



THE NEW YORK IMMIGRATION COALITION

137-139 W. 25th Street, 12th Floor

New York, NY 10001

Tel: (212) 627-2227

Fax: (212) 627-9314

www.thenyic.org

POLICY UPDATE

***STATE HEALTH REGULATION REQUIRES HOSPITALS TO IMPROVE
COMMUNICATION WITH PATIENTS***

CIVIL RIGHTS COMPLAINTS BRING ABOUT REFORMS

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Contact: Adam Gurvitch at (212) 627-2227, ext. 222; Maysoun Freij at ext. 232

New York State Department of Health Requires Hospitals to Provide Language Assistance Services for Limited-English-Proficient Patients and Hearing and Vision Impaired New Yorkers

Effective September 13, 2006

As a result of civil rights complaints filed by the New York Immigration Coalition and its partners against hospitals, citing medical harm and communication barriers, the New York State Department of Health (NYSDOH) has adopted regulations setting basic standards around hospitals' communications with limited-English-proficient patients, as well as hearing and vision-impaired New Yorkers. Significantly, the regulations make it clear that every limited-English-proficient patient has a right to meaningful access to a hospital's services in a language that is understandable to the patient. The new regulations apply to all public and private hospitals in New York State.

Background

Hospital communication barriers result in misdiagnosis, unnecessary medical procedures being performed, lack of consent, and illegal delays in providing medical care. While Federal, State, and local laws require that hospitals avoid discrimination and provide meaningful access to services regardless of a patient's national origin or the languages he or she speaks, advocates continue to document the widespread failure of hospitals throughout New York State to communicate in common languages spoken by the communities hospitals exist to serve.

The new State regulation is in response to hospitals that have denied care to patients due to communication barriers, forced patients to rely on untrained, unskilled ‘interpreters’ – often a minor child or stranger, and resulted in medical harm and poor quality of care. One in four New York State residents speak a language other than English at home, including half of the population of New York City; millions of New York State residents are limited-English-proficient, meaning that they cannot rely on English to convey their symptoms and obtain an accurate diagnosis, understand their treatment and follow-up care instructions, schedule appointments or arrange financial assistance and payment.

In April 2005, civil rights complaints were filed against Flushing, Jamaica, and Brookdale medical centers (the MediSys Health Network), and against St. Vincent’s Catholic Medical Center – Staten Island. These complaints were filed by the New York Immigration Coalition and its partners in the Immigrant Health Access and Advocacy Collaborative: Make the Road by Walking, Latin American Integration Center, Korean Community Services of Metropolitan New York, the Legal Aid Society, and New York Lawyers for the Public Interest. The complaints resulted from monitoring and failed efforts to bring about voluntary improvements in care at the hospitals. This was the most recent set of hospitals investigated by the State Attorney General at the request of immigrant advocates seeking to ensure compliance with Federal, State and New York City laws and regulations that require health care facilities to provide meaningful access to services for limited-English-proficient patients.

In September 2006, the New York State Attorney General’s Civil Rights Bureau concluded the investigations and came to agreements with the four hospitals to ensure that the safety and health of limited-English-proficient patients will not be compromised at those facilities in the future. In response to the civil rights complaints in 2005, the NYSDOH began to work extensively with the NYIC, its partners, and hospital associations to craft the State’s hospital communication assistance regulations in order to set uniform standards across the entire hospital industry; the final version of these regulations goes into effect September 13, 2006.

Highlights of the Regulation:

New York State’s Codes, Rules and Regulations, Title 10 (Health) sections 405.7 and 751.9, have been amended to strengthen patients’ rights to language assistance services by providing clear and unambiguous guidance to hospitals on managing and implementing language assistance programs across their facilities, including the provision of skilled interpreters. The regulation has the force of law and applies to private and public hospitals throughout New York State. To read the full text of the regulations, see the New York State Department of Health’s website, under Title 10, Sections 405.7 and 751.9:

<http://www.health.state.ny.us/nysdoh/phforum/nycrr10.htm>

In summary, starting September 13, 2006:

- All hospitals in New York State are required to develop a Language Assistance Program and ensure meaningful access to the hospital’s services and reasonable accommodation for all patients who require language assistance, including individuals who are limited-English-proficient, hearing impaired or vision impaired. Hospitals must designate a

language assistance coordinator to oversee this program. The hospital will be responsible for maintaining hospital language assistance services, and training all staff involved in direct patient care how to access such services on behalf of patients.

