

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

Prepared for the UC CME Consortium
By the UC Office of General Counsel

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 and professional development programs. This document and the accompanying 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. The document is not comprehensive and there may be additional federal and state laws governing the manner in which physicians and healthcare providers render services for disabled, hearing impaired, or other protected categories. We recommend that physicians review the CMA California Physician’s Legal Handbook for a comprehensive review of laws affecting a physician’s medical practice in California.

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 to take reasonable steps to ensure that LEP persons have meaningful access to federally funded programs and services. 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 titled “Guidance for Federal Financial Assistance Recipients Regarding Title VI and the Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons—Summary” is attached for your review. Additional in-depth guidance 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 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; 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, 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.

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.

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. A copy of this law may be found at the following url: <http://www.spb.ca.gov/bilingual/dymallyact.htm>.