

Ensuring Accessibility for Individuals with Disabilities in the ACA's Marketplaces¹

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Approximately 15 percent of individuals with disabilities are uninsured.² Beginning in 2014, many of these individuals will be eligible for health insurance and apply through health insurance marketplaces (or “Exchanges”). It is critical that the marketplaces identify individuals with disabilities and those who are potentially dually eligible for Medicare and Medicaid to meet their needs throughout the application and plan selection process.

The ACA (particularly § 1557, the nondiscrimination provision) and federal civil rights laws (including § 504 of the Rehabilitation Act and the Americans with Disabilities Act) require that individuals with disabilities have access to the federal and state marketplaces as well as the health plans offering insurance through the marketplaces. Access includes physical access, sign language interpreters, augmentative and assistive communication devices, communication access (i.e. longer appointments or information in plain language), TTY/TTD telephonic assistance, and materials in alternate formats (e.g. large print or Braille). This access is a critical component of marketplace implementation to enable individuals with disabilities to assess their options, express choices, and ask questions to easily and successfully enroll in and retain health coverage.

Since individuals with disabilities may have physical, intellectual/developmental or cognitive disabilities, marketplaces may need to provide a range of services, training and assistance. The following checklist provides recommendations advocates can use to encourage their states to address the needs of consumers with disabilities.

Governance

- Develop a disability access plan (and update it yearly) that ensures the needs of individuals with disabilities are addressed in the development and implementation of marketplace-related legislation, regulations, policies and procedures and contracts. Incorporate feedback from consumer partners and consumers with disabilities in the planning design and implementation.

¹ Special thanks to the staff at DREDF, Easter Seals and NDRN for their review and comments.

² S. Pizer, A. Frakt, & L. Iezzoni, *Uninsured Adults With Chronic Conditions Or Disabilities: Gaps In Public Insurance Programs*, Health Affairs vol. 28 no. 6(Nov/Dec 2009), available at <http://content.healthaffairs.org/content/28/6/w1141.full>.

- Ensure consumers with disabilities (and their advocates) actively participate in marketplace governance, advisory and oversight committees.
- Create effective, transparent and formal mechanisms to identify and address disability-related issues in marketplace governance and provide an effective means for feedback.
- Provide a yearly report of consumer ratings of the accessibility features of individual providers and the programmatic systems, designed to assist individuals with disabilities select QHPs that best meet their needs.
- Designate a marketplace staff member who directly reports to the marketplace Director or Board to coordinate and oversee disability services.
- Ensure that people with disabilities are a strong and visible presence of the marketplace workforce, particularly in those positions that are providing customer service to people with disabilities or setting policy affecting people with disabilities.
- Require that all physical offices of the marketplace comply with the Americans with Disabilities Act's 2010 Standards and are accessible to individuals with disabilities including public contact offices and administrative offices (to accommodate employees with disabilities).³

Applications and Supporting Documentation

- Request information about how the applicant prefers to receive communication and what communication assistance or services the applicant needs and a process in place for meeting these preferences, when possible.
- Include sufficient questions in the application to appropriately identify individuals with disabilities who may be eligible for traditional Medicaid and assist these individuals with providing any additional application information.⁴
- Provide the paper and on-line application in alternate formats (including large print) Provide the paper application in Braille, upon request, if other options are not an effective means of communication. Have a system in place for timely review of Braille applications commiserate with timeframes for review of non-braille applications.

³ In 2010, the Department of Justice (DOJ) published updated standards to ensure physical accessibility for individuals with disabilities. See Department of Justice, *2010 Standards for Accessible Design*, <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>.

⁴ NHeLP's comments on the single streamlined application suggested including the following: "Do you have a physical, mental, or emotional, health condition that causes limitations in activities? Yes No (if Yes, please skip the following six questions) 1) Are you/is this person deaf or does he/she have serious difficulty hearing? 2) Are you/is this person or does he/she have serious difficulty seeing even when wearing glasses? 3) Because of a physical, mental, or emotional condition, do you/does this person have serious difficulty concentrating, remembering, or making decisions? 4) Do you/does this person have serious difficulty walking or climbing stairs? 5) Do you/does this person have difficulty dressing or bathing? 6) Because of a physical, mental, or emotional condition, do you/does this person have difficulty doing errands alone such as visiting a doctor's office or shopping?" See [NHeLP Comments on the Single Streamlined Application Paper and Online Versions](#) (Feb. '13).

- Ensure the on-line application system complies with § 508 of the Rehabilitation Act⁵ and that all health IT systems are fully accessible to both consumers and providers with disabilities.
- Provide direct access to alternate versions of the online application through the marketplace website enrollment portal.
- Include closed-captioning and video description, where possible, on any instructional videos.
- Allow an individual with disabilities to easily designate an authorized representative on the application who can act on the applicant's behalf for application-related communication.
- Ensure that any security mechanisms used to gain access to any online account do not depend solely on a high functioning visual and/or audio capacity (e.g., for example, common "Captcha" technology requires users to visually interpret distorted images or discern distorted aural messages).

Notices and information for consumers

- Provide consumer notices in alternative formats including large print and/or Braille or identify and utilize augmentative and alternative communication (AAC) assistance to orally communicate written information.
- Include information on all consumer notices about the availability of alternate formats and how to request assistance, including AAC assistance and sign language interpreters.
- Allow an individual with disabilities to easily designate an authorized representative who can act on the applicant's behalf.

