December 20, 2021

Alexandria Schembra

Medical Board of California

2005 Evergreen St., Suite 1200

Sacramento, CA 95815

Via e-mail: [regulations@mbc.ca.gov](mailto:regulations@mbc.ca.gov)

**Re: Proposed Regulation to Amend Title 16, California Code of Regulations, sections 1355.4 and 1379.58; Adopt sections 1378.5 and 1379.4 (“Notice to Consumer”)**

Dear Ms. Schembra:

The California Hospital Association (CHA), on behalf of its more than 400 member hospitals and health systems, is pleased to comment on the Medical Board of California’s (MBC) proposed regulation seeking to revise the current “Notice to Consumer” requirement for physicians, research psychoanalysts, licensed midwives, and polysomnography registrants.

CHA supports the proposed updated text for the notices, which will provide additional clarity for consumers. However, the requirement to provide each patient with written notice in their primary language sets an impossible standard for hospitals, which often provide the notice on behalf of licensees.

*Ethnologue: Languages of the World* publishes an annual reference [document](https://www.ethnologue.com/browse/names) that contains statistics and other information on the living languages of the world. In 2021, the 24th edition listed **7,139** modern languages, including Bengali, Fula, Urdu, Marathi, Telugu, Yue Chinese, Mandarin Chinese, Hausa, Gujarati, Kannada, Amharic, Bhojpuri, Min Nan Chinese, Jim Chinese, Hakka Chinese, Yoruba, Odia, Javanese, Sudanese, Oromo, Tamil, and Pashto. Just listing these languages — which are among the top 50 most frequently spoken languages in the world, not obscure languages spoken by small groups — shows the impossibility of meeting the proposed requirement.

As you know, many physicians and other MBC licensees do not maintain office-based practices. Instead, they practice primarily in hospitals. Some of them — such as pathologists and radiologists — never see patients. They cannot give their patients a handout, and they don’t know which language(s) their patients speak. They probably haven’t reviewed all the signage posted in the hospital to see which signs are posted in which languages. These licensees must, by necessity, rely on the hospital to provide the Notice to Consumers.

As a service to their medical staff, hospitals are currently willing to provide these notices to patients on behalf of licensees. Today, most hospitals post signs in their facilities in English as well as other languages required by the myriad state and federal laws regarding interpreter services applicable to hospitals (Health and Safety Code § 1259; 22 CCR § 70721; 42 U.S.C. Section § 18116; 45 CFR part 92, and Title VI of the Civil Rights Act of 1964 as outlined in the U.S. Department of Health and Human Services Office for Civil Rights guidance titled “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons”), not to mention contractual obligations passed from Medi-Cal to managed care plans to providers.

However, it is impossible to provide notices in every patient’s primary language. Hospitals cannot comply with the proposed regulation, and as a result, licensees who practice in a hospital setting will be out of compliance. This requirement will also likely result in noncompliance for licensees who practice in jails, prisons, and county clinics. For example, Los Angeles County has a vast network of more than 224 primary care [clinics,](http://file.lacounty.gov/SDSInter/dhs/1057886_MHLAProviderDirectory20190620190628v2.pdf) with providers speaking 28 languages (Arabic, Armenian, Bengali, Burmese, Cantonese, Chinese, English, Farsi, French, German, Greek, Hebrew, Hindi, Hmong, Indonesian, Japanese, Khmer, Korean, Malayalam, Mandarin, Persian, Punjabi, Russian, Samoan, Spanish, Tagalog, Thai, and Urdu) —yet even Los Angeles County would be unable to comply with the proposed requirement.

All the state and federal interpreter services laws listed above recognize this impossibility. Each law establishes a threshold to determine when documents must be translated into a specific non-English language. For example, Health and Safety Code § 1259 requires hospitals to translate documents into a non-English language if that language is spoken by 5% or more of the population of the geographic area served by the hospital or of the actual patient population served by the hospital. Similarly, Medi-Cal uses the term “threshold languages,” meaning primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

With the above information in mind, CHA recommends the following revisions to the proposed regulation:

1. Replace the phrase “primary language” with “language understood by the patient” throughout the regulations. Many patients speak a primary language other than English and also understand English or another language fluently or very well. Given that the information in the Notice to Consumer is fairly straightforward, it should be permissible to provide the notice to patients in any language they understand.

1. Add a new subdivision (d) to each regulation (1355.4, 1379.58, 1378.5, and 1379.4), to read as follows:

(d) Notwithstanding subdivision (c), a licensee shall be deemed to be in compliance with this section with regard to patients seen in a clinic or health facility as defined in Division 2 of the Health and Safety Code if the hospital or clinic posts the notice on its premises in an area visible to patients in English and any other language required by Section 1259 of the Health and Safety Code. The notice shall be posted in at least 38-point type in Arial font.

1. Revise subdivision (b)(2) of each regulation to make it clear that the acknowledgement of receipt may be retained electronically.

Thank you for considering these comments. I may be reached at (916) 834-7611 if you have any questions.

Sincerely,

/s/ Lois J. Richardson

Lois J. Richardson

Vice President & Legal Counsel