



**Department
of Health**

Office of
Health Insurance
Programs

New Notice Requirements Under 45 CFR 92

Non-Discrimination Statement/Taglines

November 2016

- The purpose of the new requirements under 45 CFR 92 is to implement Section 1557 of the Affordable Care Act
- 45 CFR 92 went into effect on 7/18/16
- Within 90 days of effective date (10/18/16), imposes additional requirements for outreach/education materials and significant communications

These new requirements apply to Mainstream Managed Care, HIV SNP, HARP, Medicaid Advantage, Medicaid Advantage Plus, MLTC Partial Capitation, FIDA and PACE.

45 CFR 92 Requires Significant Publications and Communications Include

1. A Non-Discrimination Statement
2. Taglines that are published in languages other than English

1st Requirement: Non-Discrimination Statement

- 45 CFR 92.8 lists 7 components that must be included in the Non-Discrimination Statement (except small size materials) as follows.....

1st Component [45 CFR 92.8(a)(1)]

- The covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability in its health programs and activities;

2nd Component [45 CFR 92.8(a)(2)]

- The covered entity provides appropriate auxiliary aids and services, including qualified interpreters for individuals with disabilities and information in alternate formats, free of charge and in a timely manner, when such aids and services are necessary to ensure an equal opportunity to participate to individuals with disabilities;

3rd Component

[45 CFR 92.8(a)(3)]

- The covered entity provides language assistance services, including translated documents and oral presentation, free of charge and in a timely manner, when such services are necessary to provide meaningful access to individuals with limited English proficiency;

4th Component [45 CFR 92.8(a)(4)]

- How to obtain the aids and services in paragraphs (a)(2) and (3) of this section;

5th Component [45 CFR 92.8(a)(5)]

- An identification of, and contact information for, the responsible employee designated pursuant to § 92.7(a), if applicable;

6th Component

[45 CFR 92.8(a)(6)]

- The availability of the grievance procedure and how to file a grievance, pursuant to § 92.7(b), if applicable;

7th Component [45 CFR 92.8(a)(7)]

- How to file a discrimination complaint with OCR* in the Department of Health and Human Services

**US Office for Civil Rights*

2nd Requirement: Taglines

- Taglines inform the reader that other than English language assistance services are available free of charge
- Must be published in Top 15 other than English languages that are spoken in N.Y.S. (except small size materials)

Top 15 Other-Than-English Languages Spoken in N.Y.S.

- | | |
|------------------|--------------|
| 1. Spanish | 9. Polish |
| 2. Chinese | 10. Arabic |
| 3. Russian | 11. French |
| 4. French Creole | 12. Urdu |
| 5. Korean | 13. Tagalog |
| 6. Italian | 14. Greek |
| 7. Yiddish | 15. Albanian |
| 8. Bengali | |

In addition, the Top 15 Taglines and full Non-Discrimination Statement must be published:

- In physical locations where Plan interacts with the public
- In a conspicuous location on the Plan's website accessible from home page

Small Size Publications

Examples of small size publications:

- tri-fold brochures
- postcards

Requirements are:

1. Abbreviated Non-Discrimination Statement that only contains the first component of the full Non-Discrimination Statement
2. Taglines published in Top 2 languages other than English

Significant Publications and Communications

- CMS intends the scope of significant publications and significant communications to include not only documents intended for the public, such as outreach, education, and marketing materials, but also written notices requiring a response from an individual and written notices to an individual, such as those pertaining to rights or benefits.
- Significant publications include Plan determination notices, whether adverse or not.

US OCR Sample Language

- Appendix A to 45 CFR Part 92 contains a sample Non-Discrimination Statement
 - The OCR sample provided does not meet NYS Medicaid Managed Care reading level requirements.
- Appendix B to 45 CFR Part 92 contains a sample Tagline
 - The OCR sample taglines may be misinterpreted to limit language assistance services to only the top 15 languages.
 - 42 CFR 438.10(d)(2) requires oral interpretation be available for all languages.

DOH Template Insert

- DOH created sample inserts that meet the federal requirements.
- Plans are encouraged to use these samples to meet 45 CFR 92 until materials can be updated to incorporate new requirements.
- DOH-approved Plan determination notices that are amended solely to include the DOH sample inserts do not need to be re-submitted for DOH approval prior to use.
- To be issued electronically from the BIGAPLANS BML

QUESTIONS?

Contact us at:

MMC/HIV SNP/HARP -
bigaplans@health.ny.gov

All Long Term Care Product Lines –
mltcmkt@health.ny.gov

