



California Healthcare Interpreters Association

Committed to setting standards of excellence that ensures equal access to quality medical care for all people by supporting and promoting the healthcare interpreting profession.

October 10, 2000

Daniel Zingale, Director
California Department of Managed Health Care
980 Ninth Street, Suite 1800
Sacramento, CA 95814

G. Lewis Chartrand, Jr., Chief of Legal Services
Department of Managed Health Care
980 Ninth Street, 5th Floor
Sacramento, California 95814

(Via Facsimile (916) 322-2579)

RE: Cultural and Linguistic Competency Standards Contained in Proposed Regulations for LS 03-00, Independent Medical Review and Grievance Procedures

Dear Mr. Zingale & Mr. Chartrand:

Professionally trained and tested healthcare interpreters make it possible for Limited-English Proficient (LEP) and Non-English Speaking Americans and new immigrants to accurately, safely, and efficiently communicate with a medical practitioner who does not speak their language. The California HealthCare Interpreters Association (CHIA), as the representative of healthcare interpreters in California, is committed to setting the standards of excellence in the emerging discipline of the healthcare interpreting profession.

The California Healthcare Interpreters Association, in addition to supporting the letter already sent to you by the California Pan-Ethnic Health Network, would like to take this opportunity to comment on the proposed Regulations that relate to healthcare interpreting. Proposed Regulation 1300.68 (b)(3) reads as follows:

The plan shall assess the linguistic needs of the enrollee population and make written translations of grievance materials and translators available by telephone in any language for which the plan determines that 10 % or more of the enrollee population in any service [area] [sic] speak a language other than English. These translations shall be made available upon request by the enrollee."

CHIA is concerned about the inaccuracy and errors in this section of the proposed regulation. The wording of this proposed regulation creates an impression that appears to be contrary to the intent and interpretation of the Civil Rights Act of 1964, Title VI. This may be because of confusion over the terms, "translator" and "interpreter." An *interpreter* converts a spoken conversation from one language into a second language.

Interpretation is carried out in person, or over the telephone. A *translator* converts written text in one language into text in a second language.

The August 31, 2000 policy guidance issued by the Office for Civil Rights, US Department of Health and Human Services, on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons makes it clear that,

*A recipient/covered entity whose policies, practices or procedures exclude, limit, or have the effect of excluding or limiting, the participation of **any** LEP person in a federally-assisted program on the basis of national origin may be engaged in discrimination in violation of Title VI. In order to ensure compliance with Title VI, recipient/ covered entities must take steps to ensure that LEP persons who are eligible for their programs or services have meaningful access to the health and social service benefits that they provide. The most important step in meeting this obligation is for recipients of Federal financial assistance such as grants, contracts, and subcontracts to provide the language assistance necessary to ensure such access, at no cost to the LEP person.*

There may be some confusion about the “safe harbor” provisions of the OCR Guidance with respect to written translations. The applicable section of this provision in the August 31 Guidance reads as follows:

OCR will consider a recipient/covered entity to be in compliance with its Title VI obligation to provide written materials in non-English languages if:
(A) The recipient/covered entity provides translated written materials, including vital documents, for each eligible LEP language group that constitutes ten percent or 3,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected by the recipient/covered entity's program.

In other words, the 10% (or 3,000 individuals) threshold only applies to written materials. For spoken interpretation, compliance with Title VI requires interpretation for any patient requiring this service. The wording in your proposed regulation limiting “translators” to languages with 10% of the service [area] population is therefore not in keeping with the OCR guidelines for the spoken language needs of LEP enrollees in Medicaid Managed Care.

The California Healthcare Interpreters Association is currently developing California-wide standards and a certification process for professional healthcare interpreters. We would welcome your thoughts and participation in this developmental process, and will certainly include you in the public comment process of the draft standards as they are developed.

Unlike Washington State, California has not provided its healthcare providers with any reimbursement for interpreting. CHIA would like to suggest that your department, together with the Department of Health Services, consider the Massachusetts model of reimbursement for interpreter services as a standard part of health care funding. You should look at the new “Emergency Room Interpreter Bill” passed recently by the State of Massachusetts as an example of how this might work in California (An Act requiring competent interpreter services in the delivery of certain acute health care services [Chapter 66 of the Acts of 2000]). The federal government has offered financial assistance to states to pay for healthcare interpreters. The Health Care Financing

Administration (HCFA) in a letter sent to State Medicaid Directors on August 31, 2000, stated, in part, that:

While we encourage you to contact OCR about the details of the guidance, we would like to emphasize that under both the SCHIP and Medicaid programs, Federal matching funds are available for States' expenditures related to the provision of oral and written translation administrative activities and services provided for SCHIP or Medicaid recipients. Federal financial participation is available in State expenditures for such activities or services whether provided by staff interpreters, contract interpreters, or through a telephone service.

