utilized by regulated parties. The approaches suggested in State Adminis-
trative Procedure Act Section 202-b(2) were rejected as inconsistent with
the purpose of the regulation.

Rural Area Input:
The New York State Association of County Health Officers (NYSCCHO), including representatives of rural counties, has been in-
formed about this change and has voiced no objections.

Job Impact Statement
This regulation adds neonatal herpes to the list of diseases that clinical
laboratories, clinicians, and hospitals must report to public health authori-
ties and for which clinicians must submit laboratory specimens. The staff
who are involved in reporting neonatal herpes at the local and State health
departments are the same as those currently involved with reporting, mon-
toring and investigating other communicable diseases. Implementation
should not significantly increase the demands on existing staff nor increase
the need to hire additional staff for laboratories, hospitals, and providers.
The NYSDOH has determined that this regulatory change will not have a
substantial adverse impact on jobs and employment.

NOTICE OF ADOPTION

Language Assistance and Patient Rights

I.D. No. HILT-20-06-00004-A
Filing No. 1040
Filing date: Aug. 28, 2006
Effective date: Sept. 13, 2006

PURSUANT TO THE PROVISIONS OF THE State Administrative Pro-
cedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 405.7 and 751.9 of Title 10
NYCRR.

Statutory authority: Public Health Law, section 2803
Subject: Language assistance and patient rights.

Purpose: To strengthen communications provisions for persons who do
not speak English or do not speak it well; and addition of two rights to the Subdivisions (n) and (o) are amended and new subdivisions (p) and (q)

Authority: Public Health Law, section 2803

Subject: Language assistance and patient rights.

Purpose: To strengthen communications provisions for persons who do
not speak English or do not speak it well; and addition of two rights to the Patient’s Bill of Rights to be consistent with the Public Health Law.

Text of final rule: Paragraph (7) of subdivision (a) is repealed in its
entirety and a new paragraph (7) of Section 405.7 is added to read as follows:

(7) the hospital shall develop a Language Assistance Program to
ensure meaningful access to the hospital’s services and reasonable accom-
modation for all patients who require language assistance. Program re-
quirements shall include:

(i) the designation of a Language Assistance Coordinator who
shall report to the hospital
administration and who shall provide oversight for the provision
of language assistance services;
(ii) policies and procedures that assure timely identification and
ongoing access for patients in need of language assistance services;
(iii) the development of materials that will be made available for
patients and potential patients that summarize the process and method
of accessing free language assistance services;
(iv) ongoing education and training for administrative, clinical
and other employees with direct patient contact regarding the import-
ance of culturally and linguistically competent service delivery and how
to access the hospital’s language assistance services on behalf of patients;
(v) signage, as designated by the Department of Health, regarding
the availability of free language assistance services in public entry loca-
tions and other public locations;
(vi) identification of language of preference and language needs
of each patient upon initial visit to the hospital;
(vii) documentation in the medical record of the patient’s lan-
guage of preference, language needs, and the acceptance or refusal of
language assistance services;
(viii) a provision that family members, friends, or non-hospital
personnel may not act as interpreters, unless:
(a) the patient agrees to their use;
(b) free interpreter services have been offered by the hospital
and refused; and
(c) issues of age, competency, confidentiality, or conflicts of
interest are taken into account. Any individual acting as an interpreter
should be at least 16 years of age or older; individuals younger than 16 years of
age should only be used in emergent circumstances and their use docu-
mented in the medical record.

(ix) management of a resource of skilled interpreters and persons
skilled in communicating with vision and/or hearing impaired individuals;
(a) interpreters and persons skilled in communicating with
vision and/or hearing impaired individuals shall be available to patients in
the inpatient and outpatient setting within 20 minutes and to patients in the
emergency service within 10 minutes of a request to the hospital adminis-
tration by the patient, the patient’s family or representative or the provider
of medical care. The Commissioner of Health may approve time limited
alternatives to the provisions of this subparagraph regarding interpreters
and persons skilled in communicating with vision and/or hearing impaired
individuals for patients of rural hospitals; which:
(1) demonstrate that they have taken and are continuing to
take all reasonable steps to fulfill these requirements but are not able to
fulfill such requirements immediately for reasons beyond the hospital’s
control; and
(2) have developed and implemented effective interim plans
addressing the communications needs of individuals in the hospital service
area.

(x) an annual needs assessment utilizing demographic information
available from the United State Bureau of the Census, hospital admin-
istrative data, school system data, or other sources, that will identify
limited English speaking groups comprising more than one percent of the
total hospital service area population. Translations/transcriptions of sig-
ificant hospital forms and instructions shall be regularly available for the
languages identified by the needs assessment; and

(xi) reasonable accommodation for a family member or patient’s
representative to be present to assist with the communication assistance
needs for patients with mental and developmental disabilities.

