

# LANGUAGE ACCESS RIGHTS AND BENEFITS ACCESS FOR HIV+ NEW YORKERS

Ensuring Language Access in Benefits  
for Limited English Proficient Clients  
who are HIV/AIDS Infected or Affected



This webinar is presented as part of the AIDS Institute funded initiative presenting a broad array of legal topics to HIV providers across New York State. To view the training calendar for upcoming trainings, visit [www.lac.org](http://www.lac.org)

# Objectives for Today

- To better understand the language access obligations of health care and other benefits providers serving individuals who are HIV+ or at risk of acquiring HIV
- Explore public charge concerns and protections for immigrants who need government assistance
- To Inform members of the HIV+ community about available health programs and services

# AGENDA

- HIV and Racial Disparities
- Impact on Immigrants
- Defining common Language Access terms
- Federal and State protections
- Safe RX
- Public Charge
- Uninsured Care Programs
- Medicaid (Access, Health Homes, HIV-SNPs)
- Federal Public Health Emergency
- Language Access in Hospitals
- Appeals
- Fair Hearing Demonstration Project
- Additional Resources

# In Honor of those we have Lost

“Despite the progress we’ve made over four decades, HIV persists as a serious public health challenge globally. Fortunately, ending the HIV epidemic is now within our reach .As we mark the 40th anniversary of the first official report about AIDS on June 5th, 1981, we pause to honor the more than 32 million people who have died from AIDS-related illnesses globally, including 700,000 people in the U.S.

Reflecting on those we have lost to HIV and AIDS, and standing alongside the HIV community, we recommit ourselves to ending the HIV epidemic, continuing the work that must be done, reengaging people with lived experience and a wide variety of stakeholders from all sectors of society, and to reenergizing our efforts to accelerate progress and ensure equity.”

-- U.S. Health Secretary Xavier Becerra

# Looking at HIV Today

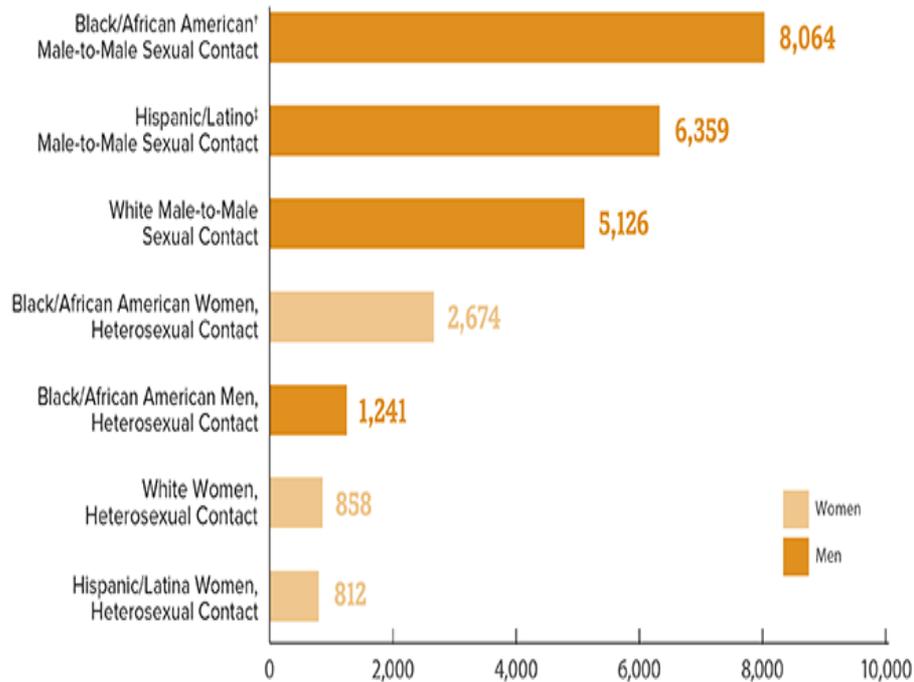
- 38 million people are HIV positive worldwide
- 1.2 million people in the U.S. are HIV positive
- Approximately 13% in U.S. are unaware they are infected
- Over 30,000 New HIV Infections are diagnosed yearly in the U.S.

# HIV and Racial Disparities

- In 2020, Black people/African Americans represented 12% of the US population, but accounted for 42% of new HIV diagnoses (12,827) (8X more infection than white population)
- In 2020, Hispanic/Latinos/Latinx represented 19% of the US population, but accounted for 27% of new HIV diagnoses (8,285) ( 4X more infection than white population)
- As of December 2021, 103,900 New Yorkers were living with diagnosed HIV. 22% of New Yorkers living with diagnosed HIV resided outside New York City; Total NY 45% Black; 28.8% Latino; 22.8% white; 2.5% Asian (NYSOH 2021)

# New HIV Diagnoses Among the Most-Affected Populations in the US and Dependent Areas, 2019\*

Gay and bisexual men are the population most affected by HIV.



