



THE NEW YORK IMMIGRATION COALITION
137-139 West 25th Street, 12th Floor
New York, NY 10001
Tel: (212) 627-2227 Fax: (212) 627-9314
Website: www.thenyic.org



New York Lawyers For the Public Interest, Inc.
151 West 30th Street, 11th Floor
New York, NY 10001-4007
Tel 212-244-4664 Fax 212-244-4570
TDD 212-244-3692 Email info@nylpi.org
Website: www.nylpi.org



One West Main Street, Suite 200
Rochester, NY 14614
Tel 585.454.4060
Fax 585.454.2518
Website: www.empirejustice.org

Ms. Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Room 2438, ESP Tower Building
Albany, NY 12237
(518) 473-7488
regsqa@health.state.ny.us

September 14, 2009

RE: Comments on Proposed Rule Making: Rate Methodology for Non-public Hospitals to Ensure Access for All Medicaid Patients Requiring Language Assistance

Dear Ms. Ceroalo:

We are writing on behalf of a broad coalition of health care consumer organizations, providers, and medical interpreters to comment on the State Department of Health's ("the Department") proposed rules regarding the rate methodology for distributing Medicaid funding for language assistance services to private hospitals in New York City.¹ For the past several years, our coalition has been advocating in support of Medicaid reimbursement for language assistance services in New York State. One of our core principles is accountability. We believe that any allocation of Medicaid dollars for language assistance services should contain accountability mechanisms to ensure that providers receive reimbursement based on the actual provision of communication assistance services to limited English proficient ("LEP") Medicaid beneficiaries and not simply an open-ended increase in medical assistance rates of payment.

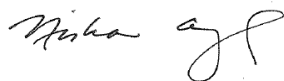
We were therefore pleased to see that the proposed rule includes the requirement that all general hospitals receiving funding submit a written certification attesting to the fact that the funds were used only for the purpose of providing language assistance services, and that such certifications would be subject to audit and recoupment by the Department. This provision can be further strengthened by requiring general hospitals to report publicly on how the funding was used. Doing so will enhance transparency and accountability for consumers and will not impose an additional burden on providers, as they will already have to prepare such reports when submitting their written certifications to the Department.

¹ Rate Methodology for Non-Public Hospitals to Ensure Access for All Medicaid Patients Requiring Language Assistance, 31 N.Y. Reg. 12 (August 5, 2009).

In addition, this funding presents an opportunity for the Department to drive best practices in the area of language access by requiring providers to use the first year of funding to improve their capacity for tracking when language assistance services are provided to individual patients. For example, the regulations should emphasize that language assistance services must only be provided by screened, trained and qualified interpreters, and not by ad hoc interpreters such as family members or untrained staff.² Also, our coalition is of the view that Medicaid funding for language assistance services should be distributed on a claims-based system – that is, hospitals should have to document when they provide interpretation or translation to an LEP patient in order to receive reimbursement through Medicaid for that encounter. The current formula, which reimburses providers based, in part, on the proportion of LEP residents in the hospital's service area risks rewarding facilities that happen to be located in very linguistically diverse communities but do not adequately meet the communication assistance needs of that patient population. A claims-based system would provide for a more equitable and accountable means by which to disburse Medicaid dollars earmarked for language services. However, it is our understanding that many private hospitals in New York City have not developed the systems necessary to provide this level of tracking. The funding available under §2807-c(1)(k) should therefore be used to develop the capacity to document when and how language assistance services are made available at the individual level, so that Medicaid dollars can truly follow the patient.

Many thanks for your consideration. Please do not hesitate to contact any of us if you have any questions or would like to discuss further.

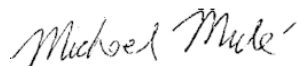
Best regards,



Nisha Agarwal
Director, Health Justice Program
New York Lawyers for the Public Interest



Jenny Rejeske
Health Policy Associate
New York Immigration Coalition



Michael Mulé
Staff Attorney
Empire Justice Center

² This is not to suggest that the Department should dictate the modality of interpretation, e.g. in-person, remote simultaneous, telephonic, etc. However, our workgroup does feel strongly that the interpretation, no matter what modality is used, be provided by individuals who are screened, trained and qualified to do so.