



All-State Medicaid and CHIP Call February 21, 2023



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2/21/23 Agenda

- Family Caregivers: Personal Care Services - Options Beyond the COVID-19 Public Health Emergency
- Accessibility Requirements in Medicaid and CHIP
- Premium FAQs
- Open Mic Q and A

Family Caregivers: Personal Care Services

Options Beyond the COVID-19 Public Health Emergency (PHE)



Background on 1905(a)

- Section 1905(a)(24) of the Social Security Act (the Act) prohibits family members from being paid providers of personal care services. Under regulations at §440.167(b), family member is defined as “legally responsible relative.”
- Section 1135(b)(1)(B) of the Act allowed for a waiver of this prohibition, to temporarily allow payment during the PHE for 1905(a) personal care services rendered by legally responsible individuals (which could include legally responsible family caregivers), provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services.

Background on 1915(c) and (i)

- Typically, states have the option to receive federal reimbursement of personal care services rendered by legally responsible individuals only when such services are deemed “extraordinary care,” so long as the state specifies satisfactory criteria for authorizing such payments.
- Under Appendix K amendments and disaster relief state plan amendments, states were allowed the option to temporarily permit payment for services rendered by family caregivers or legally responsible individuals under 1915(c) waivers and 1915(i) state plan benefits, respectively, as part of waiver or state plan operations during the PHE. States choosing this option had to indicate the services to which this applied, the safeguards used to ensure that individuals received necessary services as authorized in the plan of care, and the procedures used to ensure that payments were made for services rendered.

Continuing Flexibility Post-PHE

- As the PHE flexibilities terminate* based on the expiration of the COVID-19 PHE declaration, states have options to continue the use of family members, including legally responsible individuals, as paid caregivers.
 - *Flexibilities authorized under 1135 waivers and disaster relief state plan amendments expire on May 11, 2023; flexibilities authorized under an Appendix K for 1915(c) waivers expire no later than six months after May 11, 2023.
- The following slides illustrate options by benefit category, and the services that can receive federal reimbursement when provided by family members.

Continuing Flexibility Post-PHE (continued 1)

- Home Health Benefit: 1905(a)(7)
 - No statutory or regulatory prohibition on family members/legally responsible relatives as providers
 - Allows family members/legally liable relatives who meet the provider qualifications and are employed by or under arrangement with a Home Health Agency to provide medically necessary home health services
 - This includes home health aide services, which provide assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs)

Continuing Flexibility Post-PHE (continued 2)

- 1915(c) HCBS Waivers, 1915(i) State Plan HCBS Benefit, and Section 1115 Demonstrations
 - States continue to have the option to receive payment for personal care services rendered by legally responsible individuals when such services are deemed “extraordinary care” so long as the state specifies satisfactory criteria for authorizing such payments.
 - For states that have 1915(c) and 1915(i) services approved through a section 1115 demonstration, states should contact their project officer.

Continuing Flexibility Post-PHE (continued 3)

- 1915(j) Self-Directed Personal Assistant Services
 - States can allow beneficiaries to hire family members, including legally responsible individuals
 - Participants set their own provider qualifications

Continuing Flexibility Post-PHE (continued 4)

- 1915(k) Community First Choice
 - Provides home and community-based attendant services and supports to eligible Medicaid enrollees
 - 6 percentage point increased Federal match to states for service expenditures
 - Enrollees can hire legally responsible individuals (self-directed service delivery model)
 - States can allow legally responsible family members to work for agencies (agency service delivery model)
 - Enrollees set their own provider qualifications

Continuing Flexibility Post-PHE (continued 5)

- States interested in relying on state plan or waiver authorities to continue reimbursing family members, including legally responsible individuals, for covered services should be mindful of effective dates and submission requirements associated with each authority.
- For example, except for 1915(i), state plan amendments (SPAs) may only be effective retroactive to the beginning of the calendar quarter in which they were submitted; 1915(c) waivers, 1915(i) SPAs, and 1115 authorities would require prospective effective dates.



Accessibility Requirements in Medicaid and CHIP

February 2023



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Background

- Medicaid and CHIP agencies must:
 - take reasonable steps to ensure meaningful access to the Medicaid and CHIP programs by individuals with limited English proficiency (LEP); and
 - take appropriate steps to ensure communications are as effective for individuals with disabilities, as they are for other individuals accessing the Medicaid and CHIP programs.
- Language access and effective communication requirements for Medicaid and CHIP exist in federal Medicaid and CHIP regulations, under Section 1557 of the ACA, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and implementing regulations.
- This deck provides guidance for Medicaid and CHIP agencies on federal requirements and flexibilities in providing language services to individuals with LEP and effective communication to individuals with disabilities to ensure compliance.