Data for 2020 should be interpreted with caution due to the impact of the COVID-19 pandemic on access to HIV testing, care-related services, and case surveillance activities in state and local jurisdictions

NOTE: Subpopulations representing 2% or less of all people who received an HIV diagnosis in 2020 are not represented in this chart.

\* Among people aged 13 and older.

' Black refers to people having origins in any of the Black racial groups of Africa. African American is a term often used for people of African descent with ancestry in North America.

† Hispanic/Latino people can be of any race.

Source: CDC. Diagnoses of HIV infection in the United States and dependent areas, 2020. *HIV Surveillance Report* 2022:33.



# Accessing and Retaining Medical Care

- According to the CDC, while 87% of people with HIV are diagnosed, only 56.5% retain medical care
- Key supports needed to retain medical care include
  - Access to medical insurance
  - Food , Housing, Economic supports
  - Emotional Support
  - Substance abuse treatment
  - Education and Transportation

Providers need to make many improvements, including:

- Cultural awareness and representation
- Linguistic accessibility

# Health Literacy

Per the US Department of Health and Human Services

- 90% of adults in the United States experience difficulty understanding health information that currently is available through the media, health care facilities, and communities.
- This occurs when information is not provided in a patient's preferred language or if the way information presented is not well suited for the patient
- Health literacy is not solely based on an individual's ability to read. It is their ability to read, listen, and analyze health information and then apply that information in order to make complex health care decisions

# The Need for Language Access

- Approximately 22 percent of U.S. residents over the age of 5 speak a language other than English at home
  - Of those persons, approximately **37.6 percent** ( 35 million people) who are **Limited English Proficient, (LEP)**, meaning they have a limited ability to speak, read, write, or understand English (8.8% of U.S. population)
- According to the 2020 U.S. Census, there are 2.5 million LEP New Yorkers, comprising 14% of the state's population
- People who are Deaf/Hard of Hearing, Blind/Low Vision or who have other Sensory Challenges also need Language Assistance

# Language Access Terms

- **Language Access:** the right of LEP individuals to receive meaningful access to recipient programs, benefits and services, particularly those receiving federal funding. Includes many health providers, schools, law enforcement, courts, social services, community agencies, other.
- **Language Assistance Services (LAS):** interpreter service (oral) and translation services (written) for LEP individuals, or communication assistance services for sensory impaired (SI) individuals
- **Meaningful Access:** language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual.

# Federal Protections

- Title VI of the Civil Rights Act of 1964 - “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- National Origin Discrimination- includes discrimination against an individual because of the language they speak or their ancestry.  
*Lau v. Nichols* (1974)

# Federal Protections(continued)

- Executive Order 13166 (2000)- Prohibits federal agencies and recipients of federal assistance from discriminating based on national origin by, among other things, failing to provide meaningful access to LEP individuals
- Requires Federal agencies ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries

# Obligations and Enforcement

- To determine if a recipient of federal funding is providing meaningful access, the DOJ LEP Guidance uses a four-factor analysis:
  1. The Number or Proportion of LEP Individuals
  2. Frequency of Contact with the Program
  3. Nature and Importance of the Program
  4. Resources Available
- Every county and state agency must have a Title VI civil rights complaint procedure.

# Best Practices

- In Person:
  - Use “I Speak” Cards at multiple points of contact
  - Prominently post Language Identification Posters at various points of contact advising of right to an interpreter
  - If not requested and you think comprehension is limited, offer language assistance
  - Utilize competent bilingual staff or professional interpreters
- By Phone:
  - Phone lines should be language accessible and staff fully trained on how to assist
  - Use bilingual staff or professional telephonic interpreters
  - Children should not be used as interpreters!
  - Possible Conflict of Interest using other Family/Friends
- When engaging with interpreter, speak directly to your client in the first person, not to the interpreter
- Indicate individual’s language needs in your records

# Interpreters

- Competent interpreters
  - More than self-identifying as being bilingual
  - Knowledge in both languages of the necessary words and phrases for the HIV/AIDS program or service
  - Cultural Awareness, Competence, Humility
  - Recommend Certification as per National CLAS Standards
- Interpreter services hierarchy
  1. Trained in house competent bilingual staff
  2. In house full-time staff interpreter
  3. Contracted professional interpreters
  4. Telephone interpreter services

# How does language access affect access to healthcare?

- Language-discordant encounters result in
  - Worse health outcomes
  - Reduced access to health information
  - Decreased patient satisfaction with care
  - Lower return rate for follow-up care
  - Untimely access to health services including preventative services and screening
  - Misinterpretation
  - Confidentiality issues...

