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DATE: March 14, 2022

ALL PLAN LETTER 22-002

TO: ALL MEDI-CAL MANAGED CARE HEALTH PLANS

SUBJECT: ALTERNATIVE FORMAT SELECTION FOR MEMBERS WITH VISUAL IMPAIRMENTS

PURPOSE:

The purpose of this All Plan Letter (APL) is to provide information about the Department of Health Care Services' (DHCS) processes to ensure effective communication with members with visual impairments or other disabilities requiring the provision of written materials in alternative formats, by tracking members' alternative format selections (AFS).

BACKGROUND:

The Americans with Disabilities Act (ADA) requires that services, programs, and activities provided by public entities must be accessible to individuals with disabilities, including visual impairment. (See 42 U.S.C. 12131 et seq).¹ Medi-Cal managed care health plans (MCPs) are subject to the standards of Title II of the ADA, including standards for communicating effectively with individuals with disabilities to ensure they benefit equally from government programs.²

POLICY:

Provision of Member Information in Alternative Formats

DHCS' policy regarding the provision of member information in alternative formats is set forth in APL 21-004, Standards for Determining Threshold Languages, Nondiscrimination Requirements, and Language Assistance Services.³ As required by APL 21-004, MCPs must provide appropriate auxiliary aids and services to individuals with disabilities.⁴ In determining what types of auxiliary aids and services to provide, MCPs must give "primary consideration" to the individual's request of a particular auxiliary aid or service.⁵ MCPs must provide auxiliary aids and services to a family

¹ United States Code is searchable at the following: <https://uscode.house.gov/>

² 45 Code of Federal Regulations (CFR) 92.102. ADA Title II Regulations are available at: https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm.

³ APLs are available at: <https://www.dhcs.ca.gov/formsandpubs/Pages/AllPlanLetters.aspx>.

⁴ 45 CFR 92.102(b).

⁵ 28 CFR 35.160(b).

member, friend, or associate of a member if required by the ADA, including if said individual is identified as the member's authorized representative (AR), or is someone with whom it is appropriate for the MCP to communicate (e.g., a disabled spouse of a member).⁶ MCPs must accommodate the communication needs of all qualified members with disabilities, including ARs, and be prepared to facilitate alternative format requests for Braille, audio format, large print (no less than 20 point Arial font), and accessible electronic format, such as a data CD, as well as requests for other auxiliary aids and services that may be appropriate.⁷

MCPs must provide appropriate auxiliary aids and services to members with disabilities, including alternative formats, upon request. Additionally, MCPs must inform members who state that they have difficulty reading print communications on account of a disability of their right to receive auxiliary aids and services, including alternative formats.

If a member selects an electronic format, such as an audio or data CD, the information may be provided unencrypted (i.e., not password protected), but only with the member's informed consent. MCPs must inform a member who contacts the MCP regarding an electronic alternative format, that unless the member requests a password protected format, the member will receive notices and information in an electronic format that is not password protected, which may make the information more vulnerable to loss or misuse. MCPs must make clear that members may request an encrypted (i.e., password protected) electronic format. If the member requests notices and information in a password protected electronic format, the MCP must provide a password protected electronic format with unencrypted instructions on how the member is to access the encrypted information.

Processes for Collecting and Sharing Alternative Format Selection Data

DHCS is attaching three technical guidance documents to this APL to assist MCPs with regular sharing of AFS information with DHCS. MCPs must collect and store AFS information for members and ARs, (including, for example, individuals who have power of attorney for health-related matters), and share member AFS data with DHCS as specified in the attached "Alternative Format Data Process Guide" (Data Process Guide).⁸ At this time, MCPs are not required to submit AFS data to DHCS for ARs, but must track AR AFS data and provide alternative formats to ARs as required by law.

⁶ 28 CFR 35.160.

⁷ Examples of other auxiliary aids and services can be found at page 12 of APL 21-004 and at <https://www.ada.gov/effective-comm.htm>.

⁸ The Data Process Guide titled, "Alternative Format Data Process Guide," is posted together with this APL as an attachment.

The Data Process Guide outlines the process by which MCPs must submit member AFS data to DHCS and describes how DHCS will share member AFS data with MCPs on an ongoing basis. As described in the Data Process Guide, MCPs must submit all member AFS data that has been collected in a one-time file upload to DHCS' Alternative Format Database by April 14, 2022. The MCP's one-time file upload should also include each subcontractors and network providers AFS data.

