



February 14, 2018

Senator Rebecca Saldaña  
230 John A. Cherberg Building  
Olympia, WA 98504-0403

VIA Email: Rebecca.Saldana@leg.wa.gov

**RE: Oppose SSB 6245 to Support a Comprehensive and Inclusive Planning Process to Create a System that will Improve Upon Existing Services, Improve Language Access, Support Language Professionals, and Create Efficiencies Across State Agencies**

Dear Senator Saldaña,

The Washington State Coalition for Language Access (WASCLA) supports full access to the services of Washington State government for all residents with limited English proficiency (LEP). WASCLA actively works to promote comprehensive, high-quality language assistance services. Given our mission to remove language barriers that prevent equal access to services, **we support the intent of legislation like SSB 6245, but we cannot support the bill as currently written** for the reasons explained below. We welcome the opportunity to work with you and other stakeholders to refine the bill to ensure the needs of the LEP public is the central focus.

In the development of SSB 6245, we have not seen mention of input and involvement of the core stakeholder group whose interests WASCLA represents: the recipients of programs and services administered by state agencies. WASCLA believes the needs of state residents with limited English proficiency would be best met by an approach that begins with thorough study of all the issues, utilizing the 2013 OFM [Study of Procurement of Interpreter Services](#) as a resource, and with consideration of services already in place, followed by a comprehensive and inclusive planning process.

WASCLA recommends that for this legislative session, we shift focus to **seek funding to accomplish a study of existing language access services across state agencies as well as the language access needs of those agencies, and to complete a comprehensive and inclusive planning process which will guide the way toward consolidation**. In this way, we ensure the needs of agencies and recipients in each program is addressed in a consolidated model, and avoids harmful, unintended consequences. A detailed analysis of WASCLA's concerns about the current SSB 6245 follows.

## **The Bill Applies Universal Changes for Procurement of Interpreter Services for State Agencies and Fails to Account for the Variation of Agency and Client Needs.**

As currently written, SSB 6245 applies to all state agencies. In Section 2, it reads, “the department, the authority, and the office of administrative hearings shall ensure that bilingual services are provided to non-English speaking applicants and recipients...” In Section 3 (3), only three agencies (DSHS, HCA, and Labor and Industries) are mentioned; however, in Section 3 (5), all state agencies are required to develop and a model or jointly purchase these services with the DSHS/ HCA model. In your communications with WASCLA, you have assured us the bill will only apply to the DSHS, HCA and Labor and Industries and that this bill is only intended to apply in the health care setting. Given that Section 3 (6) mandates medial interpreter certification, that would be consistent, yet the current language of the bill does not reflect this understanding. Clarification is needed on scope of agencies and services intended to be included.

### **The Bill Expands the HCA Interpreter Services Program, which is Designed for Specific Health Care and Social Services Settings.**

WASCLA has extensive knowledge about the HCA IS program dating back to the time when it was repeatedly recommended for elimination by Governor Gregoire, and more recently due to WASCLA’s engagement in a stakeholder process with HCA advising on new vendor procurement and raising concerns about how the program is serving clients. WASCLA’s opposition to SSB 6245 is related to what we have observed from the IS program, and the lack of detailed information HCA has allowed to be known about the program’s outcomes.

### **Incomplete Information Points to Concerns about Outcomes in the HCA IS Program, and HCA Will Not Release Data to Confirm or Deny.**

During an HCA stakeholder process, requested by WASCLA and other community groups during 2016 and 2017, **HCA informed the group that an evaluation of the IS program has not been done.** The information that HCA has provided about the program is insufficient to draw conclusions, and HCA has refused to release much of the information that reportedly exists.

While some quantitative data is available from the scheduling vendor, HCA does not share it in the public domain. The data HCA does share is misleading. HCA is quick to point to a 90% fill-rate for interpreter requests under the current IS vendor system. However, that metric is a global fill-rate that aggregates all languages together and for the state as a whole. It provides no information about the actual need for services by language, the fill-rate on a language-by-language or region-by-region basis, the quality and timeliness of services delivered, nor how clients are served when interpreters cannot be found. This is of primary concern to WASCLA.

