



TO: The Professional Practice Committee

FROM: Douglas E. Lentivech


SUBJECT: Proposed Amendment to section 63.11 of the Regulations of the Commissioner of Education Relating to Interpretation and Translation Services for Limited English Proficient (LEP) Individuals by Mail Order Pharmacies

DATE: March 3, 2014

AUTHORIZATION(S):


SUMMARY

Issue for Decision

Should the Board of Regents amend section 63.11 of the Regulations of the Commissioner of Education relating to the provision of interpretation and translation services for Limited English Proficient (LEP) individuals by mail order pharmacies?

Reason(s) for Consideration

Required by State statute (Education Law section 6829[4], as added by Section 3 of Part V of Chapter 57 of the Laws of 2012).

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the full Board for adoption as an emergency action at the March 2014 meeting of the Board of Regents. A copy of the proposed amendment and a Statement of Facts and Circumstances Which Necessitate Emergency Action are attached.

Procedural History

The proposed amendment was discussed by the Professional Practice Committee at the February 2014 Regents Meeting. It is anticipated that a Notice of

Proposed Rule Making will be published in the State Register on March 19, 2014. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The 2012 New York State budget legislation included amendments to the Education Law, which amendments are commonly referred to as the SafeRx Law (L. 2012, c. 57, Part V). This law, which generally became effective March 30, 2013, includes provisions to assist LEP individuals who need interpretation and translation services when filling prescriptions at covered pharmacies.

Effective May 30, 2013, the Board of Regents approved regulations affecting those covered pharmacies located within New York State. Following a series of open forums and consultations with stakeholders, the Regents accepted the recommendation that the entire state be considered a single "region." In accordance with the statutory requirements and the analysis of census data, this determination resulted in a requirement that interpretation and translation services be provided in four languages, in addition to English. Other regional determinations were rejected since most led to fewer languages being covered in almost all upstate localities. Therefore, covered New York State pharmacies must now provide competent oral interpretation services and translation services in Chinese, Italian, Russian and Spanish.

The 2012 legislation also required the Commissioner of Education, in consultation with the Commissioner of Health (DOH), to promulgate regulations, effective March 30, 2014, to establish translation and interpretation requirements for mail-order pharmacies. Specifically, Education Law §6829(4) requires the regulations to address the concerns of affected stakeholders and reflect the findings of a thorough analysis of issues including: (a) how persons shall be identified as an LEP individual, in light of the manner by which prescriptions are currently received by mail order pharmacies; (b) which languages shall be considered; (c) the manner and circumstances in which competent oral interpretation services and translation services shall be provided; (d) the information for which competent oral interpretation services and translation services shall be provided; (e) anticipated utilization, available resources, and cost considerations; and (f) standards for monitoring compliance with the regulations and ensuring the delivery of quality competent oral interpretation services and translation services.

Based upon consideration of the factors above, it is proposed that mail order pharmacies sending prescriptions to New York State residents be subject to the same requirements as are now required for covered pharmacies within the State. Specifically, with each initial transaction with patients seeking mail order pharmacy services, mail order pharmacies will provide printed materials, in at least the four above-referenced languages, explaining the availability of competent oral interpretation services and translation services. A client will be identified as an LEP individual when he or she requests such oral interpretation services and translation services or when such mail order pharmacy fills a prescription that indicates that the individual is limited English proficient. The manner and circumstances in which competent oral interpretation services and translation services will be provided is by a staff member of the mail order

pharmacy or third-party contractor, and services will be provided on an immediate basis but need not be provided in-person or face-to-face. The information for which competent oral interpretation services and translation services shall be provided will be prescription medication labels, warning labels and other written materials. With respect to anticipated utilization, available resources, and cost considerations, based upon experience with the existing requirements for translation services in the New York City metropolitan area, the proposed requirements should prove to be neither costly nor logistically difficult for mail order pharmacies. Finally, regarding standards for monitoring compliance with the regulations and ensuring the delivery of quality competent oral interpretation services and translation services, as in all such matters, complaints of non-compliance will be investigated, and since out-of-state pharmacies require registration with the Department, they are also subject to the Department's professional discipline processes.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That paragraph (7) of subdivision (a) of section 63.11 of the Regulations of the Commissioner of Education is added, and subdivision (b) and paragraph (1) of subdivision (c) of section 63.11 are amended, as submitted, effective March 30, 2014, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare to ensure the timely implementation of Education Law section 6829(4) as added by Section 3 of Part V of Chapter 57 of the Laws of 2012 which requires that, effective March 30, 2014, mail order pharmacies provide free, competent oral interpretation services and translation services to limited English proficient individuals .