- Each hospital must manage skilled interpreters who can provide assistance to limited-English-proficient patients. Hospitals must also manage persons skilled in communicating with vision and/or hearing impaired patients.
- Hospitals must provide materials to patients and potential patients summarizing how to access the hospitals' free language assistance services; and must also post signs. These forms of notice must be in the languages of the community each hospital serves.
- Hospitals are required to identify and document each patient's language of preference and language needs in the medical record upon initial visit to the hospital. The hospital must document whether language assistance services were accepted or refused for all limited-English-proficient patients.
- Interpreters for limited-English-proficient patients, and persons skilled in communicating with vision and/or hearing impaired individuals, shall be available to patients in the inpatient and outpatient setting within 20 minutes, and to patients in the emergency service within 10 minutes of a request to the hospital administration by the patient, the patient's family or representative, or the provider of care. Only hospitals in rural areas of the State may receive temporary exceptions to these timeframes, which will be granted by the NYSDOH only if a rural hospital is unable to comply after taking all reasonable steps and developing effective interim plans.
- Hospitals are not permitted to use a patient's family members, friends, or non-hospital personnel as "interpreters," unless free interpreter services have been explicitly offered by the hospital to the patient, and the patient does not agree to use these services. In practice, even in cases when a patient declines a hospital's offer of free language assistance, the hospital may determine that it will provide a skilled interpreter in order to assure the quality of patient care or protect confidentiality, rather than allow the patient to utilize an informal, unskilled "interpreter."
- Hospitals are required to consider issues of age, competency, confidentiality, and conflict of interest when selecting an interpreter. The hospital must assure the appropriateness of any interpreter used in a hospital setting, whether she or he is part of the hospital language assistance program or is a family member, stranger or friend of the patient. With regard to age, the new law gives clear guidance that any individual acting as an interpreter should be 16 years of age or older, and that anyone younger than 16 years should only be used in the case of an emergency.
- Each facility must post signs throughout the hospital and share materials with potential patients to promote the availability of free language assistance services.
- Each hospital must conduct an annual needs assessment that identifies any languages other than English spoken by more than **one percent** of the hospital's patients or the total

hospital service area population. The hospital is required to provide patients with written translations of “significant hospital forms and instructions” in any of the languages identified in the needs assessment.

- It is important to note that hospitals are required to provide free communication assistance such as interpreting to **every** patient who needs it; the one percent population threshold relates only to the languages into which a hospital must translate written materials.
- The regulation requires hospitals to provide all patients with meaningful access to services in a timely manner. The regulation makes hospitals responsible for providing free communication assistance to all patients and their representatives who are limited-English-proficient, as well as to all patients who are vision and/or hearing impaired.

What Limited-English-Proficient Patients Should Expect When Accessing Hospital Care

Patients who do not speak English or speak only a limited amount of English should expect the following in every hospital in New York State beginning September 13, 2006:

- The hospital must offer and provide communication assistance from fully bilingual staff or skilled interpreters in a language that is understandable to the patient and his or her representative throughout the duration of the medical visit. The hospital must ensure appropriate communication when the patient and his or her representative calls to make an appointment, registers for care, and interacts with nurses, doctors, counselors and non-clinical staff such as the hospital’s financial assistance and insurance enrollers.
- The hospital is responsible for identifying the patient’s language of preference and documenting it in the medical chart. Documenting language of preference ensures that various departments of the hospital will be aware of communication assistance needs when coming into contact with the patient, and makes it possible for the hospital to prepare for subsequent medical visits by having the appropriate language assistance services available at the time of the appointment.
- Patients should cooperate with a hospital’s effort to identify their language and communication needs, and should not be afraid of accessing medical care or utilizing the hospital’s free language assistance services. Hospitals and other health providers do **not** share information with government agencies about a patient’s immigration status, or information about a patient’s household member’s immigration status. The hospital may use a variety of means to identify a patient’s language, such as charts, cards, and telephonic language services.
- If the hospital fails to communicate with the patient, the patient or the patient’s representative or physician should notify the hospital of the language she or he speaks, and request an interpreter.

