



## Executive Briefing

# 2010 Medicare / Medicaid Foreign Language Compliance

By Elisabete Miranda, President Translation Plus, Inc

## Introduction

This briefing provides background and overview of the responsibilities that Medicaid / Medicare based insurance plan sponsors face with regard to communicating with individuals with Limited English Proficiency (“LEP”).

## Background

Title VI of the Civil Rights Act of 1964 provides that no person shall “on the ground of race, color, or national origin, be excluded from participation, be denied the benefit of, or be subject to discrimination under any program or activity receiving Federal financial assistance”. In 1974, the Supreme Court determined that Title VI prohibits conduct that has a disproportionate effect on persons with LEP because such conduct constitutes national origin discrimination. In 2000 an Executive Order was issued with companion guidelines from the Department of Justice setting forth objectives and principles for federal agencies to follow in issuing guidelines to non-Federal organizations regarding their obligation to provide meaningful access to LEP persons<sup>1</sup>. Since Medicare and state Medicaid programs involve federal funding they both fall under these LEP mandates. The Centers for Medicare & Medicaid Services (“CMS”) is the authority for guidelines to participating plan sponsors regarding LEP requirements.

## CMS Language Thresholds

The CMS guidelines require that plan sponsors make translated marketing materials available in any language that is the primary language of more than ten percent (10%) of a plan sponsors Plan Benefit Package (“PBP”) service area. The ten percent threshold is determined by dividing the total number of people who speak a given language in the service area by the total population 5 years and older for that service area. For service areas that are smaller than a county, the figures for the entire county are used to make the determination.

A listing of PBP’s that require translated materials based upon 2010 population data is available to plan sponsors at CMS’ HPMS website. This information can be used for 2011 as long as the PBP services area is the same for 2010 and 2011, and as long as the US Census Bureau hasn’t released new (i.e. 2009) data. The mechanics for

determining whether a particular PBP exceeds the 10% threshold is covered in detail in the Memo to Medicare Sponsors from Cynthia G. Tudor and Danielle Moon<sup>2</sup>.

Regardless of the percentage of non-English speakers in PBP service area, all plan sponsors must have appropriate interpreter services available to their call center personnel to answer questions from non-English speaking beneficiaries.

### **Documents That Must Be Translated**

Although the plan sponsor is responsible for identification of all materials required for translation, CMS provides a minimum set that must be available in printed form and on the sponsor's web site<sup>3</sup>:

- Enrollment instructions and forms\*
- Summary of Benefits\*
- Plan ratings information
- Required Written Notices covering annual benefits changes, grievance procedures, future plan availability, and limited income Extra Help
- Evidence of Coverage\*
- Annual Notice of Change of Coverage
- Provider Directory\*
- Pharmacy Directory (if applicable)\*
- Formulary (if applicable)
- Any changes to the materials listed above

\* Translated materials that must be uploaded by the plan sponsor to CMS' HPMS Marketing Module

Additional materials not listed above may be required if they are "vital documents" or if their unavailability could be considered a discriminatory practice.

### **CMS Document Submission Deadlines**

To avoid violating CMS anti-discrimination guidelines<sup>4</sup>, translations should be posted to plan sponsor web sites and available for mailing at the same time that the English language versions become available. After the English version has been approved, the plan sponsor must upload the following materials into HPMS:

- The approved English version of the material
- The translated version of the material
- A letter of attestation signed by an individual able to legally bind the organization attesting to the accuracy of the translated materials.

In particular, English versions should be available far enough ahead of their mailing date to allow time for translations to be completed and the translated materials package to be uploaded to CMS.

## **Penalties**

The plan sponsor is responsible for proactively uploading translated versions of materials to CMS' HPMS, posting translated materials on their websites, meeting requests for translated materials in a reasonable timeframe, and insuring that translation or interpretation activities accurately convey the meaning and intent of its marketing materials. The basic remedies for failure to meet this standard include demerits that can result in ratings changes as well as the prohibition of distribution of marketing materials until they have been modified and approved. Since an attestation by an executive of the plan sponsor accompanies submissions, failure to make good faith efforts to insure that information is accurately conveyed can result in "Federal civil action and/or criminal prosecution"<sup>5</sup>.

## **Language Translation Standards**

The Department of Health and Human Services Civil Rights Division has published general guidelines for quality and accuracy of translation<sup>6</sup>.

These guidelines state that "the permanent nature of written translations, however, imposes responsibility on the recipient [of the translation] to take reasonable steps to insure that the quality and accuracy of the translations permit meaningful access by LEP persons". Key components of the guidelines for competency of translations include:

- Consistency with the expected reading level of the audience
- Knowledge of the target audience's regional variations in vocabulary, phraseology, and expressions
- The use of several individuals to check each other's work

## **CMS Phone Interpretation Standards**

Regardless of the percentage of non-English speakers in a plan area, all plan sponsors call centers must be able to accommodate non-English speaking / reading enrollees and prospective enrollees.

The Health and Human Services general guidelines for quality and accuracy of interpretation include<sup>7</sup>:

- Demonstrated ability to communicate information accurately in both English and the second language
- Regional cultural awareness in both languages
- Proper interpretation of terms of art, legal, or technical concepts
- Advanced knowledge of the content of documents likely to be discussed
- Adherence to the same confidentiality standards as the plan sponsor
- Role adherence – without deviation into counselor or legal advisor

## About the Author

Elisabete Miranda is the President of Translation Plus an organization that specializes in helping health insurance companies communicate across languages and cultures in their respective client base. Her company has over 900 healthcare, marketing, and insurance experts that deliver CMS and Title VI compliant language services to large health insurance clients like Humana and Horizon as well as targeted providers like Fallon and NY Presbyterian. Elisabete is an expert in multicultural and multilingual communications who has acted as a cultural consultant to healthcare projects targeting various ethnic communities in the U.S, and is also a member of the Board of Directors of the primary industry trade group, the Association of Language Companies.

---

<sup>1</sup> For more information see [“Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”](#) pages 2 – 4

<sup>2</sup> CMS Memo [“2010 Update for Marketing Material Language Lookup & Translated Materials Monitoring”](#)

<sup>3</sup> [“CMS Medicare Managed Care Manual, Chapter 3 Medicare Marketing Guidelines”](#) Sections 30.6 – 30.11

<sup>4</sup> See Note 3 Section 30.6

<sup>5</sup> See Note 3 Appendix 11

<sup>6</sup> See Note 1 pages 9 – 10 and 14 – 16

<sup>7</sup> See Note 1 pages 9 - 13