



## Healthcare for Non-English Speakers - Interpreting the Federal Rules

*By: Fran Quarles, Esq.,  
of HealthSouth Corporation*

*"My mother has developed a nagging cough. She doesn't speak much English. Would the doctor be able to see her this week?"*

Physicians' offices may receive such calls frequently. Private practitioners who speak only English might wonder if they have a legal obligation to provide special language services for those patients. Not all physicians are required to provide language services. The answer for each physician depends on: (1) whether the physician receives federal financial assistance other than through Medicare Part B, and (2) the results of a four-step analysis issued by the Department of Health and Human Services ("HHS").

Federal requirements for assisting people with Limited English Proficiency (LEP) come from a combination of Title VI of the Civil Rights of 1964, Department of Health and Human Services (HHS)

regulations and Executive Order 13166. For any program or activity receiving federal financial assistance, discrimination on the basis of race, color or national origin is prohibited. Toward that end, recipients of federal financial assistance (other than physicians who only receive Medicare Part B) must take reasonable steps to ensure that LEP persons have meaningful access to such programs and activities. LEP services must be provided at no charge to the patient, but no federal agencies provide funding.

### Who Must Provide LEP Services?

Any physician who receives federal financial assistance (defined below) is considered a "recipient" of federal assistance. Physicians who only receive Medicare Part B payments are not considered "recipients," and are not subject to the LEP rules. The term "recipient" should not be confused with the patient, who is considered the "ultimate beneficiary." Physicians, or recipients, should apply HHS guidelines to determine what, if any, LEP services are necessary under their particular circumstances.

### What is Federal Financial Assistance?

Federal financial assistance includes, but is not limited to: (1) grants and loans of federal funds; (2) the grant or donation of federal property and interests in property; and (3) any federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance, such as Aid to Families with Dependent Children. Federal financial assistance does not include such assistance received by way of insurance or guaranty. In fact, HHS guidance

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specifically states that recipients of HHS assistance do not include providers who only receive Medicare Part B payments. Physicians should note that Medicare Part A qualifies as federal financial assistance. Therefore, a physician's practice group that owns an Ambulatory Surgical Center (which bills the Part A facility fee) would be subject to these federal prohibitions against national origin discrimination.

#### **Who Are LEP Persons and What Are LEP Services?**

LEP persons do not speak English as their primary language. They have only a limited ability to read, write, speak or understand English. LEP services can be either oral (interpretation) or written (translation). Oral interpretation can include contracting with on-site professional interpreters, hiring bilingual staff, or using commercially available telephone translation services. Written translation can involve an entire document or a shorter description. For HHS, the buzz word for determining the extent of a requisite service is "meaningful." The interpretation or translation must effectively communicate the substance of an oral or written message.

#### **HHS' Four-Factor Analysis**

In 2003, HHS issued guidance entitled, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." This guid-

ance contains the following four factors for physicians receiving federal financial assistance to consider in assessing whether they must provide LEP services:

1. the number or proportion of LEP persons eligible to be served or likely to be encountered in the physician's practice
2. the frequency with which LEP individuals come in contact with the physician's practice
3. the nature and importance of the services provided to people's lives
4. the resources available to the physician and costs.

HHS has clarified that a balance should be struck to ensure LEP individuals' meaningful access to federally funded services while not imposing undue burdens on small businesses, including physician practices. Thus, if the physician is required to provide LEP services, the correct mix or extent of the services should be based on what is both necessary and reasonable in light of the four-factor analysis. For example, a physician's practice which encounters one LEP patient per month on a walk-in basis may want to use a telephone interpreter service instead of hiring bilingual staff. Or, if an LEP patient is seeking a routine medical examination, a physician could ask the patient to schedule his or her appointment at a time when an appropriate interpreter is available.

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### **May a Family Member or Friend Act as an Interpreter?**

When a physician determines an interpreter is needed, the physician must inform the LEP patient that he or she has the option of either: (1) having the physician provide an interpreter free-of-charge, or (2) choosing his/her own interpreter. A physician cannot require the LEP patient to use a family member or friend, and should respect the LEP patient's desire to use an interpreter of his or her own choosing (which may be a professional interpreter and not a family member or friend).

