



DAVID MAXWELL-JOLLY
Director

State of California—Health and Human Services Agency
Department of Health Care Services



ARNOLD SCHWARZENEGGER
Governor

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TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 10-03
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS

SUBJECT: LANGUAGE ACCESS SERVICES FOR LIMITED-ENGLISH PROFICIENT
AND NON-ENGLISH PROFICIENT INDIVIDUALS
(Reference: All County Welfare Directors' Letter 08-32)

PURPOSE

This All County Welfare Directors' Letter (ACWDL) delineates the responsibilities of counties when providing language services to Limited-English Proficient (LEP) and non-English proficient applicants/beneficiaries, and it establishes procedures to ensure that LEP and non-English proficient applicants/beneficiaries are informed that free interpreter services are available.

For purposes of this ACWDL, LEP and non-English individuals are defined as individuals who identify themselves as unable to speak, read, write or understand the English language to interact effectively with county and local welfare/health agencies. Applicants/beneficiaries who are not fluent in the English language have the right to choose to access information regarding Medi-Cal's programs and services in their native language or preferred language.

BACKGROUND

In 2007, the Department of Health Care Services (DHCS) convened a Notice-of-Action (NOA) Workgroup to respond to concerns raised by applicants/beneficiaries and advocacy groups regarding applicants/beneficiaries receiving multiple, confusing and conflicting NOAs and NOAs sent in inappropriate

languages. The NOA Workgroup (comprised of staff from DHCS, counties, consortia, and advocacy groups) recommended a number of interim and long-term improvements to respond to these concerns.

One recommendation made by the NOA Workgroup was that all applicants and beneficiaries must be able to effectively access DHCS programs and services. DHCS has developed a general LEP policy to clarify the responsibilities of counties in providing effective language services and to ensure that applicants/beneficiaries are informed of the availability of free interpreter services. In ACWDL 08-32, counties were instructed to implement one of the three multilingual notification options as of October 1, 2008, when sending out NOAs to ensure that individuals are informed that free assistance is available in their native language or preferred language and that they are informed to contact their local county welfare/health office for further assistance.

LEGAL AUTHORITY

DHCS is mandated by a portion of Title VI of the Civil Rights Act of 1964 as amended (42 USC section 2000d et seq.) and the Dymally-Alatorre Bilingual Services Act (Government Code Section 7290 et seq.) to provide LEP individuals with meaningful access to services by providing language assistance. DHCS is responsible for the administration of the State's Medicaid program (referred to in California as Medi-Cal) and for ensuring that county and local welfare/health agencies comply with these federal mandates and state laws.

Federal Law

42 U.S.C. 2000d provides that, "...no person 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."

State law

Under the *California Dymally-Alatorre Bilingual Services Act*, Government Code Section 7290 et seq., <http://www.spb.ca.gov/bilingual/dymallyact.htm>, (hereinafter referred to as the Act), a local public office or facility of the state agency is required to translate materials explaining their services into the languages spoken by five percent or more of the population they serve and to employ a sufficient number of bilingual persons to ensure access to LEP individuals.

DEFINITIONS

The Act provides that counties that provide information or services to the public where contact is made with a substantial number of LEP must employ a sufficient number of qualified bilingual persons to ensure that provision of services in the language of the LEP person are accessible.

- The Act defines “substantial number” as five percent or more of the people served by any local office or facility of a state agency. The determination of what constitutes a substantial number of LEP persons and a sufficient number of qualified bilingual persons shall be made by the local agency.
- A “sufficient number” of staff is the number required to provide the same level of services to LEP persons as is available to English-speaking persons seeking such services in a similar amount of time.

Public contact positions are those that emphasize the ability to meet, contact, and deal with the public in the performance of the agency’s functions. The contact may be made by mail correspondence, telephone, or through face-to-face communication.

COUNTY PROCEDURES

Counties are responsible for ensuring that LEP individuals have access to meaningful language services, and must take necessary steps to ensure that interpretive services and written translations are provided to LEP applicants/beneficiaries, regardless of the size of the language group.

The following six areas serve as guideposts for counties in providing effective language services to LEP individuals:

1. Informing Signs: Counties must place signs near any reception desk or window and other initial points of contact. All such signs should be clearly visible. The signs must advise LEP applicants/beneficiaries of their right to access free assistance in their preferred language. Some useful tools include posters that state that free interpreter services will be provided in many languages and language identification brochures that are available from telephone language line services.

The sign should also explain the complaint process and list the telephone number and address of the county’s Office of Civil Rights for

individuals to file a complaint and the telephone contacts for local legal aid offices.

In addition to the signs offering free translation/interpretive services, if a particular county serves a substantial number (five percent of the caseload or as determined by the local agency for county programs) of LEP applicants/beneficiaries, all directional and instruction signs must be translated and posted in that particular language.

2. Identifying Language Preference: Counties must identify the preferred language(s) for written and verbal communication for applicants/beneficiaries. This is particularly important for individuals who may be illiterate in their non-English language. For illiterate individuals or those for whom there is no written translation, the counties must provide oral interpretation of written notices. Identification of language preferences should be done initially. Also county staff have access to the "I speak card", available at this link <http://www.dss.cahwnet.gov/civilrights/PG584.htm>. This card helps county staff to determine the language an applicant/beneficiary speaks by offering the person an opportunity to point to the language in which he/she needs assistance. If a language is not listed, each county is required to have an established procedure to obtain assistance in identifying the language in which the client needs to communicate. Counties are reminded that clients must select their language preference.
3. Bilingual Staffing: Counties with a substantial number of LEP persons must employ a sufficient number of qualified bilingual persons to ensure that provision of services in the language of the LEP person are accessible. This includes applicants/beneficiaries who use American or other sign language.

