Health Plan Compliance with Language Assistance Requirements

Biennial Report to the Legislature
January 2019 – December 2020

TABLE OF CONTENTS

EXECUTIVE SUMMARY ____ 1

INTRODUCTION ____ 2

PART I: LANGUAGE ASSISTANCE REGULATION REQUIREMENTS ____ 3

Enrollee Assessment ____ 3

Determination of Threshold Languages through Population Analysis ____ 3

Language Assistance Services ____ 4

Translation ____ 4

Interpretation Services ____ 5

Proficiency Standards ____ 6

Notice of the Availability of Language Assistance Services ____ 6

Timely Access to Qualified Interpreters ____ 7

Staff Training ____ 8

Compliance Monitoring ____ 8

PART II: HEALTH PLAN COMPLIANCE WITH STANDARDS ____ 9

Overview of the DMHC Survey Process and Deficiency Findings ____ 9

DMHC Help Center: Inquiry Calls and Complaints Related to Language Assistance Services ____ 12

CONCLUSION ____ 15

TABLES

Table 1: Language Threshold Standards for Translation ____ 4
Table 2: Health Plan Type and Number of Surveys Completed by Year ____ 9
Table 3: Survey Deficiencies by Health Plan Enrollment ____ 9
Table 4: Number of Deficiencies by Health Plan Type ____ 10
Table 5: Full-Service Health Plans Surveyed 2019 - 2020 ____ 10
Table 6: Dental Health Plans Surveyed 2019 - 2020 ____ 10
Table 7: Behavioral Health Plans Surveyed 2019 - 2020 ____ 10
Table 8: Vision Plans Surveyed 2019-2020 ____ 10
Table 9: Total Commercial Health Plan Survey Deficiencies by Language Standard 2019-2020 ____ 11
Table 10: Language Assistance Inquiries ____ 12
Table 11: Language Assistance Complaints ____ 14

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 125 full-service and specialized health plans that provide health, behavioral, dental, vision, chiropractic, acupuncture or employee assistance services to over 26 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 Title 28 of the California Code of Regulations.[1]

Rule 1300.67.04, which became fully 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 Office of Plan Monitoring monitors health plans' compliance with the statutory and regulatory requirements as part of its routine medical survey process, which occurs at least every three years for each DMHC licensed health plan. In addition, the DMHC tracks complaints filed with its Help Center to identify trends and compliance issues.

This biennial report covers the period of January 1, 2019 through December 31, 2020. The DMHC conducts medical surveys on a triennial basis, and this report includes 64 full-service and specialized health plans which DMHC surveyed during the reporting period. During the survey process, the DMHC identified 29 deficiencies by health plans in meeting language assistance requirements and required deficient plans to implement corrective action. The DMHC Help Center received 47 written consumer complaints and 63 inquiry 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 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 accurately and with appropriate cultural relevance in a target language something heard or read in a 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 Limited English Proficient (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 compliance with Section 1367.04 and Rule 1300.67.04.

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

PART I: LANGUAGE ASSISTANCE REGULATION REQUIREMENTS

Each 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

Rule 1300.67.04 requires health plans to tailor language assistance services to the needs of each plan's enrollee population. Each health plan must apply statistically valid methods to assess its enrollee population to develop a demographic profile and to survey the linguistic needs of individual enrollees, and must update its assessment of enrollee language needs and demographic profile at least once every three years.[6] Based on health plan size and language needs assessment results, each health plan is required to determine threshold languages into which it must translate vital documents.[7]

Vital documents include:

- Applications;
- Consent forms;
- Letters containing important information regarding eligibility and participation criteria;
- Notices pertaining to the denial, reduction, modification, or termination of services and benefits, and 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 plan disclosure forms that describe the principal benefits and coverage, exclusions, limitations, and cost-sharing requirements applicable under a plan contract.[8]

[5] Rule 1300.67.04(c).
[6] Rules 1300.67.04(c)(1)(A), (e)(1).
[7] Section 1367.04(b)(1)(A)(I)-(iii), (3).
[8] Section 1367.04(b)(1)(B)(i)-(vi); Rule 1300.67.04(b)(7)(A)-(G).

