

**Testimony of Nisha S. Agarwal
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before the New York City Council, Health Committee
Oversight Hearing – Language access in New York City’s
pharmacies
June 16, 2008**

Good morning and thank you for the opportunity to testify about the need to enact legislation that would clarify and strengthen the obligation of pharmacies in New York City to provide interpretation and translation services to people who are limited English proficient (“LEP”).

My name is Nisha Agarwal. I am a staff attorney with New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm. NYLPI strives to meet the legal needs of low-income New Yorkers who, among other things, face discrimination in the health care setting because of their race, national origin or the language they speak.

As many have testified today, language barriers prevent thousands of people who are LEP from obtaining medications and other important services in pharmacies throughout New York City. Laws do

exist that should prevent this from happening. Under federal laws such as Title VI of the Civil Rights Act of 1964, people who are LEP are entitled to receive interpretation and translation services so that they may access hospitals, clinics and pharmacies, among other things, on equal terms as everyone else. Also, under the State Education Law, pharmacists must provide individualized counseling to their customers to ensure that they know how to take their medication properly and safely, and medication bottles must be labeled in such a manner that customers can easily understand them. Pharmacies cannot meet these requirements for their LEP customers without also providing interpretation and translation services.

However, in my experience as an attorney who represents LEP communities in the health care setting, I have found that pharmacies are not meeting their obligations under existing laws – especially some of the larger, chain pharmacies that are so prevalent in New York City. Part of the reason for this is that, historically, state and federal laws governing language access have not been actively enforced with respect to pharmacies, even though the risks of not providing language assistance services are often just as high in pharmacies as they are in hospitals or clinics. In October 2007, NYLPI filed a civil rights

complaint with the New York State Attorney General's office on behalf of two of the organizations that are testifying here today, but aside from the investigation that resulted from that complaint, I know of no other enforcement action that has been taken by state or federal agencies to ensure that pharmacies are in compliance with the relevant state and federal laws.

Another major reason that pharmacies out of compliance with existing language assistance laws is that those laws do not provide concrete guidance about what pharmacies should do to ensure equal access and patient safety – and this is where the City Council can step in. Existing language access laws are very broad. They tell pharmacies that they must make their services accessible to LEP individuals, but they do not tell them how or to what extent.

So, in a city like New York, where over 1 million people are LEP, pharmacies may not know if they need to be able to translate medication labels into the hundreds of languages spoken throughout the city, or simply the handful that are especially prominent in the communities where they are located. Sometimes, also, pharmacies mistakenly assume that if they were to provide interpretation services for the purposes of patient counseling they would have to hire pharmacists

who spoke dozens of different languages, or have on-staff interpreters – when, in fact, the obligation could easily be met by training existing staff or using a variety of different technologies available to provide interpretation.

The lack of clarity about what pharmacies should do under existing law has meant that they currently do very little at all. But the City Council can remedy this problem by enacting legislation that would clarify the obligations that pharmacies have to make their services accessible to all, regardless of language spoken. The purpose of such legislation would not be to supplant existing mandates, or even to add new and onerous regulation, but to provide concrete guidance to pharmacies operating within the unique context of New York City's many and diverse communities.

The legislation would ideally provide detailed guidance about

- Translation of medication labels and how to determine the languages into which labels should be translated;
- The need to provide interpretation services during patient counseling, with sufficient flexibility for the pharmacy to employ the mode of interpretation most suited to its own business and customer needs;

- Updating pharmacies' record-keeping systems so that they also track information about customers' primary or preferred languages; and
- Requirements to post notification about customers' rights to language assistance services in the pharmacy.

Far from adding to the regulatory mandates that pharmacies face, local legislation incorporating these key points should actually make it a lot easier for pharmacies to ensure that they are making their services equally accessible to all.

To give you an example of how clearer guidance can have a tremendous impact in the area of language access: In September 2006, the New York State Department of Health promulgated new regulations governing language access in hospitals that covered all of the same points I just outlined, among others. In that case, as in this one, laws were already on the books requiring hospitals to provide language assistance services, but patients were still not receiving them – often to disastrous consequences. The State Department of Health enacted the new regulations to strengthen and provide greater clarity to the existing requirements, and the results, two years later, have been quite impressive: advocates have monitored hospitals and found vast

improvements in the numbers of patients who actually receive interpretation services during their hospital visits; patients themselves report heightened knowledge of their rights to language assistance services, due to notice requirements contained in the new regulations; and, as an attorney working in this area, I have noticed that hospital administrators are increasingly willing to negotiate with me and my clients to figure out *how* to provide the necessary services, and not about *whether* or *why* they must do so in the first place. With similar guidance from the City Council, we can achieve the same results with pharmacies in New York City.

For people who are LEP, being able to access prescription medications and other important services in pharmacies in a language they can understand can be of life or death significance. The fact that so many people in our city are nevertheless unable to access these important services is troubling, but it is also a problem that it is within our capacity to fix. On behalf of my LEP clients, I urge the City Council to pass legislation that would strengthen and clarify the requirements that pharmacies have to provide language assistance services and make their services equally accessible to all New Yorkers regardless of the

language they speak.

Thank you.