- The hospital is permitted to use a variety of methods to provide language assistance services to a patient who is limited-English-proficient. While the new regulation requires hospitals to manage a pool of skilled interpreters, it does not specify what form interpretation should take in any given patient encounter. The hospital's pool of resources may be composed of full or part time staff interpreters, and/or bilingual health care and non-clinical staff, and may be supplemented by volunteers and contractors. Quality matters: hospitals are responsible for ensuring the adequacy of language skills of all staff, volunteers, and contractors who provide communication assistance.
- Patients may not necessarily get the same interpreter every time they visit a hospital, and the person providing communication assistance may not be physically present. As a back-up to ensure adequate communication with all patients at all times, and in all areas of a facility, hospitals may contract with telephonic language assistance services. Such services may be acceptable when the hospital is interacting with patients who speak languages that the hospital encounters only infrequently, or during off-hours in areas of the facility where on-site language assistance resources may be limited. Remote simultaneous medical interpreting is another form of communication assistance that does not involve an interpreter being present in the same room as the patient; it generally involves the use of skilled interpreters and in many situations may be an alternative to on-site interpreting.
- The new regulations state that hospitals must provide communication assistance to all patients within 20 minutes in inpatient and outpatient settings, and 10 minutes in Emergency settings.
- Each hospital must provide key forms in a language that the patient understands, such as registration, billing, and consent forms for medical procedures. Translated documents must be provided by the hospital in all languages relied on by one percent of the hospital's patients or service area population.
- If translated documents are not available, a hospital should provide an interpreter to orally translate significant documents for the patient at the time of a medical visit. Just as under existing law regarding English-speakers who have limited literacy or are vision impaired, the hospital has a responsibility to provide oral communication assistance to assure that patients understand the content of written forms they are given to sign. Patients should only sign documents, particularly those giving consent to medical procedures, with full comprehension of that document. Other materials that hospitals should provide in translation include medication and treatment instructions and information about accessing financial assistance.
- Each hospital is required to post signs and distribute written materials notifying patients about the hospital's free language assistance services, and provide patients and prospective patients with instructions for accessing services. These notices must be distributed in every language spoken by one percent of the hospital's patients or service area population.

Enforcement

A patient whose care is excessively delayed or is compromised in quality as a result of a hospital's failure to communicate may have had her or his rights violated under this regulation, and other Federal, State, and local laws.

As a first step, the New York Immigration Coalition generally encourages patients and their representatives to call it to the attention of a hospital's administrative and medical personnel if the patient experiences delays receiving care or is not provided with adequate, meaningful access to services due to communication obstacles. If a hospital is not complying with New York State's hospital communication assistance regulations, it can be investigated, sanctioned and subject to malpractice lawsuits.

If you believe your rights have been violated, you have the right to file a complaint with:

- 1) New York State Department of Health, Hospital Complaint Section: 800-804-5447;
www.health.state.ny.us/nysdoh/healthinfo/complaintform.htm
- 2) U.S. Health and Human Services – Office for Civil Rights: 212-264-3313;
www.hhs.gov/ocr/discrimhowtofile.html
- 3) New York State Attorney General – Consumer Helpline: 800-771-7755;
Civil rights complaints may be directed to the Health or Civil Rights Bureau.
www.oag.state.ny.us/health/health_care.html;
www.oag.state.ny.us/complaints/complaints.html
- 4) Joint Commission on the Accreditation of Health Care Facilities (JCAHO): 800-994-6610; www.jointcommission.org/GeneralPublic/Complaint/ or complaint@jcaho.org;
- 5) New York City Commission on Human Rights: 212-306-7450;
www.nyc.gov/html/cchr/html/howto.html

It is safe for patients to file complaints, regardless of their immigration status. Individuals who are vision and/or hearing impaired have additional rights and protections under the federal Americans with Disabilities Act.

For assistance in filing a complaint about hospital communications with any of the agencies listed above, contact New York Lawyers for the Public Interest at (212) 244-4664.