Table 1 below summarizes the standards for determining a plan's threshold language(s) for vital document translation, as determined by each plan's needs assessment results.[9]

Table 1: Language Threshold Standards for Translation

Number of Enrollees in the Plan	Minimum Number of Non-English Languages Vital Docs Must be Translated Into	Translation into Additional Languages is Required if the Number of Plan Enrollees Meets the Percentage or Number of Enrollees, Whichever is Less
≥ 1,000,000	2 languages	0.75 percent or 15,000 enrollees
300,000 – 999,999	1 language	1.0 percent or 6,000 enrollees
< 300,000	0 languages unless threshold is met	5.0 percent or 3,000 enrollees

Language Assistance Services

Each health plan's language assistance program must include 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.[10] Further, health plans must have processes to inform enrollees of the availability of free language assistance services and how to access the services. Health Plans must also ensure that LEP enrollees are informed of their grievance and independent medical review rights in threshold languages and through oral interpretation.[11] The policies and procedures must include processes to ensure health plan providers are informed of health plan standards and mechanisms for providing free language assistance services and standards for ensuring proficiency of individuals providing translation and interpretation services by or on behalf of the health plan.[12] Grievance forms and procedures in threshold languages must be readily available to enrollees and contracting providers.[13]

Translation

Each health plan is required to translate vital documents into its threshold languages. If a vital document contains enrollee-specific information tailored to the specific circumstances of an enrollee, a health plan is not required to translate the document. However, the health plan must provide the enrollee with a notice of the availability of

[9] See Section 1367.04(b)(1)(A)(i)-(iii).
[10] Rule 1300.67.04(c)(2)(A), (B), (F), (G).
[11] Rule 1300.67.04(c)(2)(C), (D).
[12] Rule 1300.67.04(c)(2)(E), (H).
[13] Rule 1300.67.04(c)(2)(D)(i).

language assistance services[14] in the threshold languages.[15] If the enrollee requests translation, the translated document must be provided to the enrollee within 21 calendar days.[16] Non-English translations of vital documents must meet the same standards required for the English language versions of those documents.[17]

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 plan's threshold languages.[18]

Plans must have processes or standards regarding the range of interpretation services that will be provided as appropriate for the particular point of contact, which may include, but are 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 services, or formally arranging for the services of volunteer community interpreters. In any case, all interpreters must be trained and competent to provide interpreter services.[19]

Interpretation services must be offered to the enrollee even if the enrollee is accompanied by a family member or friend who is able to provide interpretation services. If the enrollee declines the offer of interpretation services, the declined offer must be noted in the enrollee's file.[20] However, plans may require enrollees to rely on an adult or minor child accompanying the enrollee to interpret or facilitate communication in an emergency if a qualified interpreter is not immediately available. An accompanying adult may otherwise interpret or facilitate communication if specifically requested by an enrollee, the accompanying adult agrees, and reliance on the accompanying adult is appropriate under the circumstances.[21]

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[14] The Industry Collaboration Effort (ICE) developed a Notice of Language Assistance (NOLA) to be 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#]." Health Plans utilizing the ICE NOLA were required to translate the notice into applicable threshold languages. Plans may also develop their own NOLA so long as it meets all of the requirements in the regulation, and is approved by the Department.
[15] Section 1367.04(b)(1)(C)(i).
[16] Section 1367.04(b)(1)(C)(i)-(ii).
[17] Rule 1300.67.04(c)(2)(F)(iv).
[18] Rule 1300.67.04(c)(2)(G).
[19] Rule 1300.67.04(c)(2)(G)(vi).
[20] Rule 1300.67.04(c)(2)(G)(iii).
[21] Section 1367.04(b)(4)(C). These provisions were added to Section 1367.04 by Senate Bill 223, effective January 1, 2018.

