2014

CALIFORNIA LANGUAGE ASSISTANCE PROGRAM

Report of Health Insurer Compliance

Fourth Biennial Report to the Legislature
January 2012 – December 2013

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EXECUTIVE SUMMARY

The Department of Insurance is required to report to the Legislature every two years on health insurer compliance with the Language Assistance Program (LAP) regulations. This Report covers the period January 1, 2012 - December 31, 2013 and includes on-site reviews of five large health insurers, a detailed review of the LAP Reports from the top eighteen health insurers, compliance reviews of over 100 additional health insurers and collection of data regarding complaints.

One-hundred seventy (170) health insurers were identified as subject to the Language Assistance Program Data Call for the 2012-13 reporting cycle. As of the date of this Report, 132 insurers have completed and submitted their 2012-13 LAP Report. An additional 33 companies that have not previously participated in the LAP have been granted an extension of time until July 1, 2014 to develop and implement an LAP Plan and report to the Department on their activities.

The review of health insurers indicates that the majority have:

- Completed the initial survey of their insured population.
- Identified their threshold languages and translated the vital documents into the top one or two requested languages.
- Developed systems to provide interpretation services as requested.
- Provided information to their network of health care providers through websites, newsletters and various other modalities.
- Used the Notice of Availability of Language Assistance Services as the primary means of informing insureds of the availability of language services.

Areas of improvement noted for health insurers in LAP compliance are:

- Identifying methods to increase insureds response to the language survey.
- Continuing to survey the insured population every three years as required.
- Including the Commissioner's Notice of Availability of Language Assistance Services with required documents at required intervals.
- Improving the provision of LAP information and responsibilities to health care providers.

Overall, the Department has found the majority of California health insurers to be responsive and proactive regarding language services to their limited-English proficient and non-English speaking insureds.

INTRODUCTION

In 2003, the California Legislature passed Senate Bill 853 to ensure that limited-English proficient (LEP) and non-English speaking health consumers would be provided with meaningful access to interpreters when accessing their health care. SB 853 also required insurers to translate vital documents. Pursuant to this law, codified in Insurance Code sections 10133.8 and 10133.9, the Department of Insurance developed regulations (Title 10, California Code of Regulations sections 2538.1-2538.8). The regulations require all California health insurers to:

- Survey the language preferences and assess the linguistic needs of the insured population;
- Translate "vital documents" into threshold languages as indicated;
- Provide individual access to interpretation services as requested;
- Provide a Notice of Availability of Language Assistance Services to all insureds;
- Inform the health care provider networks about required interpretation services;
- Provide educational materials to insureds regarding language services;
- Train insurer staff in required language services and how to access them;
- Evaluate their Language Assistance Program; and,
- Report to the Department as required.

The Department of Insurance is required to report to the Legislature every two years on health insurer compliance with the regulations. This Report covers the period January 1, 2012 - December 31, 2013. The information in this Report is based on four large health insurer claims exams, one large health insurer Field Rating and Underwriting exam, a detailed review of the reports from the top eighteen health insurers with 90% of the health insurance market, compliance reviews of over 100 additional health insurer reports and collection of data from the Consumer Services Division regarding complaints.

PART I: LANGUAGE ASSISTANCE PROGRAM REQUIREMENTS & SUMMARY OF INSURER REPORTS

Survey the Language Preferences & Assess the Linguistic Needs

The first essential element of the Language Assistance law is to identify the preferred written and spoken language of each insured. Every health insurer shall survey their entire California insured population every three years to determine their preferred spoken and written language. If the entire population is not surveyed, the insurer shall use a statistically valid survey methodology. The results of the survey determine whether "vital documents", as defined in the regulations, shall be translated into non-English languages (threshold languages) based on meeting the criteria established in the statute.

Summary of Insurer Surveys:

The majority of health insurers reviewed completed their initial survey of the insured population. We have identified a number of insurers that have not re-surveyed their insured population as required every three years by the regulations.

