

CLIENT ALERT

HEALTH CARE

May 22, 2006

New York State Department of Health Releases Proposed Regulations on Hospital Language Assistance Programs

On May 17, 2006, the New York State Department of Health (DOH) published proposed regulations that would require New York hospitals to implement Language Assistance Programs to ensure effective communication with patients who have limited English proficiency or vision and/or hearing impairments. The proposal is open for public comments until July 1, 2006 and is subject to adoption by the State Hospital Review and Planning Council (SHRPC).

Background of Hospital Requirements to Provide Language Assistance Services

Current regulations (10 NYCRR § 405.7) require hospitals to make available interpretation and translation services in order to provide effective communication with all patients, regardless of a patient's language or impairment of hearing or vision, and sets forth two criteria for satisfaction of this general requirement: first, that services be provided for non-English speaking groups that comprise more than one percent of the total hospital services area population; and second, that services be available within 20 minutes of a request for services, or 10 minutes in emergency services. In May 2005, DOH issued a letter to the leadership of New York hospitals reminding them of the regulatory requirement to provide free language assistance services. The letter indicated that DOH would be collaborating with hospital associations and community based organizations to strengthen these regulations in order to ensure that hospitals provide adequate language assistance services. We understand that the Greater New York Hospital Association (GNYHA) and the Healthcare Association of New York State (HANYs), as well as hospital members of both organizations, were involved in the development of the proposed regulations.

Summary of Proposed Regulations

The proposed regulations would replace Section 405.7 with a more detailed provision that sets forth a blueprint for how hospitals should meet the language assistance needs of their patients. Specifically, the proposal requires hospitals to:

- create a Language Assistance Program to ensure meaningful access to services and reasonable accommodation for all patients requiring language assistance;
- appoint a Language Assistance Coordinator to oversee provision of language assistance services and report to hospital administration;
- adopt policies and procedures to assure provision of language assistance services;
- post signage and distribute materials for patients to publicize the availability of free language assistance services;

- provide training to staff on the importance of the effective communication with patients and how to access language assistance services;
- identify each patient's language needs and document in the medical record the patient's primary language, need for language assistance and acceptance or refusal of language assistance services;
- permit the use of friends or family members as interpreters only if the patient agrees to their use and refuses free services offered by the hospital, and permit children under the age of 16 to serve as interpreters only in emergency situations; and
- make available translations of all significant hospital forms in each language spoken by more than **one percent (1%) of the total hospital service area population, as determined by an annual needs assessment.**

The proposal retains the current requirements regarding the time in which services must be provided (10 minutes for emergency services; 20 minutes for other services); however, it permits DOH to approve alternative arrangements for rural hospitals that are unable to fulfill such requirements.

The proposed new DOH requirements are generally consistent with those set forth in the United States Department of Health and Human Services (HHS) guidance, dated August 8, 2003, to recipients of federal funding regarding the prohibition against national origin discrimination under Title VI of the Civil Rights Act affecting limited English proficiency persons.

The full text of the proposed regulations is available on the DOH website and may be accessed by [clicking here](#).

Contact Information

Ropes & Gray attorneys have substantial expertise in advising hospital clients on developing and implementing language assistance policies and procedures, as well as representing clients in regulatory investigations regarding language assistance services. If you have any questions about these matters, please contact any of the attorneys listed below.

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