Counties have a "substantial number" when the language group is five percent or more of the people served by any local office or facility of a state agency. A "sufficient number" of staff is the number required to provide the same level of services to LEP persons as is available to English-speaking persons seeking such services.

Bilingual staff must be competent to communicate directly with LEP individuals in their language. If bilingual staff is also used to interpret between English speakers and LEP persons or to orally interpret written

documents from English into another language, they should be competent in the skill of interpreting.

If counties are unable to hire sufficient bilingual staff, counties shall contract with a private vendor to provide interpreting services. The county must ensure the contracted vendor is competent, can demonstrate proficiency and the ability to communicate information accurately in both English and in the other language, and employs the appropriate mode of interpreting (e.g., consecutive, simultaneous, summarization, or sight translation).

4. Interpreter Services: When the LEP population is less than five percent in a county at a location, the county is not required to necessarily have bilingual workers, but it must still offer and provide free interpreter services in the language the applicant/beneficiary has specified for oral communication. This means that if a LEP applicant/beneficiary who has identified a need or preference to communicate in a non-English language comes to the office or is contacted by phone, an interpreter must be provided by the county at no cost to the individual.

Interpreter services can be provided in person or by telephone using a bilingual staff person who is acting as an interpreter, a contracted interpreter, an interpreter from an outside agency, or an interpreter from a telephone language line service. If counties do not have an individual on site to interpret the requested language, a service such as those that provide telephone-based interpretation services must be utilized to provide meaningful language access.

5. Use of Family Members and Friends as Interpreters: A family member or friend may only be used to interpret if the free interpreter services have been offered to the applicant/beneficiary and the applicant/beneficiary provides written consent indicating that he/she prefers to voluntarily use a family member or friend or their own professional interpreter.

If the county determines that family members or friends are not competent to provide quality and accurate interpretations, and/or issues of confidentiality, privacy, or conflict of interest may arise, the county shall provide competent interpreter services.

In emergency circumstances that are not reasonably foreseeable, a county may not be able to offer free interpreter services, and temporary use of a family members or friends as interpreters may be necessary.

6. Minors Used as Interpreters: Counties are prohibited from using minor children (under the age of 18) as interpreters, except temporarily under extenuating circumstances. Extenuating circumstances may include using a minor child to determine the appropriate language needs of the adult so that an appropriate interpreter or bilingual staff person could be called or the county may ask the client to wait while the county obtains the interpreter service. Other than in extenuating circumstances, minors may not be used as interpreters even if the applicant/beneficiary requests to do so, although at the applicant's/beneficiary's request the minor may be present in addition to the county provided interpreter.
7. Use of Translated Documents: The counties' delivery of services, benefits and programs to LEP applicants/beneficiaries must be done by using translated forms, translated NOAs and/or other translated written material mailings that have been required and provided by DHCS. If DHCS has provided written translated materials, the counties must use the translated document, and not the English version for those preferring non-English materials.

In addition, if using a translated NOA, any added information that is unique to the applicant/beneficiary on the notice must be in his/her language. This means that an explanation of the action that is not printed on the NOA must be in the same language in which the notice is printed. If the NOA is translated into a threshold language, the information notice on the reverse side (NA Back 9) must also be in that same threshold language.

Counties are required to provide interpretation services to all LEP applicants/beneficiaries regardless of whether the DHCS has translated the forms, notices, and/or other translated written materials. This means that upon the request of the applicant/beneficiary, counties must, at a minimum, provide oral interpretation of all forms, notices, and/or other written material mailings. Written translations can range from translation of an entire document to translation of a short description of the document.

Counties are required to send a multilingual notification with all forms, notices, and/or other written material mailings regardless of the preferred language specified on Medi-Cal Eligibility Data System.

Counties have the option to select from one of the three multilingual notifications below:

1. The MC 4034 (Language Services Notice): Is available at the department's warehouse or at the DHCS' website:
<http://www.dhcs.ca.gov/formsandpubs/forms/Forms/MC%204034.pdf>
 2. The GEN 1356 (Notice of Language Services): Is available at the California Department of Social Services' website:
<http://www.dss.cahwnet.gov/cdssweb/entres/forms/Multi/GEN1365MUL.pdf>
 3. County Customized Notification: Counties have the option of designing a multilingual notification that must be approved by DHCS prior to use. Please refer to ACWDL 08-32 for specific information that must be included in this notification.
8. Documentation: Counties are required to ask applicants/beneficiaries their preferred language for oral and written communication and document the preferred language(s) in the applicant's/beneficiary's files. Once known, the county is then required to document the following information or actions regarding language services in the case file:
- a. The acceptance or refusal of written materials in the applicant's/beneficiary's native language or preferred language after asking the applicant's/beneficiary's preference. If an applicant/beneficiary rejects materials in their primary language, document in the case file why and that the applicant/beneficiary was informed that the county will provide free interpretation of written materials. (Applicants/beneficiaries may be unable to read, and choose English because they are unaware they can get an interpretation and then rely on friends or relatives who are not competent to interpret.)
 - b. How bilingual services are provided. If, for example, a bilingual staff person is used, it must be documented in the case file.
 - c. The temporary use of a minor as an interpreter, and the extenuating circumstances requiring temporary use of the minor.

The county offered free interpretation services which the applicant/beneficiary refused after being informed of the potential problems for ineffective communication when using his or her own interpreter.

- d. The applicant's/beneficiary's written and informed consent to the release of information to the interpreter if the county uses an interpreter other than a county employee.

If you have any questions regarding this ACWDL, please contact Ms. Angelica Perez at (916) 552-9511.

Original Signed By:

René Mollow, MSN, RN, Chief
Medi-Cal Eligibility Division