Despite limited available information, indications of serious service disparities and quality assurance issues for LEP clients of DSHS and HCA have surfaced spontaneously, highlighting the urgent need for program assessments. These include:

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- [Interpreter Services for Children & Youth with Special Health Care Needs](#), results from the Great LINCS Needs Assessment, DOH, 2016. In late 2015, parent focus groups were held across the state in English and six other languages to learn about family experiences with the new care coordination efforts of Great LINCS. In all the LEP groups, there were totally unexpected results: parents spontaneously brought up problems with quality of interpreter services due to lack of language skills and interpreter ethics. Results included a serious medical misdiagnosis and several erroneous CPS referrals.
- Moore, M et. al. [Availability of Outpatient Rehabilitation Services for Children After Traumatic Brain Injury: Differences by Language and Insurance Status](#). *Am J Phys Med Rehabil*. 2016 Mar;95(3):204-13. The study on Washington children with traumatic brain injuries reveals lack of language access was an underlying factor for Latinx children faring worse after hospital discharge: most providers would not accept patients covered by Medicaid when the child or parent needed language assistance. The IS program is responsible for reaching out and registering providers for the IS program, so the lack of language access negatively reflects on the program's success.
- **Interpreter services for Deaf, hard-of-hearing, and DeafBlind individuals:** These services are included in the current HCA IS system, and while we understand that SSB 6245 exempts this language group from the future consolidation, nothing required HCA to “consolidate” ASL interpreter services into its vendor model; yet, the agency chose to do so as a matter of purported efficiency. It is instructive to the proposal of SSB 6245 to recognize the unintended consequences of the HCA system on this community:
  - Before the HCA model was developed, ASL fill-rates held a 95% global fill rate.
  - After including these services under the care and monitoring of the HCA IS program, that fill rate fell to zero. It remained at zero for several years until a community group, Medical Interpreter Task Force, became involved. Through committed advocacy, that group has managed to demand change from HCA. Unfortunately, it has only resulted in moderate improvements and the ASL fill rate hovers around 30% in some counties and remains at zero in other counties.

This is the kind of unintended consequence that a study of existing services could help avoid. Also, when SSB 6245 requires a state agency to develop their own system or utilize the HCA/DSHS model by 2020, this could likely result in the inclusion of ASL interpreter services for those agencies just as it occurred previously in HCA—for a matter of efficiency.

Before expanding the IS program, the legislature should engage in a thorough evaluation of the program to assess its strengths, weaknesses, and service gaps.

#### The Specialized Health-Care Focus of the IS Program Will Not Work in Other Settings.

The HCA model was developed for healthcare and social services settings, a design that may not naturally apply to other state agencies and their unique needs. Of concern is the inclusion of court interpreter services occurring at the Office of Administrative Hearings. By the plain language of SSB 6245, the bill requirements will apply to court interpreters for the Office of Administrative Hearings (except for sign-language interpreters). Court interpretation and medical interpretation are entirely

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different professional skills that require different training, vocabulary, ethical considerations, and certifications. Moreover, OAH already has a system in place for assigning interpreters to hearings and draws from a different pool of interpreters that are qualified to work in legal proceedings. This bill will mandate replacement of the current OAH system with a system that is not designed for the legal setting.

### **State Agencies have Varying Needs, Different Binding Legal Requirements, and Require Tailored Solutions.**

#### Different State Agencies Have Different Communication Needs.

State agencies interact with the public in different ways in accordance with their missions. While large volumes of pre-scheduled appointments are common in the health care sector, this is not the case in other service sectors where the needs for language services are more often spontaneous. In addition, employees of some agencies do significant work in the field, including providing emergency services and attending to urgent needs. Some examples of this include in the cases of accidents and crime scenes, disasters, worker protections, or for adult and child protective services. In such instances, state employees need to have ready access to interpreter services, including by phone, without needing to go through multiple steps of a scheduling system or being sent to a new service if the contracted vendor cannot provide connection to an interpreter for a specific language. Because of these differing realities, it is not clear how adoption of the model used by HCA and DSHS would benefit state agencies in general, and such a model may actually hinder efforts to provide effective language access.

#### Different State Agencies have Different Funding Sources.

One reason why it is improper to extrapolate fiscal conclusions from the HCA IS model to other Washington state agencies is that there is a unique funding source for HCA from the federal Medicaid program. Washington was among the first, and remains among the few states, to utilize Medicaid reimbursement of 50% for adults and 75% for children for the costs of interpreter services for Medicaid enrollees. This federal funding pays for a portion of the expenses incurred in the HCA IS program. It is not possible to make projections on the future of Medicaid funding in general at this time. And it is important to note that this HCA federal funding through Centers for Medicare and Medicaid to pay for language access is not available to other agencies and other types of appointments.

#### L&I Has Special Legal Obligations That Cannot Be Ignored.

Since 2015, L&I has been operating under the terms of a [Memorandum of Agreement](#) with the U.S. Department of Justice to address litigation finding the agency discriminated against LEP workers based on national origin by not providing language assistance to them to access L&I programs and services. L&I is being monitored for its compliance in implementing specific language access service requirements. The legislature cannot bind L&I to a new program that fails to take into account the requirements of the DOJ Memorandum of Agreement.