Medicaid & CHIP Accessibility Requirements

Under federal statutes and Medicaid and CHIP rules, Medicaid and CHIP agencies are required to:

- Provide program information **in plain language, timely and in a manner that is accessible** to applicants and beneficiaries with LEP or a disability at no cost to the individual.¹
- Provide language services, including **oral interpretation and written translations**.²
- Inform individuals that language services are available, and how individuals can access these services through, at minimum, **providing taglines** in non-English languages.³
- Medicaid and CHIP information must also be provided accessibly to individuals with disabilities through the **provision of auxiliary aids and services** at no cost to the individual.⁴
- Provide **applications, renewal forms, notices (e.g. eligibility, adverse action), and the fair hearing process** in a format that is accessible to individuals with LEP or disabilities.⁵

¹42 CFR 435.905(b); 42 CFR 457.110(a)

²42 CFR 435.905(b)(1)

³42 CFR 435.905(b)(3)

⁴42 CFR 435.905(b)(2); 42 CFR 457.110(a)

⁵42 CFR 435.907(g); 42 CFR 435.916(g); 42 CFR 435.917(a); 42 CFR 435.956(b), 42 CFR 431.206(e), 42 CFR 431.205(e)

Section 1557: Meaningful Access Requirements for Language Accessibility

- As states develop or review their language access plans, states should consider the following factors, which HHS Office for Civil Rights uses when determining that entities¹ have taken reasonable steps to ensure individuals with LEP have meaningful access to program(s):
 - The number or proportion of individuals with LEP who are eligible to be served or likely to be encountered in the eligible service population;
 - The frequency with which individuals with LEP come in contact with the entity's health program, activity, or service;
 - The nature and importance of the entity's health program, activity, or service; and
 - The resources available to the entity and costs.

45 CFR 92.101; see additional discussion in Notice of Proposed Rulemaking: Nondiscrimination in Health Programs and Activities (issued August 4, 2022) <https://www.federalregister.gov/documents/2022/08/04/2022-16217/nondiscrimination-in-health-programs-and-activities>

¹ Covered entities include: (1) health programs or activities receiving Federal financial assistance from HHS; (2) programs or activities administered by HHS under Title I of the Patient Protection and Affordable Care Act; or (3) programs or activities administered by entities established under Title I. 45 C.F.R. 92.3.

Section 1557: Language Access Requirements

- **Section 1557 of the Affordable Care Act** prohibits discrimination under any health program or activity receiving federal financial assistance on the grounds of race, color, national origin, sex, age, or disability.¹
- Under Section 1557, Medicaid and CHIP agencies are considered covered entities and are subject to language access requirements established by the HHS Office for Civil Rights, as well as the program-specific requirements identified earlier on slide 4.
- Specifically, Section 1557 requires that states provide:
 - Language services to individuals with LEP, which are required to be **free of charge, accurate and timely, and protect the privacy and independence of the LEP individual.**
 - Language assistance services may include:
 - **Oral language assistance**, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with LEP; and
 - **Written translation**, performed by a qualified translator, of written content in paper or electronic form into languages other than English.²

¹42 U.S.C. 18116; 45 CFR 92.1, 92.2

²45 CFR 92.101; 45 CFR 92.101(b)(2)

Section 1557: Disability Accessibility Requirements

- States must take appropriate steps to ensure that communications with individuals with disabilities **are as effective as communications with other individuals in their programs**, including by providing “information and communication technology” accessible to individuals with disabilities (e.g., websites and information kiosks).
- States must provide **appropriate auxiliary aids and services** to afford individuals with disabilities an equal opportunity to benefit from the service in question. Auxiliary aids and services include:
 - Interpreters, including on-site or through remote video interpreting services;
 - Methods to deliver aural information available to individuals who are deaf or hard of hearing such as: real-time computer-aided transcription services, written materials and notes, assistive listening devices and systems, open and closed captioning systems (including real-time captioning), text telephones (TTYs), videophones and captioned telephones; and
 - Materials that effectively provide visually delivered materials accessible to individuals who are blind or have low vision, such as: audio recordings, Braille materials and displays, screen reader software, and large print materials.

Section 1557: Interpretation Requirements

- If a covered entity is providing **oral interpreter services** to an individual with LEP, the interpreter **must**:
 - adhere to generally accepted interpreter ethics principles, including client confidentiality;
 - have demonstrated proficiency in speaking and understanding both English and the non-English language to be interpreted; and
 - be able to interpret effectively, accurately, and impartially, including any necessary specialized vocabulary, terminology, and phraseology.
- When providing interpretation for individuals with disabilities, an interpreter **must**:
 - adhere to generally accepted interpreter ethics principles, including client confidentiality; and
 - Be able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology and phraseology.
- If oral interpretation is provided remotely, it must be in real-time audio over a dedicated high-speed audio, video, or wireless connection that delivers high-quality audio without lags.
- The entity must also provide adequate training to users of the technology and other involved individuals so that such remote interpreting services can be set up quickly and efficiently.

Section 1557: Interpretation Requirements (Cont'd.)