The availability of additional resources to help pay for interpreters should provide an additional financial incentive to you and Medicaid Managed Care providers for providing trained, qualified interpreters who are able to safely and accurately provide interpretation between patients and their providers.

CHIA welcomes your response to our comments on the proposed regulations and hopes that we will be able to work together to provide trained and qualified healthcare interpreters for providers and LEP patients across California.

Signed on behalf of the Board of Directors and the Executive of CHIA:

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cc: California Pan-Ethnic Health Network
National Health Law Program
Office for Civil Rights, District IX

CHIA Founding Organizations:

Stanford Hospital and Clinics, Alameda County Medical Center, Community Health Network, SF General Hospital, Children's Hospital Oakland, Asian Health Services Language Co-op, Kaiser Permanente, Lucile Salter Packard Children's Hospital, Cedars-Sinai Medical Center, California State Refugee Health Section, Vista Community Clinic, Santa Clara Valley Medical Center, San Francisco Department of Public Health, California Pacific Medical Center, Children's Hospital Los Angeles

Background to CHIA:

Goals and objectives:

- 1) **establishing standards of practice**, including a code of ethics, and a **certification** program for California's healthcare interpreters; and
- 2) **promoting the profession of healthcare interpreting** through sponsoring internships and scholarships; advocating for cross-cultural awareness through education of healthcare professionals; encouraging the development of advanced level training in healthcare interpretation at institutions of higher education; promoting the networking of institutions that provide interpretations services; and making recommendation on existing or new policies affecting patients with limited or no English proficiency.

History:

November 1996: a group of interpreters and others, representing healthcare organizations throughout the state, meeting at Stanford University Hospital, agreed to create a support network and professional organization for healthcare interpreters. The group appointed a governing board and applied to the IRS for status as a 501(C) 3 organization.

May 1998: CHIA becomes a 501(c)(3) non-profit association. CHIA more than doubles its membership as activities begin to take place across California. Chapters began to form in the Bay area as CHIA North, and in the LA/San Diego area as CHIA South. Training and educational sessions were organized and Committees, including Testing, Resource Development, Education/Training and Linkages.

February 2000: CHIA receives funding from **The California Endowment** to develop its infrastructure as the representative of professional healthcare interpreters, and to begin the process for a California-wide standards and certification process.

September 2000: CHIA hires an Executive Director (Niels Agger-Gupta, Ph.D. Candidate) and launches California-wide Interpreter Standards and Certification process.

Policy Development:

CHIA is breaking ground in attempting to establish professional standards and certification procedures in a discipline that is not yet fully defined and recognized. CHIA is at the beginning stages of agreement on the essential elements of professional standards, and the creation of a standardized certification testing process. The professional healthcare interpreter is not yet considered a full member of the healthcare team in many California health organizations. CHIA would like to acknowledge the unpaid debt owed to all individuals who have been thrust into the position of interpreting by default, without any training in interpretation protocols.

CHIA Members:

CHIA members include health interpreters, managers, and educators across California, located in the Bay Area, Merced and the Central Valley, Los Angeles and San Diego.

CHIA's membership of professional healthcare interpreters, and others interested in healthcare interpreting, CHIA, through its Chapters, is working on creating continuing education opportunities for healthcare interpreters. CHIA works with policy advocates nationwide to incorporate the learning from other states into our strategies in California. This includes dialogue with: Massachusetts Medical Interpreters Association (MMIA), the Society Of Medical Interpreters (SOMI) in Washington State, and the National Council for Interpreting in Health Care (NCIHC)

Support:

CHIA has depended on volunteer support and a modest budget, financed primarily by membership dues. Many organizations have provided in-kind support. CHIA's commitment is to support professional interpreters and to provide training and continuing education opportunities for skill and performance development. CHIA exists to support the work of all interpreters in their current and future efforts.