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L&I has made significant changes to their language assistance services in the past three years. It would be harmful to recipients of these programs to require consolidation without a thorough analysis of the existing services. Considerations for consolidation of language assistance services need to be based on the most current information on L&I programs and services, as well as the agency's special legal obligations. This is a prime example of our ask that legislation be guaranteed to improve upon existing services in a coordinated fashion and that legislation to consolidate interpreter services must be based on a thorough understanding of language assistance needs, obligations, and existing services in each state agency.

#### State Agencies Have Their Own Language Access Regulations to Consider.

Part of the study that we are asking for would include review of existing language access requirements in the Washington Administrative Code together with current practice to ensure compliance with the Regulations and to ensure that any consolidation effort raised the bar for language services as opposed to lowering the standard. For example, see the requirements in WAC 388-271 and WAC 182-503-0110.

#### **Language-Based Restrictions on Interpreter Testing Could Have Disastrous Consequences for Clients and Interpreting Professionals.**

SSB 6245 proposes setting language-based restrictions for candidates to be eligible to take the DSHS interpreter credentialing exams, ostensibly as a way to increase the interpreter pool for less-common languages along with addressing a "surplus" of interpreters for the most common languages. However, WASCLA is concerned this is a hastily-proposed and ill-considered solution that may cause substantial harm.

#### **An Essential Step is Understanding Why the IS Program Has Disparities Between Interpreters Available and Services Needed.**

In order to assess the usefulness of a proposal to restrict interpreter credentialing as proposed in SSB 6245, one must consider the underlying reasons for disparities in availability of interpreters for the IS program on the basis of language. Multiple factors may contribute to the current mismatch between clients' needs and the availability of credentialed interpreters that would not be addressed by merely limiting test candidates on the basis of their language.

Such an assessment has not been done, but WASCLA recommends the Legislature order an assessment that seeks to uncover:

- A thorough understanding why speakers of specific languages are or are not seeking DSHS interpreter credentials;
- The status of efforts to recruit new interpreter candidates, especially among speakers of newer languages in Washington; and
- Reasons why interpreters who earn DSHS credentials are not participating in the Interpreter Services program.

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### **The Bill Proposes a Permanent Ban on the Testing of Speakers of Top Languages.**

This measure would effectively bar any new candidates from becoming certified as medical interpreters in the top languages. For any language, including the most common ones in Washington, the interpreter pool does not remain static. Changes in the life circumstances of individuals—such as through new employment or education opportunities, family responsibilities, illness, retirement, death, moving, etc.—contribute to fluctuation in the numbers of people seeking to work as an interpreter at any given time. Despite the uncertain evidence that a ban on interpreter testing would be effective in meeting the goal of increasing the language diversity of the interpreter pool for state programs, SSB 6245 would make such testing restrictions permanent.

An alternative approach could be to create a pilot project that would establish testing restrictions for a limited time, and then review the outcome. WASCLA recommends that if language-based testing restrictions are to be tried, they be in effect only for a specified time period, such as for two years, and a mechanism for evaluation of such program be written in to the bill.

Alternatively, the bill could specifically encourage development of the interpreter pool in languages of lesser diffusion by allowing those languages falling below a specific fill-rate to have priority for testing placement, but allowing space for additional interpreters to continue to test. The legislation could also simply require DSHS to increase their testing availability and encourage training and testing in specific underserved languages. It does not need to permanently bar specific language groups from future certification opportunities.

### **Washington's DSHS Credentialing Program Could be Reformed, but Other Testing and Credentialing Programs Are Not a Viable Substitute.**

Spoken-language interpreters in Washington, including for the top languages, typically work in multiple settings that may include public and private sectors. The DSHS Language Testing and Certification program (LTC) was created almost 30 years ago to credential interpreters to serve clients of Washington medical and social services programs, and over the years this credential has become a standard requirement for medical interpreters working in healthcare settings statewide. It certainly would be advisable to examine the LTC program in terms of how it meets today's needs and consider potential reforms. However, barring speakers of Spanish and other top languages from becoming certified could have the unintended consequence of preventing new interpreters from being able to serve clients of DSHS & HCA programs as well as in the broader healthcare context. Other testing and credential programs would not fill the void left by the unavailability of the LTC program.

In 2017 HCA began posting on its [website](#) county-specific information about certified and authorized interpreters. The table available on the HCA website, "Languages available, by county" reveals that there are seven Washington counties each with only one certified Spanish medical interpreter. Among the ten counties where Latinxs now are the majority of the population, Adams, Okanogan, Walla Walla, Douglas, and Skagit counties each have respectively one, two, three, five, and seven certified Spanish

medical interpreters. It is thus hard to fathom any rationale from a health equity perspective for the proposed statewide ban on testing of new Spanish interpreters.