A physician should always consider the issues of competence and appropriateness in the use of family members and friends, as well as any potential conflicts of interest and confidentiality issues. In some cases, family members (especially minor children) or friends may not be competent to provide accurate interpretation. If a physician later determines that a family member or friend is not competent or appropriate, the physician should provide competent interpreter services in place of, or if appropriate, as a supplement to, the LEP patient's interpreter. Of course, if the physician provides an interpreter service, whether in-person or telephonic, the physician should ensure that the interpreters are competent to interpret medical terms.

### **Written Materials**

After applying the four-factor test, a physician may determine that to comply with these federal requirements, his

or her practice should provide translation of vital documents into the language(s) of frequently-encountered LEP groups. "Vital" documents will vary from practice to practice, depending on the information and services provided. However, examples of vital documents could include consent forms, HIPAA disclosures and notices advising LEP persons of free language assistance.

### **Enforcement**

HHS relies largely on voluntary compliance with the LEP rules. But, the agency will investigate complaints. Non-compliance will be initially addressed through an informal process. If the noncompliance is not resolved voluntarily, HHS may ultimately terminate federal assistance, but only after the physician has been given an opportunity for an administrative hearing. HHS could also refer the matter to the Department of Justice for injunctive relief or other enforcement proceedings.

### **Conclusion**

Small practitioners have considerable flexibility in determining exactly how they will fulfill their obligations, if any, to ensure that LEP persons have meaningful access to healthcare. HHS' Office of Civil Rights ("OCR") can provide additional assistance with the analysis. OCR's contact information is on HHS' website at [www.hhs.gov/ocr](http://www.hhs.gov/ocr).

*The opinions expressed in this article are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance.*

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## New Members

Clayton A. Buie, M.D.	Pediatrics
Michael James Burch, M.D.	Internal Medicine
Lucy G. Chapman, M.D.	Anesthesiology
Carrie B. Huner, M.D.	Family Practice
Yasser Sakawi, M.D.	Anesthesiology
James A. Sparrow, M.D.	Anesthesiology
Christopher D. Willey, M.D.	Radiation Oncology

## *In Memoriam*

The JCMS wants to acknowledge the recent passing of the following JCMS members:

**Henry L. Darnell, Jr., M.D.**  
*December 31, 2008*

**Julius N. "Buddy" Hicks, M.D.**  
*January 5, 2009*

**Richard L. Berryman, M.D.**  
*January 20, 2009*

## ERRATA

*In last month's Pulse we offered a Special Thanks to the sponsors of our Annual Dinner Meeting. In this special thanks the name of one of our sponsors was misspelled. Please note that the correct spelling is Warren, Averett, Kimbrough & Marino, LLC. We apologize for this error.*

# Sixth District Caucus Meeting

MASA will hold its District Caucus meetings in February and March, in preparation for its Annual Session, which is set for April 16-18 in Montgomery. The Caucus meetings give members an opportunity to propose and debate future association policy at the grassroots level, and are an integral part of the process of directing the affairs of MASA. You are encouraged to attend and participate.

The Sixth District (Jefferson County) Caucus will convene Tuesday, March 3, 2009, at 6:00 p.m. in the Board Room of the Jefferson County Medical Society. The JCMS building is located at 901 18th Street South, Birmingham, AL. For more information and to RSVP for the meeting, contact Juanita Pruitt at 933-8601 or via e-mail at [jpruitt@jcmsalabama.org](mailto:jpruitt@jcmsalabama.org).