Proficiency Standards

Health plans must develop and apply appropriate criteria for ensuring the proficiency of the individuals providing translation and interpretation services. Alternatively, health plans may adopt standards, issued by an association acceptable to the DMHC, to certify the proficiency of the individuals providing translation and interpretation services. At a minimum, a plan's language assistance proficiency standards must require that individuals providing translation and interpretation services 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. [22]

Notice of the Availability of Language Assistance Services

Health plans must include a notice of the availability of free language assistance services 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. [23] 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.[24]

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."

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

[22] Rule 1300.67.04(C)(2)(H).
[23] Rule 1300.67.04(c)(2)(C)(ii)-(iii).
[24] Rule 1300.67/04(c)(2)(F)(v).

modified versions of the notice) to achieve compliance with the language assistance notice requirements.

In 2017, the California Legislature passed Senate Bill 223, enacting, among other provisions, Sections 1367.042 and amending Section 1367.04. These provisions require:

- Plan notifications to enrollees and the public, in specified locations and manner, of the availability of free and timely language assistance services and how to access them in the top 15 languages spoken by LEP individuals in California as determined by the Department of Health Care Services (DHCS);
- Availability of free and timely auxiliary aids and services for individuals with disabilities;
- A statement the plan does not discriminate based on a set of protected categories and;
- A description of how to file a discrimination complaint with the United States Department of Health and Human Services Office of Civil Rights.[25] Further, plans must include with non-standardized vital documents a written notice of the availability of interpretation services in the top 15 languages spoken by LEP individuals in California as determined by DHCS.[26]

The DMHC has incorporated these requirements into its medical survey process in addition to reviewing required plan filings.

Timely Access to Qualified Interpreters

Health plans must have processes and standards for providing enrollees with access to timely interpretation services, for 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. 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 delay results in the effective 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.[27]

[25] Section 1367.042.
[26] Section 1367.04(b)(1)(C)(i).
[27] Rule 1300.67.04(c)(2)(G)(i)-(v).

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 the requirements to offer qualified interpretation services at all points of contact and to describe the arrangements the plan will make to provide or arrange for timely interpretation at all points of contact if all of the following conditions are met:

- Provider directories identify bilingual providers or providers who employ bilingual providers and/or staff, based on fluency attestations and signed language capability forms;
- The plan requires its providers to provide quarterly updates regarding any changes in the language capabilities of currently employed providers and/or office staff; and
- Quality assurance audits of contracting providers confirm and document the accuracy of provider language capability disclosure forms and attestations.[28]

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. 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. [29]

Compliance Monitoring

Each health plan's language assistance policies and procedures must include provisions for monitoring its language assistance program, including delegated programs, and make modifications as needed to comply with the language assistance requirements.[30]

[28] Rule 1300.67.04(d)(9).
[29] Rule 1300.67.04(c)(3).
[30] Rule 1300.67.04(c)(4).

PART II: HEALTH PLAN COMPLIANCE WITH STANDARDS

Overview of the DMHC Survey Process and Deficiency Findings

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 surveys.

The DMHC completed medical surveys of 64 full-service and specialized health plans during the reporting period. The size and type of these health plans varied from plans with commercial enrollment of less than 1,000 enrollees to health plans with more than one million commercial enrollees.

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

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

Health Plan Type	2019	2020
Full-Service	21	13
Dental	7	8
Behavioral Health	3	6
Vision	1	2
Chiropractic	2	1
Total	**34**	**30**

Table 3 identifies the number of language assistance deficiencies based on the size of the commercial plan enrollment for the 2013, 2015, 2017, 2019 and 2021 biennial reporting periods.