# Ensuring Equal Access for LEP Clients Living with HIV

- Communication with service providers is vital in order to access medical services, financial assistance, support
- Because of stigma associated with HIV, LEP individuals may be reluctant to bring a friend or family member to help communicate with service providers
- Lack of effective communication affects patient safety, resulting in inappropriate use of prescribed medications or inability to comply with follow-up instructions
- Lack of effective communication may result in inappropriate disability determinations and denial or discontinuance of benefits

# U.S. Dept of Health Non-Discrimination Provisions

- Section 1557 of the Patient Protection and Affordable Care Act (ACA)
- The Office for Civil Rights (OCR) enforces Section 1557 of the Affordable Care Act (Section 1557), which prohibits discrimination on the basis of race, color, national origin, age, disability, or sex (including pregnancy, sexual orientation, gender identity, and sex characteristics), in covered health programs or activities. 42 U.S.C. 18116.
- Other Non-Discrimination Provisions Enforced by OCR:  
<https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html#:~:text=Section%201908%20of%20the%20Public,by%20Preventative%20Health%20and%20Health>

# New York State Protections

- Executive Order No. 26 signed by Governor Cuomo 10/6/11
- Codified and expanded by Governor Hochul July 2022
- Newly created Office of Language Access
- Flexibility for Agencies to Add Additional Languages Based on Regional Language Needs and Other Factors
- State agencies which provide direct public services must:
  - Translate vital documents into 12 most frequently used non-English languages (update based on Census data)
    - Spanish, Chinese, Russian, Yiddish, Bengali, Korean, Haitian Creole, Italian, Arabic, Polish, French, and Urdu
  - Provide interpretation services between the agency and an individual in his or her primary language
  - Publish a language access plan
  - Designate a language access coordinator

# Vital Documents

- Translation of vital written materials
  - consent and complaint forms, intake forms,
  - written notices of rights, changes in benefits or denials
  - applications to participate in a program/service
  - Information regarding the program and its services
- Which documents to translate
  - All documents- for each LEP group 10% or 3000 of the eligible population.
  - Vital documents- for each LEP group 5% or 1000 of the eligible population.

State agencies now have option to add up to 4 regional language variations

# OTDA 06 ADM-05

## Providing Access to Temporary Assistance for Persons with Disabilities or Limited English Proficiency

- Directive from State to Local social service agencies regarding nondiscrimination in administration of programs
- Ensure meaningful access to cash assistance, SNAP, other programs
- People with disabilities and/or LEP should not face additional delays or barriers in application process
- Provide competent agency interpreters
- Provide reasonable accommodation
- Document need for language services in agency record
- Also OCFS guidance may apply to Social Service recipients

# SAFE Rx

- Legislation enacted in NY March 2012
  - Built upon NYC-wide legislation
  - First of its kind in the USA
- Chain and mail order pharmacies must provide comprehensive translation and interpretation service
  - Identify LEP Patients on prescription so pharmacists offer those patients the extra help they need
  - Clearer prescription labeling so that English language-learners and those with limited health literacy understand instructions, warnings and other written materials

# Addressing Public Charge Concerns

## WHAT IS PUBLIC CHARGE?

- A determination made by Immigration (DHS and USCIS) when:
  - a person has applied for Legal Permanent Residency, or
  - applies to enter the U.S. via a family-based petition, or
  - seeks to reenter the country after 6 months abroad ( only LPR)

Immigration determines whether that person has depended or is likely to depend upon certain government benefits for a prolonged period of time for the majority of their support

- Rarely results in penalty such as deportation
  - Section 212 (a) (4) of the Immigration and Naturalization Act

# Only these Benefits May be Considered in Making a Public Charge Determination

- Cash Assistance: Safety Net, TANF, SSI
  - Long-Term Institutionalization (e.g. Nursing Home, Rehab Facility) paid by Medicaid
  - 1999 INS Field Guidance on Inadmissability and Deportability
- 
- Benefits used by qualifying children and other family members will not count against the person seeking residency
  - Any changes made by prior administration were rescinded
  - However, lingering fear and misinformation prevents many immigrants from accessing necessary nutrition, financial and health services for themselves and their citizen children

# Who is Exempt from Public Charge?

- U.S. Citizens and Legal Permanent Residents
- Refugees and Asylees
- U-Visa (Crime Victims)
- T-Visa (Victims of Human Trafficking)
- VAWA (Violence Against Women Act)
- SIJS (Special Immigrant Juvenile Status)
- TPS (Temporary Protected Status)
- DACA (unless seeking residency via family petition)
- Members of Armed Forces, spouses and children
- Exemption also applies to pending applications
- For more info and resources, visit [pifcoalition.org](http://pifcoalition.org)

# Immigrants may Access these Benefits without Fear

- Nutrition Assistance: WIC, SNAP
- Children's Health Insurance Program
- Medicaid and Medicare
- Childcare Subsidies
- Heating Energy Assistance
- Disaster Assistance
- Unemployment Insurance and Workers' Compensation
- Section 8 and Other Housing Programs
- Social Security Retirement, Disability, Survivors' Benefits
- School Meal Programs
- Educational Financial Assistance....
- and more!

