

Federal and State Law Regarding Linguistic Access and Services for Limited English Proficient Persons

I. Purpose.

This document is intended to satisfy the requirements set forth in California Business and Professions code 2190.1. California law requires physicians to obtain training in cultural and linguistic competency as part of their continuing medical education programs. This document and the attachments are intended to provide physicians with an overview of federal and state laws regarding linguistic access and services for limited English proficient (“LEP”) persons. Other federal and state laws not reviewed below also may govern the manner in which physicians and healthcare providers render services for disabled, hearing impaired or other protected categories

II. Federal Law – Federal Civil Rights Act of 1964, Executive Order 13166, August 11, 2000, and Department of Health and Human Services (“HHS”) Regulations and LEP Guidance.

The Federal Civil Rights Act of 1964, as amended, and HHS regulations require recipients of federal financial assistance (“Recipients”) to take reasonable steps to ensure that LEP persons have meaningful access to federally funded programs and services. Failure to provide LEP individuals with access to federally funded programs and services may constitute national origin discrimination, which may be remedied by federal agency enforcement action. Recipients may include physicians, hospitals, universities and academic medical centers who receive grants, training, equipment, surplus property and other assistance from the federal government.

HHS recently issued revised guidance documents for Recipients to ensure that they understand their obligations to provide language assistance services to LEP persons. A copy of HHS’s summary document entitled “Guidance for Federal Financial Assistance Recipients Regarding Title VI and the Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons – Summary” is available at HHS’s website at: <http://www.hhs.gov/ocr/lep/> .

As noted above, Recipients generally must provide meaningful access to their programs and services for LEP persons. The rule, however, is a flexible one and HHS recognizes that “reasonable steps” may differ depending on the Recipient’s size and scope of services. HHS advised that Recipients, in designing an LEP program, should conduct an individualized assessment balancing four factors, including: (i) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Recipient; (ii) the frequency with which LEP individuals come into contact with the Recipient’s program; (iii) the nature and importance of the program, activity or service provided by the Recipient to its beneficiaries; and (iv) the resources available to the Recipient and the costs of interpreting and translation services.

Based on the Recipient’s analysis, the Recipient should then design an LEP plan based on five recommended steps, including: (i) identifying LEP individuals who may need assistance; (ii) identifying language assistance measures; (iii) training staff; (iv) providing notice to LEP persons; and (v) monitoring and updating the LEP plan.

A Recipient’s LEP plan likely will include translating vital documents and providing either on-site interpreters or telephone interpreter services, or using shared interpreting services with other Recipients. Recipients may take other reasonable steps depending on the emergent or non-emergent needs of the LEP individual, such as hiring bilingual staff who are competent in the

skills required for medical translation, hiring staff interpreters, or contracting with outside public or private agencies that provide interpreter services. HHS's guidance provides detailed examples of the mix of services that a Recipient should consider and implement. HHS's guidance also establishes a "safe harbor" that Recipients may elect to follow when determining whether vital documents must be translated into other languages. Compliance with the safe harbor will be strong evidence that the Recipient has satisfied its written translation obligations.

In addition to reviewing HHS guidance documents, Recipients may contact HHS's Office for Civil Rights for technical assistance in establishing a reasonable LEP plan.

III. California Law – Dymally-Alatorre Bilingual Services Act.

The California legislature enacted the California's Dymally-Alatorre Bilingual Services Act (Govt. Code 7290 *et seq.*) in order to ensure that California residents would appropriately receive services from public agencies regardless of the person's English language skills. California Government Code section 7291 recites this legislative intent as follows:

"The Legislature hereby finds and declares that the effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government and the right and ability of the government to communicate with them.

The Legislature further finds and declares that substantial numbers of persons who live, work and pay taxes in this state are unable, either because they do not speak or write English at all, or because their primary language is other than English, effectively to communicate with their government. The Legislature further finds and declares that state and local agency employees frequently are unable to communicate with persons requiring their services because of this language barrier. As a consequence, substantial numbers of persons presently are being denied rights and benefits to which they would otherwise be entitled.

It is the intention of the Legislature in enacting this chapter to provide for effective communication between all levels of government in this state and the people of this state who are precluded from utilizing public services because of language barriers."

The Act generally requires state and local public agencies to provide interpreter and written document translation services in a manner that will ensure that LEP individuals have access to important government services. Agencies may employ bilingual staff, and translate documents into additional languages representing the clientele served by the agency. Public agencies also must conduct a needs assessment survey every two years documenting the items listed in Government Code section 7299.4, and develop an implementation plan every year that documents compliance with the Act. You may access a copy of this law at the following url: <http://www.spb.ca.gov/bilingual/dymallyact.htm>