

Executive Order 120: Language Access Implementation Plan

My name is Teresa Engst. I am a paralegal in The Legal Aid Society's Health Law Unit. On behalf of the Legal Aid Society, we would like to thank the New York City Council and the Immigration Committee for convening this hearing and for their commitment to ensuring proper implementation of Mayoral Executive Order No. 120 of 2008 which requires` all City agencies which provide direct public services to establish a Language Access Implementation Plan.

The Legal Aid Society's Health Law Unit (HLU) works with a diverse clientele on a number of health-related matters. We provide representation and advice to low-income residents of all five boroughs of New York City and we operate a state-wide Health Law Helpline. Our unit provides assistance to more than a thousand low-income health care consumers and advocates each year. In addition, we provide training and technical assistance to community-based organizations, legal services providers, and health care providers across the State.

Our clients come to us for help resolving a myriad of problems associated with obtaining and maintaining health care within our current construct. Some have problems accessing or maintaining public insurance; others have insurance but are unable to navigate the rules governing their coverage so they either lose their coverage or go without care. Many come to us mired in medical debt because they were uninsured or underinsured when they became ill or injured. Our clients often have difficulty learning the rules governing public health insurance programs and appropriately navigating a complicated health care system to obtain medically necessary care. Their situation is often complicated by limited English proficiency (LEP) and the language barriers they face as a result.

New York City is a diverse city comprised of people from all over the world. As Mayor Michael Bloomberg pointed out in Executive Order No. 120, a quarter of New York's population are LEP individuals. We want to make sure that language barriers do not block individuals from accessing the health care coverage they are entitled to. The procedures set forth by the Mayor's Executive Order No. 120 can positively impact the LEP population. We appreciate the Mayor's efforts to address the inequalities in accessing public services for individuals with LEP.

We are grateful for the opportunity to come before you today and present our concerns regarding language access problems within New York's Medicaid program. Many of the LEP clients we assist receive services through the Medicaid program. Therefore we believe it is crucial that the Human Resources Administration, which oversees the Medicaid program, be proactive in executing the Language Access Implementation Program. As HRA reports in its Language Access Implementation Plan, more than a quarter of its active cases are made up of LEP clients. As HRA goes forward with its Language Access Implementation Plan, we would like to raise a few key issues that we believe require particular attention.

Providing Translated Materials

In compliance with Local Law 73 and Executive Order 120, HRA has reported that all required documents have been translated into the six covered languages: Arabic, Chinese, Haitian Creole, Korean, Russian, and Spanish. Although the translated materials are now

available, we continue to receive complaints from LEP clients that they are receiving documents from HRA in English and Spanish only. To ensure compliance with language access requirements, HRA must implement a system for correctly identifying each applicant/recipient's preferred language of communication.

We are concerned that many applicants/recipients are incorrectly coded in HRA's database and ask that HRA take necessary steps to ensure that no applicant/recipient be barred from receiving the health care benefits they are entitled to solely on the basis of language capabilities. While we appreciate HRA's recognition of the importance of providing clients with materials in their primary language, we understand that this policy can only be effective with thorough and complete follow through.

An all too common example of the language barriers presented when LEP applicants/recipients receive documents from HRA only in English is the failure to recertify Medicaid or Family Health Plus cases of otherwise eligible recipients. Each month many LEP applicants/recipients fail to recertify for public health insurance and lose their health insurance coverage simply because they do not understand the materials they receive. Many of these recipients discover they have lost their health benefits only when they later need health services. They are then forced to reapply for Medicaid coverage. This process can take months and many are forced to go without medical care as they await new decisions on their application. These gaps in coverage increase "churning" and administrative costs to Medicaid associated with processing new applications as well as threaten New Yorkers' health and well-being.

Ms. M is one of many clients we have assisted following the loss of benefits. Ms. M received a recertification notice from HRA, but it was sent to her in Spanish and English only. Ms. M's primary language is Haitian-Creole. Since she did not understand the mailing, Ms. M put it aside intending to have someone interpret it. The termination notice that followed this mailing was also issued in English and Spanish. Unfortunately, Ms. M's Medicare Savings Program was terminated. She did not realize she had a problem until her Social Security checks decreased by the Medicare Part B premium of \$96.40. Unable to figure out why she had this deduction, Ms. M sought help from her daughter. Once Ms. M's daughter contacted our helpline in October 2008, we were able to restore Ms. M's Medicare Savings Program.

Unnecessary terminations of coverage, the resulting barriers to accessing health care services, and the financial hardships they create can be avoided with increased efforts to correctly identify each recipient's preferred language and send out properly translated materials in each of these languages.

Training of Medicaid Staff

To ensure that all LEP applicants/recipients are fully able to access services, all staff at local Medicaid offices need to be trained on the availability of interpreters and translated materials as well as on cultural sensitivity in interacting with LEP applicants/recipients. We see that HRA has incorporated staff trainings into their language access plan and want to highlight the importance of this key step and ensure its full and effective implementation.

