

Testimony of Cheryl Coon on Senate Bill 698
May 9, 2019

Good afternoon Chair Salinas and Members of the Committee.

I appreciate the opportunity to comment on SB 698, which would ensure that patients, providers and caregivers can understand medication labels on their prescription drug containers. I will focus on the legal side, rather than on the policy, but there can be no dispute that requiring pharmacies to provide prescription drug container labels in both English and a language that the patient can read will prevent harmful and costly adverse impacts to approximately 222,000 Oregonians who have limited English proficiency, and as a result, are unable to read the directions on their prescription drug containers.

My background relevant to the advice I provide below is that I have been a practicing attorney for 42 years, including a decade in the Oregon Department of Justice advising state agencies on interpretation of statutes as well as six years in the United States Congress as Legal Counsel and as Chief Counsel and Staff Director of a House subcommittee.

Based on some of the questions that have come up, it appears that there is confusion about the necessity for state law when there appears that federal laws already address these issues.

In brief, two key federal laws address these issues:

- Title VI of the Civil Rights Act of 1964 and its implementing regulations require all healthcare providers and recipients of federal financial assistance (including Medicare and Medicaid) to take reasonable steps to ensure **meaningful access** to their programs by limited English proficient (LEP) individuals. Since most pharmacies in the US are recipients of federal funds, directly or indirectly, their activities fall under Title VI provisions. For example, a pharmacy that serves Medicare or Medicaid patients would be subject to Title VI.
 - However, the type of language assistance a covered entity provides to ensure meaningful **access** is flexible and depends on a variety of factors, including the size of the covered entity, the size of the eligible LEP population it serves, the nature of the program or service, the objectives of the program, the total resources available to the recipient/ covered entity, the frequency with which particular languages are encountered, and the frequency with which LEP persons come into contact with the program. There is no “one size fits all” solution for Title VI compliance with respect to LEP persons.

- The Affordable Care Act applies both to federal fund recipients as well as all programs and activities administered by the federal agencies and entities created under Title I of the ACA, primarily federal and state marketplaces and qualified health plans. The regulations implementing Section 1557 outline requirements for notifying clients/ patients of language services, providing oral interpreting and including taglines on significant written documents. Consistent with Title VI, the Affordable Care Act and its regulations makes clear that covered entities are required to take reasonable steps to provide **meaningful access** to each individual with limited English proficiency. Again, reasonable steps may include the provision of language assistance services, such as oral language assistance or written translation but standards in the final rule are flexible and context-specific

So although federal law recognizes the importance of the issues that SB 698 provides, it does not require translated labels. Without state laws that mandate translated labels, Oregonians with limited English proficiency will continue to experience the events that the nursing students shared with the Senate HealthCare Committee and will share here today. That is why California, New York and hopefully Oregon now as well will have state laws to ensure insure safety for limited English proficiency patients.

I hope this is helpful.

Cheryl Coon