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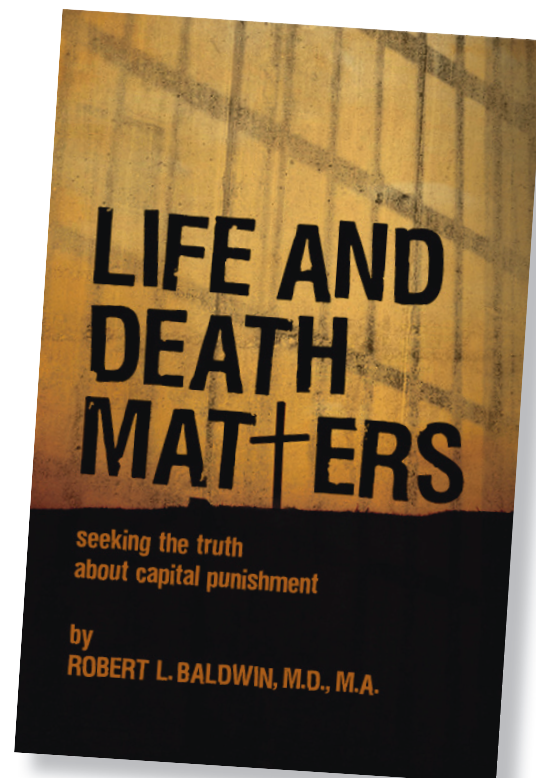
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## JCMS Member Considers Capital Punishment

Retired JCMS member Robert L. Baldwin, M.D., M.A., has recently published his first non-medical work. The book, entitled *Life and Death Matters: Seeking Truth about Capital Punishment*, was published in December by New South, Inc. After being forced into retirement due to his major illnesses, Dr. Baldwin went back to school and studied public policy. The book is a first-person account of Dr. Baldwin's life and brush with death, how it affected his thinking about life in general, and the transformation of his feelings regarding capital punishment. Ed LaMonte, PhD, the Howard Heflin Professor of Political Science at Birmingham Southern College, says Dr. Baldwin "not only provides the reader with a fact-based, faith-guided critique of capital punishment but does so in a personal and engaging manner which enhances the strength of the policy position which he passionately advocates."



Today Dr. Baldwin is actively engaged in a prison ministry in which he both visits with inmates and teaches those outside the prisons about the myths and misconceptions regarding prisons and criminal justice. The issues he addresses in the book include the debate between punishment and rehabilitation of prisoners, the interests of the families of murder victims versus the interests of society, and racial bias in convictions and sentencing. In it, he describes his own conversion from strong supporter to strong opponent of the death penalty. The book is available locally at most bookstores. His next book signing event will be at Snoozy's UAB Bookstore, 1321 10th Ave. South, on Feb. 21st at 10 a.m. to 12 noon.

## ***It's Not Too Early . . .***

To make your plans to attend the JCMS Barons Event on May 5, 2009. The Barons will take on the West Tennessee Diamond Jaxx at Regions Field beginning at 2:05. We have reserved the Robin Ventura Patio and will be serving hot dogs and hamburgers to JCMS members and their families. Space will be limited, so let us know you would like to attend by sending your name, contact information and the number of tickets you will need to Martha Wise at [mwise@jcmsalabama.org](mailto:mwise@jcmsalabama.org) or by calling her at 933-8601. See you at the ballpark!!!



## UPCOMING EVENTS

- |         |   |
|---------|---|
| Feb. 4  | Ethics Committee Meeting  |
| Feb. 17 | The Wayne Finley 811 Breakfast Club Meeting – William C. Fleming, M.D., will speak on “Physical Medicine and Rehabilitation” at 8:30 a.m. in the JCMS Board Room      |
| Feb. 23 | Executive Committee Meeting – 5:30 p.m.   |
| Mar. 3  | MASA Sixth District Caucus Meeting at the Jefferson County Medical Society<br>5:30 p.m. – Social Hour<br>6:00 p.m. – Meeting  |
| Mar. 17 | The Wayne Finley 811 Breakfast Club Meeting – Merrill N. Bradley, M.D., will speak on “Dr. James Mason’s Influence on Healthcare” at 8:30 a.m. in the JCMS Board Room |
| Mar. 23 | Foundation Trust Meeting – 5:00 p.m.<br>Executive Committee Meeting – 5:30 p.m.<br>Board of Directors Meeting – 6:30 p.m.   |
| Apr. 1  | Ethics Committee Meeting  |
| May 3   | JMCS Members Barons outing  |

Contact Juanita Pruitt at 933-8601 for more information regarding any of the above events.

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