Medicaid staff serve as the face of the Medicaid program for the general population. People go to their local Medicaid offices when they are experiencing problems with their Medicaid case or to apply for public health insurance. We are concerned because we often hear complaints from LEP clients about their experiences at their local Medicaid offices. LEP clients report that they are often forced to wait for hours or told to return on another date because of the unavailability of interpreters. LEP clients also complain of being spoken to in a condescending manner because of their LEP status.

For example, Mr. C went to his local Medicaid office in March 2009 to try and close his family's Medicaid case. He requested a Mandarin speaker but was told that he would need to wait for at least an hour for the Mandarin speaking staff person to return. He tried communicating with the other staff but had difficulty. He asked for a receipt to show that his family's Medicaid case was closed but was told that the Medicaid office is not a store and doesn't provide receipts. When the Mandarin speaking staff person returned, Mr. C tried to speak to her, but she informed him that she could not assist him unless she was directed to do so by the other Medicaid staff members. While he was finally able to obtain proof that his family's Medicaid case was closed from an English speaking staff member, he was understandably upset by this experience.

Such experiences unfairly discourage LEP applicants/recipients from going to the Medicaid office to address problems they are experiencing with their Medicaid cases or to file Medicaid applications. These situations can be avoided if Medicaid staff and representatives are properly trained on how to interact with LEP applicants/recipients and how to request interpretation services. LEP applicants/recipients should not have to face roadblocks to obtaining or maintaining Medicaid coverage on the basis of their language abilities.

IREA's Compliance with Language Access:

We are particularly concerned with the Investigation, Revenue, and Enforcement Administration's compliance with the Language Access Implementation Plan. We have seen many cases where LEP clients have received letters of investigation from IREA regarding their Medicaid/Family Health Plus cases in English and Spanish although they do not understand either language.

These letters often direct clients to meet with Investigators and request clients to bring a list of documents. Sometimes the letters detail the amount that IREA is seeking from the client and the alleged reason and time period of ineligibility for Medicaid/Family Health Plus coverage. These letters do not mention the right to an interpreter. Clients often rely on Community Based Organizations or family members to translate these letters. In many cases, clients rely on family members to serve as interpreters with Investigators as well.

For example, Mr. and Mrs. O are Russian speakers. Ms. O indicated on the 2008 Medicaid recertification that her preferred language for reading and speaking is Russian. Nonetheless, the Os received a letter of investigation from the Division of Claims and Collections in English telling them that they were ineligible for Medicaid coverage and asking

for repayment. They had to rely on their son to translate the letter they received and to communicate with the Investigator.

Similarly, Ms. S, a Polish-speaker, indicated on her 2008 recertification that her preferred language for speaking and reading is Polish. Yet she received a letter of investigation in English from the Division of Claims and Collections in February 2009. The notice stated that if she did not respond or provide additional information, her case may be closed. Luckily, Ms. S went to her local Community Based Organization to obtain a translation of what the letter said and they referred her case over to our office.

These are just a few of the examples of IREA's failure to comply with HRA's Language Access Implementation Plan that we have seen. We are very concerned about language access problems with IREA because these investigations can have severe financial and potential criminal consequences for the Medicaid/Family Health Plus recipients under investigation. Therefore, it is essential that they are able to understand the reason they are being investigated, what documentation they are being asked for, and their right to an interpreter and translated materials. The burden to find interpretation should not be placed on the recipient, but must be provided by IREA under HRA's Language Access Implementation Plan.

Increasing Awareness

To ensure that all LEP applicants/recipients understand that they have a right to interpreters and translated materials, we ask that HRA increase public awareness of the availability and right to these services. We appreciate HRA's attempts to increase public awareness of the available free interpretation services through the HRA website. While HRA's website includes a "translate this" button which can translate website content into multiple languages, the button is written only in English and therefore many applicants/recipients will be unable to use this application without outside help.

Additionally, many LEP applicants/recipients either do not use the Internet on a regular basis or do not readily have access to the Internet. Therefore, we encourage HRA to pursue other means of publicizing the right to and availability of interpretation services including increased advertising in multiple languages on public transportation and postings in public areas besides local Social Services Offices. LEP applicants/recipients need to be aware of their rights to access HRA services in their primary languages so they feel empowered to request such services.

Follow Up and Feedback

Finally, we ask that Office of Immigrant and Refugee Affairs (ORIA), the designated Language Access Coordinator for HRA, closely monitor compliance of the Language Access Implementation Plan and allow for feedback from advocates. As a measure to monitor compliance, we encourage ORIA to conduct secret shopper surveys of IREA offices, local Medicaid offices, and the Medicaid hotline.

We look forward to working with ORIA to ensure that all those entitled to public health insurance are able to access these services regardless of English proficiency. We ask for close

monitoring of compliance with Local Law 73 and Executive Order 120 at IREA offices and local Medicaid offices, especially those where language access complaints arise the most. We appreciate that HRA has included tracking of limited English speaking ability (LESA) clients as part of its plan, and hope that this data will be provided to advocates.

LEP applicant/recipients deserve the same right to access to public health insurance programs as those who are English proficient. We appreciate the Mayor's efforts to ensure this right. We hope that as we move forward, we will improve language access services and diminish the language barriers that so often block LEP applicant/recipients from obtaining necessary health care coverage and services.