Legal Aid Society
OF THE DISTRICT OF COLUMBIA

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Before the Committee on Health,
Council of the District of Columbia

Public Hearing on the "Fiscal Year 2010 Budget Request Act of 2009"
Budget for the Department of Health Care Finance

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Introduction

At the April 3, 2009 budget hearing for the Department of Health Care Finance (DHCF), my colleague, Andrew Patterson, testified on the need for increased resources to improve access to Qualified Medicare Beneficiary (QMB) benefits and to improve DHCF's provision and coordination of language services. I am submitting this written testimony to supplement his testimony on the need for increases to DHCF's language access budget.

The Legal Aid Society serves a diverse group of clients, many of whom speak little or no English. By working with our limited English proficient (LEP) and no-English proficient (NEP) clients, and through our work with the DC Language Access Coalition, we have identified several ways in which DHCF can improve its provision of language services. We have met with DHCF's Director, Julie Hudman, about these issues. We appreciate her commitment to making DHCF's services language-accessible, and we look forward to continued collaboration with her staff on these issues. But, we also recognize the costs associated with language access and the need for the Council to support her efforts.

DHCF is uniquely situated compared to other District agencies with respect to its language access obligations. As a District agency, it is covered by the DC Language Access Act of 2004. As the state Medicaid agency, it is covered by the federal Medicaid regulations. And, as a recipient of federal funds, it is covered by Title VI of the Civil Rights Act. DHCF must comply with all of these language access requirements—a challenge that requires significant coordination and resources.

Yet, the Mayor's budget allocates only $59,000 for language access, which represents less than one full-time equivalent. DHCF requires additional resources so that it is equipped to, among other things, collect and transmit data about language preference effectively, conduct systematic education and outreach, and coordinate the provision of language services internally and among the managed care organizations and providers. Underfunding the agency constrains DHCF's ability to provide language services. At a time when perhaps even more people will

[1] The Legal Aid Society was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Legal Aid provides assistance in public benefits, housing, family, and consumer law matters.

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rely on the agency's benefits, this poses grave public health and, potentially, fiscal concerns as described below.

Language access and quality of care

Fundamentally, language-accessible health care is a quality of care issue. Providing interpreters at medical visits allows for effective communication between doctors and patients, enabling physicians to identify health problems early on, to ensure that patients understand their treatment options, care instructions, and medication management, to obtain consent, to promote the use of primary and preventative care, and to reduce patients' reliance on emergency care. Securing professional interpreters, instead of forcing patients to rely on family members or friends, protects patients' confidentiality and ensures accurate and efficient interpretation. Providing interpreter and translation services when beneficiaries contact DHCF enables them to access information about coverage or troubleshoot language access problems with their providers. Communication breakdowns in any of these contexts, and many more, can significantly delay access to quality health care or, in some cases, preclude access altogether.

Language access laws governing DHCF

DHCF needs sufficient funds to fulfill its legal requirements under the DC Language Access Act of 2004 ("the Act"), Title VI of the Civil Rights Act ("Title VI"), and the federal Medicaid managed care regulations. The Language Access Act requires that District agencies provide free oral interpreter services to all LEP or NEP individuals who seek to access or participate in the agencies' services, activities, or programs; it also requires free translation of vital documents to LEP or NEP individuals who speak one of the District's six prevalent languages. Title VI prohibits DHCF and other recipients of federal funds from discriminating on the basis of national origin, which includes limited English proficiency, as interpreted by the courts and federal agency guidance. For example, any hospital that receives federal reimbursement for in-patient services must comply with Title VI. Even if only a single program within the facility receives federal financial assistance, the provider must make all of its programs and activities accessible to LEP persons under Title VI. Further, the Medicaid managed care regulations require that the state and the managed care organizations (MCOs) provide oral interpretation and written translations for enrollees and potential enrollees. The MCOs must require this of their providers as well.

In order to comply with local and federal language access laws, DHCF must have adequate funding to do, at a minimum, the following:

1. Update its management information system to collect language data and transmit this data to the Income Maintenance Administration (IMA), the enrollment broker, and the MCOs effectively.
2. Designate a DHCF staff person as a language access coordinator who would, among other things, create, implement, and monitor a comprehensive language access plan for DHCF.
3. Oversee the translation of vital documents and the provision of interpreter services within DHCF.

4. Create a strategic community outreach and education plan to inform LEP and NEP individuals of their rights.
5. Train MCOs and providers on how to provide language services to Medicaid and Alliance beneficiaries and equip them with the resources to provide those services.

Seeking federal reimbursement for language services, while important, cannot fund these tasks sufficiently or account for the provision of language services under the local law. DHCF cannot receive federal dollars, for example, to fund the agency's coordination of these efforts; nor can it receive federal funding for providing language services internally. Thus, the agency needs increased local funding.

FY 2010 budget

The Mayor's budget allocates a mere $59,000 for language access at DHCF. While we support this slight increase over last year's budget, the increase is insufficient for an agency that serves over 200,000 District residents. Indeed, the language access line of the budget amounts to less than one full-time equivalent, which suggests that there will not be a DHCF position devoted exclusively to the task of coordinating language access implementation at the agency. The agency should maximize federal dollars and receive additional local funds so that it can fulfill its language access obligations.

DHCF can and should maximize federal dollars by amending the Medicaid State Plan to add language services as a Medicaid "covered service," which would entitle it to an 84 percent federal share of payments for language services under the new CHIP law. We support the agency's plan to maximize its opportunities to receive federal funding, by obtaining SCHIP funding for CHIP and immigrant women who receive Medicaid and pursuing other federal funding opportunities now available under this law, and we hope that DHCF will take the next step by amending the State Plan as described above.

The receipt of federal dollars notwithstanding, effective implementation of language access requires the provision of language services within DHCF and the coordination of language services outside of the agency—tasks that require local funding in excess of $59,000. We are concerned that the local funds are insufficient and, moreover, that they are likely to be spent inefficiently on the basis of unsound agency policies that pre-date Julie Hudman's leadership. For example, the agency has an exclusive contract with Language Doctors, a company that charges extremely high and uncompetitive hourly rates, for the provision of language services to fee-for-service Medicaid patients. The agency also retains the policy of making payments for language services available only to fee-for-service Medicaid providers with fewer than fifteen employees, thus harming patients served by larger, but often struggling, community-based providers who cannot use the interpreter services provided by Medicaid. This essentially restricts the availability of language services to fee-for-service patients.

Increasing local funds, in conjunction with maximizing federal funding opportunities and revising certain language access policies, will give DHCF the tools it needs to meet its legal obligations and serve the needs of the LEP and NEP communities.

Conclusion

DHCF needs sufficient funds and the support of the Council to meet its language access obligations under local and federal law. Further, language-accessible health care serves significant public health interests and fiscal interests. Quality care and efficient delivery of services are vital health care priorities that should be supported irrespective of the state of the economy. But, LEP and NEP individuals cannot receive quality care without language services. Despite the economic crisis, investing in language services makes fiscal sense as well. Effective doctor-patient communication promotes early detection and preventative care, which benefit the health of the individual and reduce the need for more costly care in the future. While the provision of language services requires significant resources, both the physical health of the community and the financial health of DHCF benefit from investing in language access now.

Thank you for the opportunity to present this testimony, and please do not hesitate to contact me for further information or with any questions or concerns.