Translate "vital documents" into Threshold Languages

Once the insured population has been surveyed, the insurer identifies the threshold languages, if any, into which "vital documents" shall be translated. Translation means the conversion of a written document from English to a non-English language. The list of vital documents includes among other things applications, consent forms, letters, notices related to denials, termination of services, etc., and documents that require a response from the insured. Vital documents shall be translated into an insured's preferred language if it is one of the identified threshold languages. If a vital document includes insured specific information it is not required to be translated. However, the insurer shall send the insured the Notice of Availability of Language Services indicating that the insured may request a copy of the vital document translated into his/her preferred written language. The insurer shall provide the translated document to the insured within 21-days of the request.

Summary of Insurer Translation of Vital Documents:

The majority of insurers reviewed have identified their threshold languages and translated the vital documents into the top one or two requested languages according to the thresholds provided in the regulations. Most have contracted with language/translation companies to provide translation services.

Table 1: Criteria for Threshold Languages

Number of California Health Insured Population	Number of Insurers Meeting Criteria	Minimum Number of Non-English Languages Required	Additional Threshold Languages if criteria is met (whichever is less)	
			Percent of total insureds requesting a language	Total Number of Insureds requesting a language
Greater than 1,000,000	3	2 non-English languages	0.75%	15,000
300,000-1,000,000	8	1 non-English language	1.0%	6,000
Less than 300,000	153	"A" non-English language if thresholds are met	5.0%	3,000

Oral Interpretation Services

Every health insured is entitled to "individual access to interpretation services". Interpretation services are the conversion of oral words from one language to another or the reading of a document written in English into a non-English language. Upon request, a health insurer shall provide an insured with an interpreter in any language in a timely manner, without cost, to speak with the insurer. Insurers shall have in place a system for providing interpreters to insureds at all points of contact with the insurer. If an insured requests an interpreter when accessing his or her health care, the insurer is shall ensure that an interpreter is provided.

Summary of Insurer Interpretation Services:

The majority of insurers reviewed have systems in place to provide interpretation services to insureds when speaking with the insurer. We have identified several insurers that are not requiring their provider networks to provide interpreters to insureds when requested.

Notice of Availability of Language Assistance Services

Each insurer is required to notify all insureds of the availability of free interpretation and translation services at all points of contact when they access their health care and when communicating with their insurer. As permitted by Department regulations, the Insurance Commissioner developed a Notice that insurers are required to use for this purpose. The Notice is translated into thirteen non-English languages and contains wording developed during the regulatory process by a collaborative working group of stakeholders, advocates, health insurers and professionals. This Notice must be included in all welcome and renewal packets, letters, correspondence, brochures, newsletters, outreach and marketing materials, and any other materials sent to insureds.

The Notice of Availability of Language Assistance Services is a "pdf" document that can be modified by an insurer to provide specific information about how to contact the insurer in the event the insured has a problem obtaining language services. This Notice is also available on the DMHC website for voluntary use by Health Plans.

Summary of Insurer Notice to Insureds:

During the first reporting cycle, insurers provided a copy of the required Notice with insurer specific information included. The majority of current reports indicate"No Change" regarding the Notice requirement. Several insurers indicate that the required Notice is now only being provided with vital documents.

Notice to Health Care Provider Networks

Insurers are required to inform their network of health care providers about the Language Assistance requirement that an interpreter shall be provided to an insured in any language, in a timely manner and without cost to the insured. An insurer may negotiate with their provider network regarding the cost and provision of interpreter services to insureds. However, the insurer is ultimately responsible for bearing the costs and handling complaints from their insureds about the provision of interpreters when accessing their health care.

Summary of Insurer Notice to Providers:

Insurers initially notified their networks about the LAP law and requirements. Since the inception of the program, many insurers have provided information to their networks through websites and newsletters. Education of the provider networks regarding the specific details of the interpreter requirements remains a concern for insureds and the stakeholder community.

Educate Insureds Regarding Language Services

The insurer is responsible for providing information to their insureds about the language services that are available including interpretation and translation services. This information shall be provided regularly, in various formats, and clearly state what services are available and how to access those services.

Summary of Insurer Education for Insureds:

The majority of insurers use the required mailings of the Notice of Availability of Language Assistance Services as the primary means to inform insureds about their language services. Many insurers have information on their websites. Several use additional mailings to insureds to provide information about language services.

