

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2009**

No. 55

Introduced by The Public Advocate (Ms. Gotbaum) and Council Members Brewer, James, Liu, Palma, Sanders Jr., Gerson, White Jr., Gioia, Arroyo, Mendez, Gonzalez, Eugene, Rivera, Ferreras, Jackson, Baez, Mark-Viverito, Weprin, Reyna, Sears, Barron, Koppell, de Blasio, Dickens, Stewart, Vann and Nelson.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the provision of language assistance services in pharmacies.

Be it enacted by the Council as follows:

Section 1. New York is a multilingual city where more than 150 languages are spoken, almost half of the residents speak a language other than English at home and nearly a quarter do not speak English very well. Prescription medications typically include technical instructions, restrictions and warnings that are critical for the consumer to understand in order to use the product safely. A customer's inability to understand medication labels and instructions easily can cause errors in usage and thereby significantly endanger the health of limited English proficient residents. The difficulties limited English proficient New Yorkers may experience in communicating with their pharmacists could be greatly alleviated by the provision of interpretation services and translated medication labels.

New Yorkers who have limited English proficiency are not receiving the interpretations and translations they need. A 2007 study of pharmacies in New York City by the New York Academy of Medicine found that, although 88 percent of surveyed New

York City pharmacists reported serving customers with limited English proficiency daily and 80 percent had the ability to translate medication labels, only 34 percent reported actually translating such labels daily. More than a quarter of the surveyed pharmacists never translate labels.

Thus, the Council finds that the lack of interpretation and translation services in pharmacies inhibits the fair and effective sale of prescription medications, posing a significant risk to the health and safety of New Yorkers and that it would be in the public interest to ensure that all residents, regardless of the language they speak, understand their medication labels and instructions.

§ 2. Chapter 4 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 3 to read as follows:

SUBCHAPTER 3

LANGUAGE ASSISTANCE SERVICES IN PHARMACIES

§ 20-620 Definitions.

§ 20-621 Provision of interpretation services required.

§ 20-622 Provision of translation services required.

§ 20-623 Notification relating to language assistance services.

§ 20-624 Penalties.

§ 20-625 Hearing authority.

§ 20-620 Definitions. For the purposes of this subchapter, the following terms shall have the following meanings: a. "Chain pharmacy" shall mean any pharmacy that is part of a group of four or more establishments that (1) conduct business under the same business name or (2) operate under common ownership or management or

pursuant to a franchise agreement with the same franchisor.

b. "Competent oral interpretation" shall mean oral communication in which (1) a person acting as an interpreter comprehends a spoken message and re-expresses that message accurately in another language, utilizing all necessary pharmaceutical- and health-related terminology; (2) a bilingual pharmacy staff member communicates proficiently with an LEP individual in the LEP individual's primary language utilizing all necessary pharmaceutical- and health-related terminology; or (3) a person acting as an interpreter or a bilingual pharmacy staff member accurately translates a written document orally for an LEP individual utilizing all necessary pharmaceutical- and health-related terminology.

c. "Competent translation" shall mean written communication in which a person or device translates a written message and re-writes that message accurately in another language.

d. "Language assistance services" shall mean competent oral interpretation and/or competent translation provided to a limited English proficient individual in his or her primary language to ensure that such individual understands medication labels, warning labels and instructions for drug usage.

e. "Limited English proficient individual" or "LEP individual" shall mean an individual who identifies as being, or is evidently, unable to speak, read or write English at a level that permits such individual to understand health-related and pharmaceutical information communicated in English.

f. "Other written material" shall mean any written material other than a prescription label or warning label that the pharmacy considers vital to an LEP

individual's safe and effective use of prescription medications.

g. "Pharmacy" shall mean any retail establishment that is located within the city of New York in which prescription drugs are sold.

h. "Pharmacy primary languages" shall mean the top seven languages spoken by LEP individuals in New York city, as determined biennially by the department of city planning based on data from the American Community Survey and made available to each chain pharmacy.

i. "Primary language" shall mean the language identified by an LEP individual as the language to be used in communicating with such individual.

§ 20-621 Provision of interpretation services required. *a. Every chain pharmacy shall provide free, competent oral interpretation services to each LEP individual filling a prescription at such chain pharmacy in the LEP individual's primary language for the purposes of counseling such individual about his or her prescription medications or when soliciting information necessary to maintain a patient medication profile, unless the LEP individual is offered and refuses such services.*

b. Every chain pharmacy shall provide free, competent oral interpretation of prescription medication labels, warning labels and other written material to each LEP individual filling a prescription at such chain pharmacy, unless the LEP individual is offered and refuses such services.

c. The services required by this section may be provided by a staff member of the pharmacy or a third-party paid or volunteer contractor. Such services must be provided on an immediate basis but need not be provided in-person or face-to-face in order to meet the requirements of this section.

§ 20-622 Provision of translation services required. Every chain pharmacy shall provide free, competent translation of prescription medication labels, warning labels and other written material to each LEP individual filling a prescription at such chain pharmacy if that individual's primary language is one of the pharmacy primary languages, in addition to providing such labels and materials in English. Nothing in this section shall prohibit a chain pharmacy from providing dual- or multi-language medication labels, warning labels or other written materials to LEP individuals who speak one of the pharmacy primary languages if one of the languages included on such labels or sheets is the LEP individual's primary language.

§ 20-623 Notification relating to language assistance services. a. Every chain pharmacy shall conspicuously post, at or adjacent to each counter over which prescription drugs are sold, a notification of the right to free language assistance services for limited English proficient individuals as provided for in sections 20-621 and 20-622 of this subchapter. Such notifications shall be provided in all of the pharmacy's primary languages. The size, style and placement of such notice shall be determined in accordance with rules promulgated by the department.

§ 20-624 Penalties. a. Any chain pharmacy that violates the provisions of sections 20-621 or 20-622 of this subchapter or any rules promulgated pursuant to such sections shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than two thousand five hundred dollars for the first violation and for each succeeding violation a civil penalty of not less than five hundred dollars nor more than five thousand dollars.

b. Any chain pharmacy that violates the provisions of section 20-623 of this

subchapter or any rules promulgated pursuant to such section shall be liable for a civil penalty of not less than two hundred dollars nor more than five hundred dollars for the first violation and for each succeeding violation a civil penalty of not less than three hundred dollars nor more than one thousand dollars.

§ 20-625 Hearing authority. a. Notwithstanding any other provision of law, the department shall be authorized upon due notice and hearing, to impose civil penalties for the violation of any provision of this subchapter and any rules promulgated thereunder. The department shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in section 20-624 of this subchapter for each such violation. All proceedings authorized pursuant to this section shall be conducted in accordance with rules promulgated by the commissioner. The penalties provided for in section 20-624 of this subchapter shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

b. All such proceedings shall be commenced by the service of a notice of violation returnable to the administrative tribunal of the department. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§ 3. Effect of invalidity; severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity

of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§ 4. This local law shall take effect two hundred and seventy days after its enactment into law, provided that the department may promulgate any rules necessary for implementing and carrying out the provisions of this local law prior to its effective date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on ...August 20, 2009..... and approved by the Mayor onSeptember 3, 2009.....

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 55 of 2009, Council Int. No. 859-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on August 20, 2009:
36 for, 7 against, 0 not voting.
Was signed by the Mayor on September 3, 2009
Was returned to the City Clerk on September 3, 2009

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.