- When a state is providing oral interpretation services to an individual with LEP, a state **cannot**:
 - Require the individual with LEP to provide their own interpreter.
 - Rely on an adult accompanying an individual with LEP to interpret or facilitate communication, except:
 - In an emergency involving an imminent threat to the safety or welfare of an individual or the public, where there is no qualified interpreter for the individual with LEP immediately available; or
 - When the individual with LEP requests that interpretation and the accompanying adult agrees to assist, and assistance by that adult is appropriate under the circumstances.
 - Rely on a minor child to interpret or facilitate communication, except in an emergency.
 - Rely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with LEP.

Section 1557: Translation Requirements

If a covered entity is providing **written translation services** for written content (in either paper or electronic formats) to an individual with LEP, they must be provided by a translator who **must**:

- adhere to generally accepted translator ethics principles, including client confidentiality;
- have demonstrated proficiency in writing and understanding at least written English and the written language in need of translation; and
- be able to translate effectively, accurately, and impartially, including any necessary specialized vocabulary, terminology, and phraseology.

Medicaid & CHIP Claiming for Language Access Services

- **Regular federal Medicaid administrative match** is generally available for expenditures for language services, including translation and interpretation services.
- **Increased federal match** is available for certain translation or interpretation service expenditures.
 - Medicaid increased match: 75 percent of allowable expenditures for translation or interpretation services in connection with the enrollment, retention, and receipt of covered services by children of families for whom English is not the primary language.¹
 - CHIP increased match: The higher of 75 percent or the state's enhanced FMAP plus 5 percent of allowable expenditures for translation or interpretation services in connection with the enrollment, retention, and receipt of covered services by individual for whom English is not the primary language.^{2,3}
- In order to obtain the increased translation/interpretation match, States and providers may:
 - Enter into a contract or employ staff that provide solely translation or interpretation functions and claim related costs as administration; and/or
 - Pay for translation or interpretation activities to assist the medical provider of record for the service separately as an administrative expenditure, in addition to the rate paid for the medical service itself.

SHO #10-007: Increased Federal Matching Funds for Translation and Interpretation Services under Medicaid and CHIP (issued July 2010):

<https://www.medicaid.gov/federal-policy-guidance/downloads/SHO10007.pdf>

CMCS Informational Bulletin: Recent Developments in Medicaid (issued April 26, 2011): <https://www.medicaid.gov/federal-policy-guidance/downloads/Info-Bulletin-4-26-11.pdf>

¹ Section 1903(a)(2)(E) of the Social Security Act

² Section 2105(A)(1)(d)(IV) of the Social Security Act

³ Under 2110(a)(27) translation services are included in the definition of child health assistance and therefore are not subject to the 10 percent administrative cap. 22

Spotlight on Accessibility During Unwinding

State preparations for unwinding should include an assessment of the state's current processes in order to ensure equal access to Medicaid and CHIP for individuals with LEP and disabilities. Key items to consider include:

- **Identification:**
 - How the state is identifying individuals who need accommodations or language services;
 - How the state is identifying need and capacity for language services based on known information about the Medicaid population and the prevalence of language needs within the state;
 - What follow up or outreach needs to be done to provide appropriate accommodations for individuals with disabilities or LEP.
- **Review of eligibility processes, including automations:**
 - How call centers or chat features are set up, in order to ensure that individuals with LEP or a disability can use automated or voice prompting features;
 - How automations (such as QR codes, apps, online systems) impact individuals with LEP or a disability and their ability to access benefits, and whether alternative methods of access or strategies are needed.
- **Training:** What training call center workers or other staff that interact with applicants and beneficiaries are receiving to recognize requests for accommodations and/or language services.
- **Complaints:**
 - Whether there is a system to receive complaints from individuals with LEP or disabilities regarding accessibility, and how individuals are informed about this process;
 - Whether the system receiving complaints is accessible to individuals with LEP or disabilities.
- **Monitoring:** How will the state monitor:
 - That disability accommodations and language services are being provided adequately;
 - If individuals with disabilities or LEP are being disparately impacted by procedural denials.

Spotlight on Accessibility During Unwinding (Cont'd.)

- States are encouraged to consider steps to ensure effective communication with individuals with LEP and disabilities. Some examples are:
 - **Ensure key documents are translated into multiple languages** by qualified translators and reviewed for cultural competence.
 - **Ensure multilingual staff** who speak frequently spoken languages within the states' population (e.g., Spanish) are available to communicate with applicants and beneficiaries (e.g., call centers) and conduct training on language and disability access requirements, confidentiality, ethics, terms and phraseology to ensure oral interpreters are qualified.
 - **Partner with community-based organizations** with interpretation services.
 - **Update websites with taglines** in non-English languages to inform individuals how to access language services that are available.
 - **Ensure that information, including information provided through technology (e.g. websites and information kiosks), is communicated to individuals with disabilities accessibly** by providing auxiliary aids and services at no cost to the individual.
- If states have additional questions or would like to discuss specific strategies to provide language services to applicants and beneficiaries, CMS can provide additional technical assistance. States can contact their CMS State Lead for assistance.

Questions
