain translated documents	31	6	8	17	22%
Consumer – Inquiry about how to obtain an interpreter	26	18	16	14	27%
Consumer – Inquiry about the language assistance laws	39	8	0	7	20%

Type of Issue	Number of Calls 2009-2010	Number of Calls 2011-2012	Number of Calls 2013-2014	Number of Calls 2015-2016	Percentages 2009-2016
Consumer – Requested interpreter, but none was provided	9	5	0	6	7%
Consumer - Requesting a provider that speaks their language	0	12	12	7	11%
Provider – Unsure how to access a plan's language assistance program	7	1	1	3	4%
Provider – Inquiry about the language assistance laws	19	2	1	2	9%
Total Calls Regarding Language Assistance	**131**	**52**	**38**	**56**	**100%**

Information current as of December 31, 2016

CONCLUSION

During this two-year report period of January 1, 2015, through December 31, 2016, the DMHC did not identify any significant deficiencies with health plans' language assistance programs. Small health plans, with 150,000 enrollees or less, accounted for almost half of all the language assistance deficiencies cited. The majority of the deficiencies were from specialized health care plans. In general, small, specialized plans lacked adequate systems to monitor compliance with language assistance requirements and training to provide interpretation services.

While the DMHC Help Center received a low number of consumer complaints regarding language assistance, the Help Center will continue to investigate and resolve consumer issues related to language access, and if any systemic barriers to language assistance services are identified, the DMHC will act promptly to investigate health plans and protect consumer's health care rights.