# Thinking broadly about New York health care services

- Interpretation services/language assistance must be provided at no cost by the following:
  - Medicaid, Medicare, Child Health Plus (federally funded programs)
  - Hospitals, pharmacies, nursing homes
  - Managed care organizations
  - Universities, others with health or social service research programs
  - State, county, and local health agencies
  - State Medicaid agencies
  - State, county and local welfare agencies
  - **Programs for HIV/AIDS, families, youth, and children**
  - Public and private contractors, subcontractors and vendors
  - Physicians and other health care providers who receive federal funding, such as Medicaid

# Applying for Assistance

- Indicate on Medicaid application that applicant needs info in language other than English
- Agency must provide bilingual worker or interpreter and translated documents
- Contract agencies must also provide language assistance services
- What if language access issues arise?
  - Document incidents
  - Contact supervisor
  - Be ready to file written complaints with agency or HHS when language assistance services not provided

# Uninsured Care Programs

- Federal grant administered through NYS DOH
- Intended as transition coverage for people with HIV who don't yet qualify for Medicaid
- New York's uninsured care programs
  - Aids Drug Assistance Program (ADAP)
  - ADAP plus (primary care)
  - HIV home care program
  - ADAP plus insurance continuation (APIC)
  - Pre-Exposure Prophylaxis Assistance Program (PrEP-AP)

# Uninsured Care Programs – What do they cover?

- ADAP
  - Free medications for treatment of HIV/AIDS and opportunistic infections
  - Can help people who have Medicaid with a spenddown
- ADAP Plus (Primary Care)
  - Free primary care services at selected clinics, hospital outpatient departments, office-based physicians and lab vendors
- HIV Home Care
  - Skilled nursing, home health aide services, intravenous therapy administration, medications and supplies and durable medical equipment
- APIC
  - Can pay for commercial health insurance premiums for ADAP individuals
- PrEP-AP
  - HIV testing, STI/STD testing and supportive primary care services through eligible providers
- [NYSDOH Uninsured Care Programs Covered Services](#)
- [ADAP Formulary \(revised November 2021\)](#)

# Uninsured Care Programs: What is *excluded*?

- Pharmacy (drugs not included in [ADAP formulary](#))
- Emergency room
- Substance Use Disorder Services/Methadone Maintenance
- Ancillary services (any service, lab, or procedure not included in the clinic visit)
- Rehabilitative Therapy (vocational, physical, speech, etc)
- Case Management/Social Work
- Psychiatric/Mental Health (extended visits)
- Inpatient Services

# Uninsured Care Programs – Eligibility

- Income limit: 500% FPL
- Residency: NYS (US citizenship not required)
- Medical: HIV-infection or at risk of acquiring HIV infection
- Consistent w/ Guidelines for Pre-Exposure Prophylaxis

# Accessing ADAP

- NYS DOH comprehensive webpage on Uninsured Care Programs:
  - <http://www.health.ny.gov/diseases/aids/resources/adap/>
- Includes eligibility criteria, covered services, application forms, fact sheets and helpline number (M-F, 8-5)
  - In State: Toll free 1-800-542-2437 or 1-844 -682 4058
  - Out of State: (518) 459 1641
  - TTY: (518)-459-0121
- Online portal for applications and recertifications <https://nyucp.providecm.net/>
  - Los Programas Uninsured Care han creado un portal en línea (Currently “UNDER CONSTRUCTION”)
- [English](#), [Spanish](#), [Arabic](#), [Bengali](#), [Chinese](#), [Haitian Creole](#), [Italian](#), [Korean](#), [Polish](#), [Russian](#), [Yiddish](#).
- Immigration Status not a factor

# Medicaid

- Joint federal-state program created in 1965; administered at county level by states
- Provides health coverage to millions of Americans (low-income adults, children, pregnant women, elderly adults, people with disabilities)
- Medicaid has two basic categories of coverage:
  - MAGI (Modified Adjusted Gross Income)
    - “Marketplace” or Expansion Medicaid
    - Administered by NYSOH Marketplace
  - Non-MAGI
    - For those with Medicare, or over the age of 65 or people with a disability
    - Includes Medicare Savings Program + SSI beneficiaries
    - Administered by LDSS or HRA (NYC)

# Accessing MAGI Medicaid

- Available to:
  - Childless adults ages 19-64 without Medicare
  - Children
  - Parents and caretaker relatives of children
    - Can be age 65+ and / or on Medicare
  - Pregnant women
    - Can have Medicare
- Apply via NY State of Health Online, by phone or through in-person assistor (navigator, CAC, broker)
  - [nystateofhealth.ny.gov](https://nystateofhealth.ny.gov) or 1-855-355-5777
- Resources available in many languages
  - <https://info.nystateofhealth.ny.gov/AdditionalLanguageMaterials>