Table 3: Survey Deficiencies by Health Plan Enrollment

Health Plan Enrollment	Number of Deficiencies 2013 Report	Number of Deficiencies 2015 Report	Number of Deficiencies 2017 Report	Number of Deficiencies 2019 Report	Number of Deficiencies 2021 Report
Large (≥ 500,000)	6	2	8	1	3
Medium (150,000 to 499,999)	3	7	9	7	3
Small (≤ 150,000)	16	8	16	18	23
Total	**25**	**17**	**33**	**26**	**29**

For the 64 full-service and specialized surveys, the DMHC identified 29 deficiencies across 16 health plans' language assistance programs, as noted in Table 4.

Table 4: Number of Deficiencies by Health Plan Type

Number of Plans by Plan Type with a Deficiency	Total Number of Deficiencies
Full-Service Plans (4)	7
Dental Plans (8)	16
Behavioral Health Plans (3)	5
Vision Plans (1)	1
Chiropractic Plans (0)	0
Total (16)	**29**

Tables 5 through 8 identify the full-service and specialized health plans that were surveyed in 2019 and 2020 and identified as non-compliant with the language assistance requirements. Plans with an asterisk were cited for one or more language assistance deficiencies. The results of the surveys are available on the DMHC website.

Table 5: Full-Service Health Plans Surveyed 2019 - 2020

2019	2020
Ventura County Health*	Scripps Health Plan Services, Inc.
Santa Clara County*	Community Care Health Plan, Inc.*

Table 6: Dental Health Plans Surveyed 2019 - 2020

2019	2020
Dedicated Dental Systems, Inc.*	The CDI Group, Inc.
Western Dental Services, Inc.	Access Dental Plan
Dental Benefit Providers of California, Inc.*	Golden West Health Plan, Inc.*
	Blue Cross of California
	SafeGuard Health Plans, Inc.

Table 7: Behavioral Health Plans Surveyed 2019 - 2020

2019	2020
Managed Health Network	Claremont Behavioral Services, Inc.*
CONCERN: Employee Assistance Program	

Table 8: Vision Plans Surveyed 2019-2020

2019	2020
Medical Eye Services, Inc.	

Table 9 identifies the deficiencies related to commercial 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 9: Total Commercial Health Plan Survey Deficiencies by Language Standard 2019-2020

Language Standard	Deficiencies
Implementation	2
Standards for Enrollee Assessment	8*
Standards for Staff Training	1*
Standards for Language Assistance Services	18*
Standards for Compliance Monitoring	6*
Total	**35**

Deficiencies with an asterisk indicate plans cited as deficient in more than one of the language standards. While only 29 actual deficiencies were cited as a result of the medical surveys, 35 total deficiencies of language standards are listed in Table 9. Of the six health plans cited for a deficiency in Standards for Compliance Monitoring, four health plans were also cited as being deficient in Standards for Language Assistance Services as part of the same deficiency finding. One of these four health plans was additionally cited for being deficient in both Standards for Enrollee Assessment and Standards for Staff Training, again as part of the same finding.

When a deficiency in a commercial plan's language assistance program is identified, the health plan is required to submit a corrective action 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 action 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 deficiencies may require more than 45 days to correct. In those cases, the DMHC conducts a follow-up review of the 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 actions.

Of the 29 deficiencies identified during this reporting period, eight deficiencies were corrected by the health plan(s) prior to the issuance of the Final or Follow-Up Survey reports, 15 deficiencies are currently being assessed as part of the Follow-Up Survey process and one deficiency is being referred to the Department's Office of Enforcement

for further review. Additionally, one plan that was cited for five deficiencies surrendered their health care service plan license prior to the issuance of the Follow-Up Report.

DMHC Help Center: Inquiry 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 the consumers and health plans to promptly arrange language services when needed. For this reporting period, the DMHC Help Center received 63 inquiries (phone calls) and 47 written complaints regarding language assistance.

