

Proposed Int. No. 859-A

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 and de Blasio

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. Limited English proficiency can have significant consequences in healthcare settings, particularly in relation to the dispensing of medication. A patient's inability to understand medication labels and instructions can cause errors in usage and thereby 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 presents a significant risk to the public 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. Section 17-1002 of chapter 10 of title 17 of the administrative code of the city of New York is amended to read as follows:

§17-1002 Definitions. [When used in this chapter, the term “rebate”] For the purposes of this chapter, the following terms shall have the following meanings: a. “Limited English proficient 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.

b. “Primary language” shall mean the language identified by a limited English proficient individual as the language to be used in communicating with such individual.

c. “Rebate” shall mean a refund of a certain portion of the wholesale price of a drug based on a negotiated agreement between a drug manufacturer and any administrator of the prescription drug discount card program created pursuant to this chapter.

§ 3. Section 17-1003 of chapter 10 of title 17 of the administrative code of the city of New York is amended by adding a new subdivision e to read as follows:

e. In developing the prescription drug discount program, the department shall ensure that program information and prescription drug discount cards are provided to limited English proficient individuals in their primary languages.

§ 4. Section 17-1004 of chapter 10 of title 17 of the administrative code of the city

of New York is amended to read as follows:

§ 17-1004 Report. Not later than sixty days after the end of each twelve-month period during which the prescription drug discount card program has been in operation, the department shall provide the city council with a report regarding such program. Such report shall provide information regarding the operation of such program during the reporting period, including, but not limited to (i) the number of prescription drug discount card holders who used the prescription drug discount card at least once, (ii) the total cost savings to all card holders generated by the program, (iii) the average cost savings to a card holder per prescription, (iv) the source and method of cost savings under the program, (v) the major drug categories that are not discounted under the program and an explanation as to why such drugs are not listed, (vi) the drugs for which rebates are offered under the program, listed according to major drug category, (vii) the number of pharmacies participating in the program, [and](viii) to the extent available, any costs incurred by pharmacies to participate in the program, and (ix) the number of users who are limited English proficient individuals.

§ 5. 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 Recordkeeping; primary language determinations; and pharmacy locations.

§ 20-625 Penalties.

§ 20-626 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 five 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 a person acting as an interpreter comprehends a spoken message and re-expresses that message accurately and objectively in another language, 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 and objectively in another language, utilizing all necessary pharmaceutical- and health-related terminology.

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. “Pharmacy” shall mean any retail establishment that is located within the city of New York in which prescriptions drugs are sold.

g. “Pharmacy primary languages” shall mean the languages spoken by one percent or more of (1) the population residing in the community district in which a pharmacy is located, as provided to such pharmacy by the department on a yearly basis; and (2) beginning one year after the effective date of the local law that added this section, a pharmacy’s customers, as determined by the pharmacy’s prescription management system for the previous year.

h. “Prescription management system” shall mean an electronic system designed to assist in the filling of prescriptions that stores identifying information about a patient including, but not limited to, a patient’s name and address.

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 all LEP individuals in an LEP individual’s primary language for the purposes of counseling such individual about his or her prescription medications, unless an LEP individual refuses such services. Such services may be provided by a staff member of the pharmacy or a third-party paid or volunteer contractor. Such services need not be provided in-person or face-to-face in order to meet the requirements of this section.

b. Every chain pharmacy shall provide free, competent oral interpretation of

medication labels and warning labels and patient information sheets to LEP individuals who do not speak one of the pharmacy's primary languages.

§ 20-622 Provision of translation services required. Every chain pharmacy shall provide free, competent translation of prescription medication labels, warning labels and patient information sheets to each LEP individual filling a prescription at such chain pharmacy who speaks one of the pharmacy's primary languages. Nothing in this section shall prohibit a chain pharmacy from providing dual- or multi-language medication labels, warning labels or patient information sheets to LEP individuals who speak one of the pharmacy's 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.

b. Every pharmacy that is not required to provide language assistance services pursuant to this subchapter and is not providing such services shall conspicuously post, at or adjacent to each counter over which prescription drugs are sold, a notification of three nearby pharmacies or chain pharmacies where such language assistance services are available. 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 Recordkeeping; primary language determinations; and pharmacy

locations. a. Every chain pharmacy's prescription management system shall include a mandatory field to record the primary language of all individuals who fill prescriptions at such chain pharmacy.

b. The department shall provide to each pharmacy and each chain pharmacy on a yearly basis a list of the languages spoken by one percent or more of the population residing in the community district in which the pharmacy or chain pharmacy is located.

c. The department shall provide to each pharmacy that is not a chain pharmacy on a yearly basis a list of three nearby pharmacies or chain pharmacies that provide language assistance services.

d. For all prescriptions filed pursuant to section 71.07 of the health code of the city of New York, the pharmacist shall include an indication of whether language assistance services were needed and provided when such prescriptions were filled.

§ 20-625 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 or 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.

§ 20-626 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 20-625 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 20-625 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.

§ 6. This local law shall take effect one hundred and eighty days after its enactment into law, provided, however, that subdivision b of section 20-624 of section 5 of this local law shall take effect sixty days after such enactment, and provided further that the department may promulgate any rules necessary for implementing and carrying out the provisions of this local law prior to its effective date.