Staff Training, Recruitment & Retention

Insurers are required to provide regular training about language services and the diverse needs of the insured population to all employees who have routine contact with insureds. Insurers are also required to recruit and retain employees who encourage workforce diversity. The goal is a multi-cultural/multi-lingual workforce.

Summary of Insurer Staff Training, Recruitment & Retention:

The majority of insurers have LAP training programs for employees. Most require re-training on a regular basis. In today's health insurance marketplace, the majority of insurers have active recruitment programs to hire multi-cultural/multi-lingual employees.

Evaluate Insurer's Language Assistance Program

All health insurers are required to evaluate the provision of language services to their insured population. The insurer shall review complaints and grievances, requests for language services, whether their LAP meets the language needs of their insured population, and whether the resources and plans for providing language services are current and available.

Summary of Insurer Evaluation of the LAP:

The majority of insurers use customer surveys, complaints, grievances and internal audits to evaluate their LAP. Many insurers using a contracted interpreter service receive reports from the contractor that are part of their evaluation process. Several insurers have in-house "quality improvement programs". Others have a Cultural and Linguistic Unit or Compliance Unit that administer the LAP and handles evaluation.

Insurer Reporting to Department of Insurance

All health insurers are required to complete the biennial LAP Data Call report every two years. The report includes two sections: Section 1 is the Cultural Appropriateness Report that requests information required by statute; Section 2 is an LAP Update Report that collects additional information about the status of activities that are required to be conducted on a regular basis.

Summary of Insurer Reporting:

One-hundred seventy (170) health insurers were identified as subject to the Language Assistance Program Data Call for the 2012-13 reporting cycle. In order to proceed in an orderly fashion, staff developed several reporting categories for insurers. As of the date of this Report, 132 insurers have completed and submitted their 2012-13 LAP Report. An additional 33 companies that have not previously participated in the LAP have been granted an extension of time until July 1, 2014 to develop and implement an LAP Plan and report to the Department on their activities.

PART II: MONITORING HEALTH INSURER COMPLIANCE

Introduction

The Department of Insurance Language Assistance Program (LAP) has grown considerably since its inception in 2007. The number of health insurers subject to the program has increased to almost 200; our ability to track the status of insurers has developed into a comprehensive data reporting system and our activities regarding non-reporting health insurers have been fine-tuned.

Due to several changes in health care law in California (Senate Bill 353) and the nation (Affordable Care Act), this reporting period presented new and different challenges for Department of Insurance Language Assistance Program staff. The volume and types of questions from health insurers surpassed even 2007 - the first year of health insurer reporting. The number of insurers subject to the LAP increased for both newly licensed companies and previously non-reporting insurers.

While there were many challenges, our work this reporting period confirms our belief that the Language Assistance Program and the services provided to limited and non-English speaking health insureds in California is more important than ever before and will continue to be strongly supported by the Department.

Overview of Health Insurer Compliance Monitoring

A three-part process was used to review the Language Assistance Programs of all California health insurers: 1) Market Conduct on-site examinations; 2) Review of complaints received on the Consumer Hotline; and, 3) Review of information submitted in the biennial Data Call Reports.

The Consumer Services & Market Conduct Branch enforces applicable insurance laws during the investigation of individual consumer complaints against insurers and through on-site examinations of insurer claims and underwriting files. All licensed insurance companies for all lines of insurance are required by law to be examined at least once every five years. Over two hundred exams were conducted in 2012.

The Field Rating and Underwriting Bureau (FRUB) focuses on ensuring that all California consumers are treated fairly, and that insurers are selling and servicing policies in compliance with law.

The Consumer Services Division handles the Department's Consumer Hotline among many other activities. The Hotline received over 170,000 calls last year.

During this reporting period, the Market Conduct Division's examinations included five major health insurers. These five health insurers represented 31.24 percent (31.24%) of the health insurance marketplace in California. While these exams found no major violations of the LAP requirements, suggestions for improvement as well as noted "best practices" are shared with the insurers as required by the regulations.