Table 10: Language Assistance Inquiries

Inquiry Type	Number of Inquiries 2009-2010	Number of Inquiries 2011-2012	Number of Inquiries 2013-2014	Number of Inquiries 2015-2016	Number of Inquiries 2017-2018	Number of Inquiries 2019-2020	Percentage of Total Language Assistance Inquiries 2009-2018
Consumer inquiry about how to obtain an interpreter	26	18	16	14	18	10	25%
Consumer inquiry about how to obtain translated documents	31	6	8	17	5	14	20%
Consumer inquiry about the language assistance laws	39	8	0	7	0	4	14%
Consumer requested interpreter, but none was provided	9	5	0	6	19	8	12%
Consumer requesting a provider that speaks their language	0	12	12	7	1	1	8%

Inquiry Type	Number of Inquiries 2009-2010	Number of Inquiries 2011-2012	Number of Inquiries 2013-2014	Number of Inquiries 2015-2016	Number of Inquiries 2017-2018	Number of Inquiries 2019-2020	Percentage of Total Language Assistance Inquiries 2009-2018
Provider unsure how to access a plan's language assistance program	7	1	1	3	18	20	12%
Provider inquiry about the language assistance laws	19	2	1	2	4	6	9%
Total Inquiries Regarding Language Assistance	**131**	**52**	**38**	**56**	**65**	**63**	**100%**

When an enrollee or provider calls the Help Center, agents will try to resolve the inquiry by explaining the law, health plan requirements, or how to receive interpreter or translation services. Agents may also contact a health plan on an enrollee's behalf to advise the health plan that they must assist the consumer in the requested language. In instances where a resolution is not reached, Help Center staff will direct an enrollee to file a written complaint.

During this reporting period, the DMHC received 47 written complaints. Eighteen of the 47 (38%) complaints related to interpreter access, 14 (30%) related to translation access, and seven (15%) included a secondary category[31] related to a cultural barrier. See Table 11 for a breakdown of complaint categories received by the DMHCs Help Center.

[31] Prior to October 2018, the DMHC's complaint database only allowed for one complaint category to be recorded. For categories other than Interpreter Access or Translation Access, a language access complaint was secondary to the primary complaint.

Table 11 below provides the types and number of inquiries the Help Center received from 2009 through 2020 related to language assistance.

Table 11: Language Assistance Complaints

Complaint Type	Number of Complaints 2009-2010	Number of Complaints 2011-2012	Number of Complaints 2013-2014	Number of Complaints 2015-2016	Number of Complaints 2017-2018	Number of Complaints 2019-2020
Interpreter Access	4	9	8	7	17	18
Translation Access	0	2	2	4	11	14
Cultural Barrier	0	0	0	0	0	7
Access to Specialist	0	0	0	0	1	2
Coverage Benefits Exclusion	0	0	0	0	1	1
Non-Medical Transportation	0	0	0	0	1	1
Prescription Issue	0	0	0	0	1	1
Responsiveness	0	0	0	0	1	3
Total Complaints Regarding Language Assistance	**4**	**11**	**10**	**11**	**33**	**47**

Of the 47 complaints for 2019-2020, 36 were resolved by the DMHC through the complaint process, eight were referred back to the health plan to complete the health plan's grievance process, One was initiated as an inquiry phone call that was referred to the DMHC written complaint process, one was not under DMHC jurisdiction, and one was withdrawn by the enrollee.

CONCLUSION

One of the fundamental components of the DMHC's mission is to ensure consumers are educated about their health care rights and aware of the resources available through the DMHC Help Center. While the Help Center has assisted over 2.4 million consumers, non-English speaking consumers contact the Help Center at a lower rate when compared to their population representation.

During this two-year report period of January 1, 2019 through December 31, 2020, the DMHC identified 29 deficiencies for 16 of the 64 health plans the DMHC surveyed. The largest number of consumer inquiries and complaints to the DMHC Help Center during this period were about access to interpreters, followed by translation services.

The DMHC will continue to oversee and assess the effectiveness of the health plans' language assistance programs. The DMHC will continue its focus on outreach to non- and limited-English proficient health plan enrollees and work with its contracted community-based organization partners to conduct outreach regarding consumers' rights to access language assistance and the availability of the Help Center to assist individuals with language access problems.