Technical instructions can be found in the attached document titled, "Alternative Format Selection Technical Guidance for Medi-Cal Managed Care Health Plans," (Technical Guidance).⁹ After the initial one-time upload, MCPs and their subcontractors and network providers must enter any new member AFS at the time of the member's request, online through the AFS application system, or by calling the AFS Helpline, and begin to provide member documents in the requested alternative formats. MCPs and their subcontractors and network providers must refer to the attached document titled, "Alternative Format Application User Guide" for instructions regarding how to submit AFS data online via DHCS' AFS application system.¹⁰ DHCS will send an AFS file to MCPs from DHCS' Alternative Format database weekly (MCPs are to share this data with their subcontractors and network providers as appropriate). The Technical Guidance attachment contains the data elements, file path, and frequency of the DHCS AFS data that will be sent to MCPs. MCPs and their subcontractors and network providers must utilize the weekly DHCS AFS file data to provide member documents in the requested alternative formats.

Due Process Requirements

Constitutional due process requires that a member's benefits must not be reduced or terminated without timely and adequate notice explaining the reasons for the proposed action and the opportunity for a hearing. (Goldberg v. Kelly (1970) 397 U.S. 254, 267–268). In the case of a member with a visual impairment or other disabilities requiring the provision of written materials in alternative formats, DHCS has determined that adequate notice means notice in the member's selected alternative format, or notice that is otherwise in compliance with the ADA, Section 504 of the Rehabilitation Act of 1973, and Government Code Section 11135. MCPs may not deny, reduce, suspend, or terminate services or treatments without providing adequate notice within applicable legal timeframes.¹¹ MCPs must calculate the deadline for a member with a visual impairment or other disabilities requiring the provision of written materials in alternative

⁹ The Technical Guidance document titled, "Alternative Format Selection Technical Guidance for Medi-Cal Managed Care Health Plans," is posted together with this APL as an attachment.

¹⁰ The "Alternative Format Selection Application User Guide" is posted together with this APL as an attachment.

¹¹ 42 CFR 438.404; 42 CFR 431.211.

formats, to take action from the date of adequate notice, including all deadlines for appeals and aid paid pending.¹²

Ordinarily, members must exhaust the MCP's internal appeal process, and receive notice that an adverse benefit determination has been upheld, prior to proceeding to a state hearing. However, if the MCP fails to provide adequate notice to a member with a visual impairment or other disabilities requiring the provision of written materials in alternative formats, within applicable federal or state timeframes, the member is deemed to have exhausted the MCP's internal appeal process and may immediately request a state hearing.¹³ MCPs are prohibited from requesting dismissal of a state hearing on the basis of failure to exhaust the MCP's internal appeal process in such cases.

Policies and Procedures

Within 90 days of the release of this APL, MCPs must submit policies and procedures to DHCS regarding the collection and sharing of AFS data.

MCPs are responsible for ensuring that their subcontractors and network providers comply with all applicable state and federal laws and regulations, contract requirements, and other DHCS guidance, including APLs and Policy Letters.¹⁴ These requirements must be communicated by each MCP to all subcontractors and network providers. MCPs must assist subcontractors and network providers in meeting this obligation by offering information or training on the effective communication requirements of Title II of the ADA, and technical assistance on such topics as local alternative format vendors, and how to provide accessible documents and websites.

DHCS will audit MCP compliance with these requirements regularly. MCPs must be prepared to report efforts to ensure that members are aware of their right to receive effective communication, what requests for auxiliary aids and services have been made by members, how the MCP has responded to those requests, and the MCP's response to any complaints regarding the receipt of effective communication. Failure to demonstrate compliance with the law may result in enforcement action, including but not limited to, sanctions.

¹² For information about notices that trigger member deadlines, see APL 21-011, Grievance and Appeal Requirements, Notice, and "Your Rights" Templates, or any superseding APL.

¹³ Welfare and Institutions Code Sections 10951 and 14197.3; 42 CFR 438.402, 438.404, 438.408, and 438.10.

¹⁴ For more information on Subcontractors and Network Providers, including the definition and requirements applicable, see APL 19-001, and any subsequent APLs on this topic.

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If you have any questions regarding this APL, please contact your Managed Care Operations Division contract manager.

Sincerely,

Original Signed by Dana Durham

Dana Durham, Chief
Managed Care Quality and Monitoring Division