The Consumer Hotline has not received any complaints about an insurer not providing an interpreter or a translated document when requested since the inception of the LAP in 2007. However, a small number of consumer calls have been received requesting information about various aspects of the Language Assistance Program and services. The newly created unit of dedicated health insurance cosumer service officers handles questions regarding how to get an interpreter at the doctor's office or how to request a translated document. If a consumer complains that the doctor's office will not provide an interpreter as requested, the Department will refer them to their insurer for resolution since the Department does not have a contractual relationship with the health care provider networks. However, the consumer is strongly advised to contact the Consumer Services Hotline again if the insurer does not resolve the issue in a satisfactory and timely manner.

Guidelines for Review: Categories & Priorities

The annual Health and Disability Insurance (HDI) Data Call provides the list of Class 06 Licensed Disability insurers with active health insurance policies. The 2013 HDI Data Call identified one hundred-seventy insurers that are subject to the Language Assistance Program requirements. These policies include a wide array of individual and group health insurance as well as specialized health insurance policies that provide covered benefits in a single specialized area of health care such as dental, vision, behavioral health, and Medicare supplement insurance.

Insurers were assigned to one of two categories: Category A includes 117 insurers who have participated in the LAP and provided biennial reports in past years. Category B includes 41 insurers who have never submitted a Language Assistance Program Plan or a biennial report. Some of the Category B insurers are newly licensed since the last reporting period; others are insurers that have not reported for prior years' data calls. The number of policyholders and prior reporting history further prioritized health insurers.

Category A - Priority 1 is assigned to eighteen companies with over 100,000 insureds that have been active in the LAP since its inception.
Category B - Priority 2 is assigned to twelve companies with over 500 policyholders that have not participated in the LAP in past years. These companies have been granted an extension of time until July 1, 2014 to develop and implement their Language Assistance Plan and submit the required report to the Department.

For the first time since the inception of the LAP, the volume of questions from insurers with small numbers of policyholders about the LAP requirements prompted the Department to create an Alternate Report Method (ARM) for insurers with less than 500 policyholders. The goal of the ARM reporting is to provide reduced reporting requirements for companies with close to zero percent (0%) of the market share of health insurance that are unlikely to meet the translation thresholds and do not plan on marketing health insurance in the future.

The LAP statute provides that the Commissioner shall ensure that the LAP reporting does not duplicate other required reporting by insurers. The majority of the insurers granted the ARM reporting are Category B insurers who have never reported in the past. Very few Category A insurers requested reduced reporting since they are already familiar with the LAP report requirements and have developed their reporting methodology.

Table 2: Summary of LAP Reporting

170 INSURERS REQUIRED TO REPORT	Number Reported	Number Not Reported	Comments
Category A - Full Report	117	-0-	18 Reviewed
Category A-ARM Alternate Report Method (Less than 500 insureds)	7	-0-	Only 7 of the 46 companies requested ARM
Category B - Full Report	3	9	Extension to 7/1/14
Category B-ARM (Less than 500 insureds)	5	24	Extension to 7/1/14 & Reduced Reporting
Exempt/Excluded No Report Required			17 companies were excluded from the reporting requirement
TOTALS	**132**	**33**	

PART III: REVIEW OF HEALTH INSURER COMPLIANCE

General Observations

In reviewing the eighteen largest health insurers participating in the Language Assistance Program since its inception, we have found the majority to be providing language services to their limited and non-English speaking insureds. Several insurers have exceeded the requirements in one or several areas. These are highlighted as "Best Practices" in the next section.

Neither insurers nor the Department has received many complaints regarding language services. However, several areas have been noted for improvement. Several insurers require Department follow-up to obtain further information to determine if performance meets expectations and provide recommendations for improvement.

The majority of insurers have:

- Completed the initial survey of their insured population.
- Identified their threshold languages and translated vital documents into the top one or two requested languages.
- Developed systems to provide interpretation services to the insureds.
- Included the Commissioner's Notice of Availability of Language Assistance Services with all vital documents sent to insureds.
- Provided information to their network of health care providers through websites, newsletters and various other modalities.

Areas of improvement include:

- Identifying methods to increase the response to the language survey by insureds such as sending a LAP language survey as a stand-alone document without additional information requested such as race, ethnicity, age, etc.
- Explain the purpose of the Survey at the beginning of the Survey document.
- Insurers shall re-survey their insured population every three years as required.
- Ensuring that the Commissioner's Notice of Availability of Language Assistance Services is sent to every insured with required documents at required intervals.
- Ensuring that health care providers are informed of the LAP requirement to provide interpreters to patients upon request.