Websites

- Ensure the website complies with § 508 of the Rehabilitation Act and works with screen readers for individuals with visual impairments⁶ and ensure all health IT systems are fully accessible to both consumers and providers with disabilities to avoid disparities.
- Include information on the homepage of the website about the availability of assistance and how to request it, including alternate formats for materials, AAC assistance and in-person assistance (such as sign language interpreters).
- Provide a prominent link from the homepage of the marketplace website to a directory of consumer assistance programs that are accessible to individuals with disabilities and provide AAC assistance.

Call centers

- Provide training to call center representatives to be ready to respond to inquiries on relevant civil rights laws,⁷ how to identify communication needs, how to timely and

⁵ For resources on implementing § 508, see <https://www.section508.gov/>.

⁶ *Id.*

⁷ These include ACA § 1557, § 504 of the Rehabilitation Act and the Americans with Disabilities Act. Call centers should also inform consumers how to file complaints under these relevant laws.

appropriately respond to consumers who may have disabilities affecting communication, how to use the TTY/TTD system, how to access AAC assistance, how to use video relay services to communicate with people who are Deaf or who have hearing impairments, and how to refer consumers to in-person consumer assistance programs.

- Have a dedicated telephone number for TTY/TTD users or video relay service for individuals who are Deaf or have hearing impairments; and at least one staff available on all shifts who is trained on use of these alternative devices.
- Collect and report data on the marketplace's website in accessible formats that includes the number of calls by consumers who utilize AAC assistance or are referred to in-person assistance.
- Support and encourage the hiring of persons with disabilities and require that call center offices comply with the Americans with Disabilities Act's 2010 Standards to accommodate employees with disabilities.⁸

Enrollment assistance programs (navigators, in-person assisters, certified application counselors)

- Conduct a needs assessment to identify the types of services and assistance individuals with disabilities in the assister's service area may need and include disability organizations and consumers in this process.
- Include contract requirements that assisters comply with ACA § 1557, § 504 of the Rehabilitation Act and the Americans with Disabilities Act.
- Select entities that currently provide assistance to populations with disabilities as navigators, in-person assisters and certified application counselors.
- Ensure that all assistance programs can reach and appropriately serve all individuals with disabilities served by the marketplace.
- Incorporate protection & advocacy organizations, independent living centers, community health centers and community health workers that serve populations with disabilities into outreach and enrollment assistance plans.
- Provide training on relevant civil rights laws, how to identify communication needs, how to appropriately work with consumers who may have disabilities affecting communication, how to use video relay services to communicate with people who are Deaf or who have hearing impairments, how to access interpreter services or other AAC assistance, and how to work with interpreters and AAC assistance.
- Support and encourage the hiring of persons with disabilities and require that all physical offices of assisters comply with the Americans with Disabilities Act's 2010 Standards and are accessible to individuals with disabilities including public contact offices and administrative offices to accommodate employees with disabilities.⁹
- Develop formal mechanisms to collect and report feedback from consumers with disabilities, including information about the accessibility of provider offices, equipment and services; solicit input from navigator and consumer assistance programs to help identify and address problems for consumers with disabilities.
- Include specific and enforceable oversight mechanisms in assisters' contracts.

⁸ DOJ, *supra* note 2.

⁹ *Id.*

- Collect and report data on the marketplace’s website in accessible formats that includes interactions with consumers with disabilities and the services provided (sign language interpreters, materials in alternate formats, use of AAC).

Outreach and education

- Develop outreach and education plans that are tailored to populations with disabilities particularly those who may be eligible but unenrolled in Medicaid
- Develop a system for annually identifying underserved populations in the MCO catchment area and develop outreach goals for these populations.
- Engage trusted messengers and community-based organizations that work with individuals with disabilities in developing and implementing outreach plans.

Certification of Qualified Health Plans (QHPs)

- Require QHPs to develop and submit a plan (and update it yearly) for assisting individuals with disabilities as part of certification.
- Include contract requirements that all QHPs and their staff comply with ACA § 1557, § 504 of the Rehabilitation Act and the Americans with Disabilities Act.
- Require standards for plan participation and EHB benefit design that include mechanisms to monitor and measure plan behavior to prevent practices that have the effect of deterring individuals with disabilities from enrolling.
- Include contract requirements for QHPs to provide and pay for sign language interpreters, AAC assistance, and other assistance to individuals with disabilities free of charge at all points of contact with the plan and health care providers, and to include information on access in provider directories.
- Require QHPs to train their staff on relevant civil rights laws, how to identify communication needs, how to appropriately work with consumers who may have disabilities affecting communication, how to access interpreter services or other AAC assistance, how to use video relay services to communicate with people who are Deaf or who have hearing impairments, and how to work with interpreters and AAC assistance.
- Develop procedures to ensure that QHPs meet requirements for providing information for consumers in plain language that is understandable to individuals with cognitive disabilities.
- Require QHPs to provide consumer information in alternate formats based on the needs of the consumers in the QHP’s service area.
- Ensure that QHPs include in their networks, and identify in provider directories and on websites, a broad cross-section of safety-net and essential community providers that have experience serving individuals with disabilities, are physically accessible, have accessible medical and diagnostic equipment, and provide other needed assistance to effectively serve people with disabilities.
- Require QHPs to report demographic data, including disability status.
- Include consumer experience with accessing assistance for individuals with disabilities in QHP quality rating information for consumers.