

Comments Regarding:

Summary of Benefits and Coverage and the Uniform Glossary

45 CFR Part 147
[CMS-9982-P]
RIN 0938-AQ73

The Alliance for a Just Society and the Health Rights Organizing Project are pleased to submit the following comments on these proposed rules.

Nearly 20 percent of the U.S. population speaks a language other than English in their homes. Of those 55 million people, 24.5 million speak English less than very well.¹

Successful implementation of the new health reform law depends on careful attention to the needs of people of color, who disproportionately suffer from worse health outcomes than do whites on a range of indicators.²

On top of these challenges, many people of color face the language barrier. For people with limited English proficiency (LEP), lack of access to language services presents a critical barrier to quality health care. Serious medical error can result when doctors and patients cannot clearly communicate with each other. Competent language services, including interpretation and translation, help ensure that all patients receive the quality health care they need.

However, the importance of language services is not limited to the doctor's office. In many cases, patients may be prevented from getting appointments, exams, tests, and follow-up care simply because they lack full information about their rights under their health insurance plans. For this reason, it is important that health insurance companies, and not just doctors, make language services available to patients.

Failure to provide competent language services has civil rights implications. Title VI of the 1964 Civil Rights Act requires all recipients of federal funding to make their services accessible to people with limited English proficiency.³ This standard should be considered to apply equally to insurance companies as to doctors and hospitals.

HHS Proposal: 10% Trigger for Translations

Among the measures in the ACA is a requirement that insurance companies provide an explanation of the essential benefits guaranteed

to their customers. However, the rules presently under consideration would effectively exclude very large LEP populations from critical protections, impeding patients' ability to exercise their rights under federal law.

The ACA includes language requiring "linguistic and cultural sensitivity" at key points in the process. Rules being developed by HHS to implement these provisions will govern which language groups will be eligible for the required notices in their native languages. Under the proposed rule we comment on here, for the individual insurance market, a language threshold is proposed "The counties in which this must be done are those in which at least ten percent of the population residing in the county is literate only in the same non-English language, as determined in guidance." Whether this threshold is met will be determined by American Community Survey data

As currently formulated, the rule would put critical health insurance information out of reach for millions. Twenty-seven states and the District of Columbia would be entirely excluded from the rule's effect.

There are 3,143 counties in the United States. According to the HHS notice, the 10 percent standard would be applied in only 255 counties (78 of which are in Puerto Rico) that meet this threshold. Overall, insurers would be required to translate appeal rights notices in just 8 percent of the counties in the United States. The list of the perverse outcomes that would be created by this policy is long and stark: 4

- In Northern California, Chinese-language speakers in San Francisco County would receive translated information, but the 40,000 Spanish speakers residing in the same county would not. Nor would these services be accorded to the nearly 113,000 Spanish speakers in nearby Alameda County or the 61,000 in San Mateo County.
- In Southern California, Spanish speakers in Los Angeles County would receive translation under this rule, but the 490,000 Asian and Pacific Islander (API) language speakers in the county would not.
- In New York, Spanish speakers in Queens and Bronx counties would receive these services, but the 252,000 Spanish-speaking residents of Kings and Nassau counties would not, even though they live right next to one another.
- In Texas, more than 35,000 Spanish speakers in Fort Bend County would not be included, nor would 34,000 in Denton County.
- In New Mexico, the rule would require translation services in nine counties, but excludes the entire city of Albuquerque.

- In Illinois, the 66,000 Spanish speakers in Kane County would receive translation services, while the 461,000 in nearby Cook County (Chicago) would not.
- In New Jersey, the Spanish-speaking residents of Hudson, Passaic, and Union counties would be provided translation services. However, their 144,000 Spanish-speaking neighbors in Bergen, Essex, and Middlesex counties would not.

The exclusion would be acutely felt by speakers of API languages. For those who speak Chinese, just one county (San Francisco) would be covered by the proposed regulations. For those who speak Tagalog, just two counties, in Alaska, would be covered.

If the standard being set here is extended to other sections of the ACA as it is implemented, millions of health care consumers will not be able to access medical care and insurance programs in a meaningful way.

Everyone should have an opportunity to use the benefits covered in their health insurance plans. No one should be shut out of health care solely based on their language. Accordingly, as HHS implements the ACA, it should require that insurers provide:

- Written translation whenever 5 percent of county residents or 500 county residents, whichever is lower, are literate in the same non-English language;
- Oral interpretation as needed by each enrollee; and,
- Clear information about the availability of interpretation and translation at no cost.

1 U.S. Census Bureau, "Language Use in the United States," April 2010, p. 2. viewed at: <http://www.census.gov/prod/2010pubs/acs-12.pdf>.

2 "Health, United States, 2008 with Chartbook," National Center for Health Statistics.

3. National Immigration Law Center, "Increasing Access to Services for Limited English Proficient Persons," Issue Brief, August 7, 2003, p. 2.

4 Data from American Community Survey, 2005-2009, Table B16004, "Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over." Figures are rounded

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