# Language Access issues with NYSOH?

- Required to Provide free language assistance services
  - Qualified interpreters
  - Written information in other languages
- Complaints against NYSOH
  - [http://www.health.ny.gov/regulations/discrimination\\_complaints/](http://www.health.ny.gov/regulations/discrimination_complaints/)
  - Email the Diversity Management Office at [DMO@health.ny.gov](mailto:DMO@health.ny.gov)
- Option to file a civil rights complaint with the U.S. Department of Health and Human Services, Office for Civil Rights
  - <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>
  - by mail U.S. Department of Health and Human Services, 200 Independence Avenue, SW, Room 509F, HHH Building, Washington, D.C. 20201
  - by phone 800-368-1019 (TTY 800-537-7697)
  - Complaint forms available at [hhs.gov/ocr/office/file/index.html](https://hhs.gov/ocr/office/file/index.html).

# Accessing Non-MAGI Medicaid

- Available through LDSS / HRA
  - In-person assistance through Facilitated Enroller
- Paper application process: [DOH-4220](#) + Supplement A ([DOH-5178a](#))
  - For assistance: 1-800-698-4543
  - TTY: 1-877-898-5849
  - [Instrucciones](#) + [Suplemento A](#)
- DOH-4220 available in: English, [Spanish](#), [Chinese](#), [Haitian Creole](#), [Italian](#), [Korean](#), [Russian](#), [Yiddish](#), [Polish](#), [Bengali](#), [Arabic](#) (Indicate preferred language)
  - All languages DOH-4220 + Supp A can be found here: [https://www.health.ny.gov/health\\_care/medicaid/how\\_do\\_i\\_apply.htm](https://www.health.ny.gov/health_care/medicaid/how_do_i_apply.htm)
- Access Application, Supp A, MSP app in any format: [audio disc](#), [data disc](#), [large print](#), [Braille](#) by downloading or calling or writing LDSS

# Medicaid Health Homes

- What are Health Homes?
  - Group of health care + service providers working together to make sure you get care/services you need
- HIV+ individuals automatically qualify for HH services
- Care management with:
  - Health providers;
  - Behavioral health & SUD services;
  - Connecting to necessary medications;
  - Housing;
  - Applying/recertifying for social services;
  - Other support services as necessary
- Enrolled through their Managed Care plan in their county

# HIV-Special Needs Plan (HIV-SNPs)

- Specialized Medicaid Managed Care plans (only in NYC) designed to meet needs of those living with HIV/AIDS
  - Can be HIV-negative, homeless or transgender
  - Dependent children can also enroll
- Covers all Medicaid services; and
  - An HIV specialist primary care physician (PCP)
  - HIV care coordination services
  - Information about HIV medications and side effects
  - Treatment adherence services
  - HIV prevention and risk reductions education for HIV negative members
- Can choose during Medicaid enrollment to be enrolled in MMC or HIV SNP
- Clients w/ Medicaid through the Marketplace – enroll in SNPs there
- Clients w/ Medicaid through HRA – call Medicaid Choice to enroll in SNP
- Model Contract

# Language Access in Medicaid Managed Care (MMC)

- Model Contract for Medicaid Managed Care/HIV SNPs/Health and Recovery Plan - March 2019
- Language should not be a barrier to receiving services
- All plans should:
  - Have bi-lingual staff
  - Have written materials prepared in multiple languages
  - Advise enrollees that they are entitled to receive language interpretation services upon request and at no charge
  - Provide interpretation services free of charge
  - Provide names, locations and telephone numbers of providers who speak languages other than English

# Complaints about MMC plans

- All MMC plans must provide care coordination for enrollees with high needs such as
  - Chronic illnesses, HIV, or physical/developmental disabilities
  - Those who need long-term services and supports (LTSS)
- The plan must have adequate case management systems to identify the service needs, including enrollees with chronic illness and disabilities
  - Plan should be screening based on claims data provided
  - Appropriately train staff to function as case managers for special needs populations (or subcontract for case management)
  - Inform enrollees about services, including referral to Health Home
- *Member Services* is frequently the care coordination unit for the managed care plan
- All MMC plans certified by Department of Health must have a process to receive and respond to complaints and grievances

# Contacting NYS Government Agencies

- Agency to contact will depend on the type of health care plan and the type of complaint
- No requirement to file a complaint/grievance with your plan first
- Agency will review or investigate and may work with health care plan to correct
- See chart that sets out [List of Government Complaint Contacts](#)
- For example, an individual who wants to complain about language access issues with their Mainstream Medicaid Managed Care plan should contact
  - *NYS Department of Health, Managed Care Complaint Unit*  
*OHIP DHPCO 1CP-1609, Albany, New York 12237*  
*Or Email: [managedcarecomplaint@health.ny.gov](mailto:managedcarecomplaint@health.ny.gov)*