- Monitoring health care providers and insurer staff for compliance with the LAP requirements by methods other than complaints and grievances.
- Requiring staff training and education for all staff and repeating at regular intervals.

Health Insurers "Best Practices"

The 2013 Language Assistance Program (LAP) Reports from eighteen health insurers representing 90% of the California health insurance marketplace have been submitted and comprehensively reviewed. These Category A – Priority 1 insurers have participated in the LAP since its inception in 2007. Among these insurers, several "best practices" were identified. These insurers have developed methods of fulfilling the LAP requirements that exceed the basic requirements of the statute and regulations. We recommend all California health insurers adopt these practices.

Survey of Insured Population/Collection of Data:

- Several insurers sent Surveys in Spanish and English. One insurer sent the Survey in Spanish, Chinese, Tagalog, Korean, Japanese and Vietnamese. While not required by the regulations, this has significantly increased the response rate from insureds. Insureds who do not read English are less likely to respond to an English-only Survey.

- Some insurers used various methods to survey the insured population including mailing postcards, using existing language data and contracting with a database vendor.

Translation of Vital Documents:

- Some insurers use independent accredited vendors for translation services. These vendors often have extensive qualification requirements for translators. The vendors also periodically review translated documents for accuracy.

Interpreter Services to Insureds:

- Some insurers arrange for interpreter services so that health care providers can directly access the insurer's interpreters; they do not have to route the requests through the insurer. This provides a fast turn-around (45-seconds) with interpreter services provided in a more timely manner to the insured.

Notice of Availability of Language Assistance Services/Information to Insureds:

- Some insurers send the Commissioner's Notice with vital documents, including enrollment and renewal packets, certificates of insurance, denial letters, the annual survey, employer "kits", claims forms and all emails.

- One insurer requires providers to post the Notice prominently at their offices.

Monitoring Compliance by Providers/Provision of LAP Information to Providers:

- Some insurers perform "on-site" reviews of providers to ensure interpretation services are being performed.

- If a provider is found to be non-compliant with the LAP after an insurer counsels the provider, some insurers remove the provider from the provider network.

- Some insurers deliver LAP information to providers through various methods including newsletters, websites, contracts, manuals, direct mail, meetings, and automated phone messages.

- Some insurers require on-going training for providers in LAP requirements and how to access interpreters for their patients.

Education of Insurer Staff/Recruitment of Bilingual/Bicultural Staff:

- Some insurers require annual training and an 80% pass rate.
- Some insurers require LAP trainings for all insurer staff not only staff with routine contact with insureds.
- Some insurers perform random test calls to employees to evaluate each individual's knowledge of the LAP requirements and the insurer's LAP process.
- Some insurers conduct post-test audits to better evaluate staffs' understanding of LAP requirements.
- Some insurers use various methods to recruit bilingual/bicultural staff including working with community organizations.

Evaluation of LAP Program:

- Some insurers use a variety of methods to evaluate LAP compliance including customer surveys, complaints and grievance data, contractor reports, on-line monitoring of phone calls, and internal audits.
- Some insurers developed internal Quality Assurance Units to evaluate compliance with the LAP requirements.

First-Time Reporters

Twelve health insurers were identified as Category B - Priority 2 companies. These companies have over 500 policyholders and have not participated in the Language Assistance Program in past years. An extension of time was granted until July 1, 2014 to develop their Language Assistance Plan, implement their Language Assistance Program and submit the required information to the Department.

Prior to the extension being granted, three Category B insurers submitted their LAP Reports. These insurers did not have the benefit of the extensive materials the Department provided to all Category B insurers. Overall, these three insurers provided some of the information requested and completed several of the required activities. We have identified areas in which we will provide further guidance and direction. A final evaluation will be completed after July 1st when the remaining nine companies submit their LAP Reports.