Timetable for Implementation

If adopted at the March 2014 meeting, the emergency adoption will become effective on March 30, 2014, for a period of ninety days. It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at a subsequent Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period prescribed by the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6810 and 6829 of the Education Law

1. Paragraph (7) of subdivision (a) of section 63.11 of the Regulations of the Commissioner of Education is added, effective March 30, 2014, to read as follows:

(7) Mail order pharmacy shall mean a pharmacy that dispenses most of its prescriptions through the United States postal service or other delivery system.

2. Subdivision (b) of section 63.11 of the Regulations of the Commissioner of Education is amended, effective March 30, 2014, as follows:

(b) Provision of competent oral interpretation services and translation services. Except as otherwise provided in subdivision (e) of this section:

(1) For purposes of counseling an individual about his or her prescription medications or when soliciting information necessary to maintain a patient medication profile, each covered pharmacy and mail order pharmacy shall provide free, competent oral interpretation services and translation services in such individual's preferred pharmacy primary language to each LEP individual requesting such services or when filling a prescription that indicates that the individual is limited English proficient at such covered pharmacy or mail order pharmacy, unless the LEP individual is offered and refuses such services.

(2) With respect to prescription medication labels, warning labels and other written materials, each covered pharmacy and mail order pharmacy shall provide free, competent oral interpretation services and translation services to each LEP individual filling a prescription at such covered pharmacy or mail order pharmacy in such individual's preferred pharmacy primary language, unless the LEP individual is offered and refuses such services or the medication labels, warning labels and other written materials have already been translated into the language spoken by the LEP individual.

(3) Translation and competent oral interpretation shall be provided in the preferred pharmacy primary language of each LEP individual, provided that no covered pharmacy or mail order pharmacy shall be required to provide translation or competent oral interpretation of more than seven languages.

(4) The services required by this subdivision may be provided by a staff member of the covered pharmacy or mail order pharmacy or a third-party contractor. Such services shall be provided on an immediate basis but need not be provided in-person or face-to-face.

3. Paragraph (1) of subdivision (c) of section 63.11 of the Regulations of the Commissioner of Education is amended, effective March 30, 2014, as follows:

(1) In accordance with Education Law section 6829(3), each covered pharmacy shall conspicuously post a notice to inform LEP individuals of their rights to free, competent oral interpretation services and translation services. Such notice shall include the following statement in English and in each of the pharmacy primary languages: "Point to your language. Language assistance will be provided at no cost to you." With each initial transaction with patients seeking mail order services, mail order pharmacies shall provide printed materials in English and in each of the pharmacy primary languages, explaining the availability of competent oral interpretation services and translation services. In addition, mail order pharmacies that are nonresident establishments shall provide any required information pursuant to section 63.8(b)(6) of this Part in English and in each of the pharmacy primary languages.

8 NYCRR §63.11

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE
EMERGENCY ACTION

The purpose of the proposed amendment is to implement Education Law section 6829(4), as added by Section 3 of Part V of Chapter 57 of the Laws of 2012, which establishes interpretation and translation requirements for all mail order pharmacies conducting business in New York State. The proposed amendment implements the provisions of section 6829(4) of the Education Law that, effective March 30, 2014, requires all mail order pharmacies sending prescriptions to individuals in New York State to provide interpretation and translation services for Limited English Proficient (LEP) individuals. It also subjects mail order pharmacies to the same interpretation and translation services requirements as are now required for covered pharmacies within the state. The information for which competent oral interpretation and translation services shall be provided will be prescription medication labels, warning labels and other written materials.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption as a permanent rule, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the May 19-20, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May meeting, would be June 4, 2014, the date a Notice of Adoption would be published in the State Register. However, the provisions of Education Law section 6829(4) become effective on March 30, 2014.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the State Education Department to immediately

establish requirements to timely implement Education Law section 6829(4), as added by Section 3 of Part V of Chapter 57 of the Laws of 2012, so that LEP individuals can receive competent oral interpretation services and translation services from the mail order pharmacies that fill their prescriptions.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at a subsequent Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period prescribed by the State Administrative Procedure Act.