# Medicaid for Immigrants in NY

- NY State (Non-MAGI) Medicaid available to immigrants (if income eligible) who have:
  - Receipt (I-797) or other proof that USCIS is aware of presence (PRUCOL)
  - TPS, Asylum, Refugee, DACA, U-visa, T-visa, Work Authorizations
- No 5 year wait
- No Social Security number needed
- \*NEW in 2023: Pregnant women out of status eligible for Medicaid for duration of pregnancy + 12 months post-pregnancy
- \*NEW in 2023: NY Seniors Out of Status (65+) can obtain Medicaid (if financially eligible)
- Emergency Medicaid for Undocumented Patients for Hospital, Cancer Care, Renal Dialysis
  - NOT comprehensive coverage!

# During the Public Health Emergency

- No one with Medicaid coverage on or after March 18, 2020, can lose that coverage during the Public Health Emergency unless they move out of state or voluntarily close their case (including those who have aid continuing and lose their Fair Hearing)
- No recertifications!
  - Individuals in New York City whose coverage is administered by HRA are still receiving recerts in the mail, but there are no consequences to not returning it
- Throughout the PHE, Medicaid, Essential Plan, and Child Health Plus coverage has been extended
- As of October 8, cases through December 2022 have been extended

# PHE Unwinding Tips

- Advise clients to verify address + phone numbers with the Marketplace/LDSS/HRA
- Advise clients to remain alert for any announcements related to the end of the federal PHE
- Advise clients to contact NYSOH or their LDSS if they do not receive a recertification notice during the time of year that they have recertified in the past
- For those in NYC with coverage through HRA, set up an account on Access HRA: <https://a069-access.nyc.gov/accesshra/>
- Advise clients to start gathering documents that they may need for their recertification, e.g. proof of income, resources, proof of payment of health insurance premiums, trust documents
- Advise clients who may lose public health insurance coverage to:
  - Seek assistance looking ahead to potential coverage options
  - Book appointments, get Rx refills, etc... while still covered
  - Stock up on free or reimbursable at home COVID-19 tests (8/member/month) during PHE

# More changes coming in 2023

- Advise clients to pay attention to all Notices!
- Two new notices will be issued before the end of the year to population groups who may be eligible for expanded coverage based on income
  - Changes to Medicare Savings Program (MSP) Income Levels
    - [GIS 22 MA-10 \(ny.gov\)](#)
    - [22ma10\\_att1.pdf \(ny.gov\)](#)
  - Increase of Medicaid Medically Needy Income Level to 138% of the Federal Poverty Level and Related Medically Needy and MBI-WPD Resource Level Changes
    - [GIS 22 MA-11 \(ny.gov\)](#)
    - [22ma11\\_att1.pdf \(ny.gov\)](#)

# Language Access in Hospitals

- Hospitals are NOT permitted to discriminate based on language, race, or immigration status
- Hospitals DO NOT share information with immigration agents
- All NYS hospitals are required to:
  - develop a language access plan;
  - appoint a Language Access Coordinator;
  - provide interpreters within 10 minutes in the ER and 20 minutes elsewhere in the hospital; and
  - notify patients about their rights to language services
  - patient medical records must include their language preference
- Family members, friends, non-hospital personnel cannot act as interpreters unless patient agrees and free interpreter services have been offered/refused
  - **Minor children should not to be used as interpreters**

# Language Access in Hospitals cont'd

- **Language accessibility is legally required; it is not an optional service**
  - Hospitals must provide accurate interpretation of spoken language and translations of vital documents
    - . patient's bill of rights; financial assistance applications; discharge instructions
- Complaints may be made to the hospital's Language Access Coordinator and the Joint Commission if not provided

File civil rights complaint with the U.S. Department of Health and Human Services Office for Civil Rights (OCR)

- in writing by mail, fax, e-mail, or via the [OCR Complaint Portal](#)
- within 180 days of when you knew that the act or omission complained of occurred
- OCR may extend period for "good cause"

# Hospital Language Access Policy Example

- Language policy for University of Rochester Medicine
  - <https://www.urmc.rochester.edu/strong-memorial/services-amenities/interpreters.aspx>
- 24/7 Interpreters Available in over 200 languages
  - 11x17 Poster with 18 languages other than English asking if you need an interpreter (next slide):
    - <https://www.urmc.rochester.edu/MediaLibraries/URMCMedia/strong-memorial/services-amenities/Top-18-languages.pdf>

# INTERPRETERS AVAILABLE

You have access to interpretation services 24/7 at no personal cost to you.  
This chart includes languages commonly spoken in your community, additional languages are available.