Table 3: List of Health Insurer Reviews Completed

CATEGORY A - PRIORITY 1 Received - Full Review 18	CATEGORY B - PRIORITY 2 Received - Full Review 3
Aetna Life Ins. Co. **Ameritas Life Ins. Corp.** **Anthem Blue Cross** **Blue Shield of California** **Combined Ins. Co. of America** **Connecticut General Life** **Fidelity Security Life Ins. Co.** **Guardian Life Ins. Co.** **HealthNet Life Ins. Co.** **Kaiser Permanente Ins. Co.** **Metropolitan Life Ins. Co.** **Premier Access Ins. Co.** **Principal Life Ins. Co.** **SafeHealth Life Ins. Co.** **Unimerica Ins. Co.** **Union Security Ins. Co.** **United Concordia Ins. Co.** **UnitedHealthcare Ins. Co.**	**SeeChange Health Ins. Co.** **Sterling Investors Life** **Trustmark Life Ins. Co.** **Full Reports Due 7/1/2014** *4-Ever Life Ins. Co.* *Ace American Ins. Co.* *American Family Life Ass. Co.* *Delta Dental Ins. Co.* *First Health Life & Health* *Fort Dearborn Life Ins. Co.* *National Guardian Life Ins. Co.* *Renaissance Life & Health*

Key Issues Identified – 2012-13

During this reporting period, over half of the health insurers subject to the LAP posed several hundred questions. This was due in part to the federal and state legislative changes that occurred in 2013 as well as the Department having identified a considerable group of insurers that had never participated in nor reported on the LAP in prior years. They asked an extremely wide variety of questions and raised many unusual issues and concerns.

The most basic question asked was, "does the Language Assistance Program apply to our policies"? Insurers asked questions about who is responsible for compliance and reporting when legal issues such as mergers, acquisitions, sister companies, subsidiaries, third party administrators, and managing general agents were involved. Several insurers were in 'rehabilitation' in another state and asked if they should still report. Other issues such as expatriate employees working overseas presented complex legal questions about whether the situs of the policy or the residence of the insureds governs.

By far, one of the most common types of questions from insurers was about "specialized health insurance" defined in Insurance Code section 106(c). Many insurers believed that this subsection was an additional exclusion to the definition of health insurance thus excluded their health policies from the LAP. This term describes policies of insurance that offer benefits in a single specialized are of health care including dental-only, vision-only, and behavioral health-only policies. This subsection provides a definition rather than an additional exclusion and therefore, these types of policies are included in the LAP.

The requests were reviewed by legal staff to determine whether the insurer's active policies met one of the exclusions to the definition of "health insurance" found in Insurance Code section 106(b). This section provides eight exclusions from the definition of health insurance: (1) accidental death and accidental death and dismemberment; (2) hospital indemnity, accident only, and specified disease insurance that pays benefits on a fixed benefit, cash payment only basis; (3) credit disability; (4) supplement to liability insurance; (5) disability income; (6) no-fault liability; (7) workers compensation; and (8) long-term care insurance. The majority of the exemptions were based on one of the section 106(b) exclusions.

Other exemptions were granted for a variety of reasons. Several insurers had incorrectly filled out the HDI Data Call indicating they had active health insurance policies when they did not; others no longer had active health insurance policies in force. Still others, such as

fraternal insurers, reinsurers, stop-loss insurers, were granted exemptions because their California license specifically excluded them from the LAP.

Legal research and review of these issues resulted in most of the insurers being subject to the LAP requirements. However, seventeen health insurers were granted exemptions from the requirements of the Language Assistance Program. These insurers were noted in the LAP database for future LAP reporting.

Regardless of the outcome, all insurers appreciated the thoroughness with which their requests were reviewed. Insurers not receiving an exemption have proceeded to move forward to complete the activities and reporting as required.

CONCLUSION

Overall, the Department has found most California health insurers to be responsive and proactive regarding language services to their LEP and non-English speaking insureds. In several cases where concerns have been identified, the majority of insurers have quickly corrected and remedied these problems. Continuing education of the consumer community, provider networks, and newly licensed health insurers is ongoing. As the provision of health insurance in California is dramatically changing with new health products quickly being marketed to limited-English speaking communities, the need to provide clear information about required language services to all health insurers has never been more critical. The California Language Assistance Program will continue to provide this information and ensure health insurance compliance with the law.

Download the Report at:
www.insurance.ca.gov

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