New paragraphs (18) and (19) are added to subdivision (c) of Section
405.7 to read as follows:

(18) Authorize those family members and other adults who will be
given priority to visit consistent with your ability to receive visitors.
(19) Make known your wishes in regard to anatomical gifts. You may
document your wishes in your health care proxy or on a donor card,
available from the hospital.

Subdivisions (n) and (o) are amended and new subdivisions (p) and (q)
are added to Section 751.9 to read as follows:

(n) access his/her medical record pursuant to the provisions of section
18 of the Public Health Law, and Subpart 50-3 of this Title[.]
(p) authorize those family members and other adults who will be given
priorities to visit consistent with your ability to receive visitors;
and
(q) make known your wishes in regard to anatomical gifts. You may
document your wishes in your health care proxy or on a donor card,
available from the center.

Final rule as compared with last published rule: Nonsubstantial
changes were made in section 405.7(a)(7)(vii)(c), (ix), (ix)(a), (x).

Text of rule and any required statements and analyses may be

on May 17, 2006, the changes do not necessitate any
changes to the Regulatory Impact Statement, Regulatory Flexibility Anal-
ysis, and the Job Impact Statement.

Assessment of Public Comment
The Department received 16 letters with comments during the official
comment period. They were primarily from associations and individuals
involved with issues concerning immigrants, access to health care, transla-
tion services, legal assistance and health and hospitals. One comment with
approximately 198 signatures came from a seniorized citizen center.

In general, the comments supported the proposed regulatory changes
and many strongly supported the proposal. While there was overwhelming
support, there were suggested changes recommended. They are as follows:

Comment:
In subparagraph (ix) of paragraph (7) “and/or” should be changed to
“and”. Communication services should be offered to limited English prohi-

rific individuals as well as to those who are vision and/or hearing im-
paired. Skilled language interpreters and persons skilled in communicating
with hearing and vision impaired individuals are not interchangeable.

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Response:
Several of the letters received contained this comment. The Department agrees and the change has been made.

Comment:
Subparagraph (viii) of paragraph (7) specifies that in the event the family members, friends, or non-hospital personnel are younger than 16 years of age, issues of competency, confidentiality or conflicts of interest are taken into account. Several comments suggested that these considerations should be made whenever interpreter services are provided by family, friends, or non-hospital personnel of any age.

Response:
The Department agrees that this standard was the intent in the proposed regulation and this change has been made.

Comment:
Sixteen year olds should not miss school to serve as interpreters for their families.

Response:
While the Department agrees that a 16 year old should not miss school to serve as an interpreter, it has no way to regulate the action of a parent in this situation. The age limit was discussed as part of the deliberations. The consensus reached was age 16.

Comment:
The proposed regulations should permit public inspection of the entire hospital language assistance plan, rather than access to a summary only.

Response:
This concept was discussed as part of the deliberations on the regulation. While some members of the review group continued to seek this public disclosure, the consensus of the group was to maintain the requirement as written. No change to the regulation will be made.

Comment:
The proposed regulations should include better monitoring requirements to ensure full compliance with these important provisions.

Response:
Compliance with the regulations will be monitored by Department of Health staff in response to complaints or through focused surveillance. This approach is consistent with ensuring compliance with all other parts of the State Hospital Code.

Response:
One comment asked for clarification of acceptable interpretation services. A concern is the lack of any explicit mention in the proposed regulation of interpretation services other than those provided by in-person, face to face interpreters. Multiple modalities for providing language services and not just in person, face to face interpreters is needed.

Response:
The Department agrees that, based on current technology, there are many ways to successfully provide interpreter services beyond in-person, face to face interpretation. As part of this regulation, we acknowledge that these other forms may be used by hospitals and we will clarify this in subsequent guidance to the hospitals.

Comment:
Concerns were raised about the annual needs assessment provisions. It was noted that no single source of demographic information is consistently reliable for projecting changes in language services needs across the geographic neighborhoods applicable to New York City hospitals. Flexibility is the key. No critical indicator accurately correlates the language spoken by persons within a given community with the critical issue of whether or not significant numbers of those persons are also limited in proficiency in speaking English. It was further noted that it is not clear what a total "hospital service area" includes. Is that the hospital’s primary service area only (which could cause undercounting) or the hospital’s secondary service area? Flexibility in any community language profile and needs assessment is essential. The best barometer of a new emergent language need for Limited English Proficient (LEP) purposes is the relevant hospital’s administrative data in conjunction with other data such as census information.

Response:
In the regulation, the Department acknowledges that no single means of demographic information is always reliable. For this reason, the regulation allows hospitals to choose those information sources that work best for them. This approach will be covered in subsequent letters and training sessions for hospitals. No change to the regulation is needed.

Comment:
The proposal will require each hospital Language Assistance Program to include “signage, as designated by the Department of Health, regarding the availability of free language assistance services in public entry local-