**English: Do you speak [language]?**  
**We will provide an interpreter at no personal cost to you.**

Spanish	<b>Spanish Español</b> ¿Habla español? Le proporcionaremos un intérprete sin costo alguno para usted.	Nepali	<b>Nepali नेपाली</b> तपाईं नेपाली बोल्नुहुन्छ? हामी तपाईंको लागि नि:शुल्क रूपमा दोआब उपलब्ध गराउने छौं।
Arabic	<b>Arabic</b> هل تتحدث اللغة العربية؟ سوف نوفر لك مترجما فوريا بدون أي تكلفة عليك.	Mandarin	<b>Mandarin 中文</b> 您讲国语吗？我们将免费为您提供翻译。
Vietnamese	<b>Vietnamese Tiếng Việt</b> Bạn vi nói được tiếng Việt không? Chúng tôi sẽ cung cấp một thông dịch viên miễn phí cho quý vị.	Cantonese	<b>Cantonese 粵語</b> 你講粵語嗎？我們將免費為您提供翻譯。
Russian	<b>Russian Русский</b> Вы говорите по-русски? Мы абсолютно бесплатно предоставим вам переводчика.	Somali	<b>Somali Af Soomaali</b> Ma ku hadashaa Af Soomaali? Waxaan kuu helaynaa tarjumaan bilaa lacag ah.
Burmese	<b>Burmese</b> သင် မြန်မာစကား ပြောနိုင်သလား။ ကိုယ့်ကို စကားပြော တစ်ဦးကို သင့်အတွက် ကိုယ်ကျင့်ရန် နှင့်ဆောင် စေမိမိပေးမည်။	Swahili	<b>Swahili Kiswahili</b> Je, unazungumza Kiswahili? Tusakupatia mkalimani bila gharama yoyote kwako.
Karen	<b>Karen</b> နာဂါး ကိုယ်တိုင်အိမ်၊ မဟာဂိုဏ်း၊ ပျာတဝါးစိုင်းဝဲခေါ်၊ ဝဟာတဝါးနွေဝဲခေါ်၊ နာဂါးကော့ဒါတိုင်ခေါ်။	Turkish	<b>Turkish Türkçe</b> Türkçe konuşuyor musunuz? Sahninizde ait hiçbir mutfak olmadıkça size bir tercüman temin edeceğiz.
French	<b>French Français</b> Parlez-vous français ? Nous vous fournissons gratuitement un interprète.	Amharic	<b>Amharic</b> እንዴት ትናገሩሉ? እርስዎ ባለቤቱ ለሌላ ሰው ለተረጎሙ ለተረጎሙ ነገር የለም።
Korean	<b>Korean 한국어</b> 한국어를 사용하십니까? 무료로 통역 서비스를 제공해 드리겠습니다.	Ukrainian	<b>Ukrainian Українська</b> Ви розмовляєте українською? Ми абсолютно безкоштовно надамо вам перекладача.
Irundi	<b>Kirundi Ikirundi</b> Uvuga Kirundi? Tuzakuransha umuntu agushyirika ata mahera utanze.	American Sign Language (ASL)	



# Appealing a Determination

- Agency must issue written notice of any denial, discontinuance or change in benefits and inform individual of the right to request a fair hearing and number for legal assistance
- Hearing may also be requested due to application delay even if no notice received
- Entire notice should be in requested language; if not, may be defective and toll statute of limitations

# Fair Hearing Rights

(NYS Office of Temporary and Disability Assistance)

- Decision may be appealed up to 60 days from date of determination (90 days for SNAP)
- If receiving benefits, aid continuing should be authorized if request is made prior to the effective date of the notice
- Make sure to request an interpreter if needed
- Request to expedite if emergency (huge backlog now)
- Request for hearing may be submitted to OTDA online, by mail/fax or by phone at 1-518-474-8781 or 1-800-342-3334 (toll free)
- Administrative Law Judge will be assigned to hear case and will issue decision in writing after the hearing

# Types of Medicaid Appeals

- Internal Appeal to health plan (after receiving Initial Adverse Determination)
- Fair Hearing request to OTDA (after receiving Final Adverse Determination)
  - Unless deemed exhaustion!
- External Appeal
  - Plan notice denying your Internal Appeal will explain your right to request an External Appeal (when reason for denial is due to medical necessity or is experimental or investigational)
  - May request an External Appeal even if also requesting FH
  - Reviewed by a different State agency (DFS) than FHs (OAH)
  - FH decision always trumps External Appeal decision

# How to Request a Fair Hearing

## Online

- [Fair Hearing Online Request Form \(English\)](#)
- [Fair Hearing Online Request Form \(Arabic\)](#)
- [Fair Hearing Online Request Form \(Bengali\)](#)
- [Fair Hearing Online Request Form \(Chinese\)](#)
- [Fair Hearing Online Request Form \(French\)](#)
- [Fair Hearing Online Request Form \(Haitian Creole\)](#)
- [Fair Hearing Online Request Form \(Italian\)](#)
- [Fair Hearing Online Request Form \(Korean\)](#)
- [Fair Hearing Online Request Form \(Polish\)](#)
- [Fair Hearing Online Request Form \(Russian\)](#)
- [Fair Hearing Online Request Form \(Spanish\)](#)
- [Fair Hearing Online Request Form \(Urdu\)](#)
- [Fair Hearing Online Request Form \(Yiddish\)](#)

## Mail/Fax

- [Fair Hearing Request Form \(English\)](#)
- [Fair Hearing Request Form \(Arabic\)](#)
- [Fair Hearing Request Form \(Bengali\)](#)
- [Fair Hearing Request Form \(Chinese\)](#)
- [Fair Hearing Request Form \(French\)](#)
- [Fair Hearing Request Form \(Haitian Creole\)](#)
- [Fair Hearing Request Form \(Italian\)](#)
- [Fair Hearing Request Form \(Korean\)](#)
- [Fair Hearing Request Form \(Polish\)](#)
- [Fair Hearing Request Form \(Russian\)](#)
- [Fair Hearing Request Form \(Spanish\)](#)
- [Fair Hearing Request Form \(Urdu\)](#)
- [Fair Hearing Request Form \(Yiddish\)](#)

Speech Impaired or Hard of Hearing: contact the New York Relay Service at 711 and request that the operator call us at 1-877-502-6155. Service at this number will *only* be provided to callers using TDD equipment

# Fair Hearing Demonstration Project

- OTDA Office of Administrative Hearings (OAH) began a demonstration project in March 2020 to conduct fair hearings using telephone, vide, and other means of communication
- Now extended through March 12, 2023
- Almost all FHs have been taking place by telephone
- Ongoing advocacy with OAH
  - Fair Hearing notice letters/insert with instructions are now available in languages other than English

# Fair Hearing Demonstration Project: LA Issues

Non-exhaustive list of language access issues still being discussed

- Schedule all hearings for LEP individuals to be held in-person and allow appellant to affirmatively opt-in to a phone hearing based on preference
- Create specific guidance and trainings for interpreters at telephone hearings
- Create specific guidance and trainings for ALJs - including how to conduct a remote fair hearing with an interpreter and issues relating to credibility determinations in this context
- Systems needed to ensure that interpreters are provided with the evidentiary documents in advance of the hearing
- Require Agencies to translate common documents so that appellants can respond to the Agency's evidence
- Improve the ALJ opening statement to ensure that all appellants are clearly informed that they have a right to face-to-face or in-person hearing, and to clearly explain the role/additional instructions if there is an interpreter

# Language Access is a Civil Right!

Denial of Language Access services results in disparities in healthcare, food assistance, housing, financial stability and access to other essential services.

Denial of Language Access services results in improper sanctions and denials of services.

If your client has been denied essential language access services by any federally funded government program, you may file a complaint with the Department of Justice, Office of Civil Rights at <http://www.justice.gov/crt/about/cor/complaint/php> or with the agency which has not provided the necessary services.

# Additional Resources

Limited English Proficiency (LEP) – A Federal Interagency Website

[www.lep.gov](http://www.lep.gov)

NY Health Access – Language Access Services in Health Care Setting

<http://wnylc.com/health/entry/73/>

Immigrant Eligibility for Public Benefits in NY State

[https://empirejustice.org/resources\\_post/immigrant-eligibility-for-public-benefits/](https://empirejustice.org/resources_post/immigrant-eligibility-for-public-benefits/)

Health Coverage Crosswalk

<https://info.nystateofhealth.ny.gov/sites/default/files/Empire%20Justice%20Center%20Health%20Coverage%20Crosswalk.pdf>

NY State HIV Demographics:

<https://www.health.ny.gov/diseases/aids/general/statistics/>

# Additional Resources

National Health Law Program (NHELP)

[www.healthlaw.org/index.php?option=com\\_content&id=239&Itemid=196](http://www.healthlaw.org/index.php?option=com_content&id=239&Itemid=196)

National CLAS Standards <https://thinkculturalhealth.hhs.gov/clas/standards>

The Joint Commission <https://www.jointcommission.org/resources/patient-safety-topics/report-a-patient-safety-concern-or-complaint/>

Language Access Plan: Department of Health, October 1, 2022

<https://ogs.ny.gov/system/files/documents/2022/09/doh-lap-2022.pdf>

[https://empirejustice.org/resources\\_post/immigrant-eligibility-for-public-benefits/](https://empirejustice.org/resources_post/immigrant-eligibility-for-public-benefits/)

Oct 2022 Press Release on Breaking Language

Barriers: <https://www.hhs.gov/about/news/2022/10/06/hhs-takes-action-break-language-barriers.html>

# We are Here to HELP!

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