It is also important to note that the two national tests referred to in Section 3 (6), are for medical interpreters only and are limited in scope of languages for which certification is offered. The national tests are expensive and there is little incentive for most Washington interpreters to seek these credentials. Most professional settings do not offer a pay differential to interpreters who have earned the national credentials, and the testing fees for the national-level certification exams are considerably higher: DSHS fees are \$75 total, while certification exam fees for both CCHI and NBCMI are \$485.

### **A Better Solution Would Support Quality Training Programs for All Types of Language Professionals.**

Interpretation is a skill that requires specialty knowledge of the vocabulary and context of the settings in which an interpreter works, in the interpreter's language pair(s). The DSHS LTC program only offers a credential for interpreters working in medical and social-services settings and does not assess general- or community-interpreters who, in addition to their knowledge of interpreting skills, must also possess the specialty knowledge base for other disciplines reflected by our state agencies. The DSHS LTC program is not designed to certify interpreters for the full spectrum of service settings covered by various Washington state agencies.

To assess the skills of community interpreters or those for other specific disciplines, the legislature should support the creation of new tests and training programs that meet the variety of needs of all the service settings of Washington's state agencies. Currently, training for community interpreters even in English is almost non-existent in the entire state. To make meaningful change in the experience of the LEP community with language access, the Legislature should support high-quality, comprehensive interpreter training. Creating unnecessary scarcity with testing restrictions not a good solution.

### **Careful, Inclusive Planning and Evaluation Should Precede Sweeping Policy Change that Mandates Entering into Procurement Contracts and Impacts Basic Civil Rights.**

The bill states that "the department" (DES), and also that "each agency," would need to have at least one contract with a vendor which supplies combined telephonic and video remote interpreter services. To be able to consider the merits of this specific proposal, information is needed from each agency on their utilization of remote interpreter services, and what each perceives as additional needs in this area. Due to the very different types of communication needs of each, some agencies may not need both telephonic and video remote services, or VRI may not be appropriate or even possible in many situations. For example, in emergency situations and field work, state agency personnel need to be able to make direct phone connections with interpreters and would not have access to VRI equipment. And as a procurement issue, it is important to know there are fewer vendors which offer both telephonic and VRI, so it would be unduly restrictive to have that requirement.

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The State has a current contract for [Telephonic Based Interpreter Services](#) for all agencies to use through the National Association of State Procurement Officials (NASPO) Purchasing Consortium. Due to the large size of the purchasing pool, this service offers both favorable pricing and very broad coverage of languages. For planning purposes, the Legislature should assess the utilization data under the NASPO contract, as well as other available data sources, in order to ensure language access policy changes are tailored to agency needs. Requiring each agency to maintain its own contract for remote interpreter services of any type could be very logistically cumbersome and more costly.

Other information that should be considered before moving towards consolidation of interpreter services include review of the Reports from the Governor's Interagency Council on Health Disparities. These are the 2014 publications:

- [Language Access Policy Paper](#)
- LANGUAGE ACCESS: STATE AGENCY SURVEY in [State Action Plan to Eliminate Health Disparities](#)

Finally, as WASCLA has mentioned before, the 2013 OFM [Study of Procurement of Interpreter Services](#) should be consulted and its recommendations thoroughly considered before designing policy to consolidate interpreter services.

It is clear the current SSB 6245 did not take into account existing recommendations, agency needs and practices, data on utilization and outcomes of existing programs, and the needs of LEP individuals, before proposing broad changes with the potential to harm language access in Washington.

### **ASL Interpreter Services Deserve Careful Consideration, not Exclusion.**

While the bill excludes procurement of interpreters for people with sensory disabilities from the new requirements, the exclusion does not simply do away with the need to ensure effective communication for Deaf and DeafBlind clients of state agencies. The disastrous results of incorporating procurement of ASL interpreters into the present HCA vendor contract are an instructive case-in-point that should serve as a warning about the need for careful planning. As we've seen from this example, despite the warning that "nothing in this section is intended to address how state agencies procure interpreters for sensory-impaired persons," that will not prohibit state agencies deciding that it is more efficient to consolidate spoken language and sign language services into the same program. This bill will likely result in the expansion of what has proved to be a devastating HCA model to other state agencies for this language group.

### **WASCLA Has Expertise and Recommendations on How Consolidation of Language Access Services Across State Agencies Could Benefit the State, the State Agencies, Language Professionals, and Washington's LEP Residents.**

WASCLA wholeheartedly supports the intent behind SSB 6245 to provide a more efficient, cost-effective program to provide interpreter services in state agencies, but the current bill is not the right solution. **WASCLA believes that an important first step towards improved language access services in state government would be the development of a statewide language access coordination program, established outside of any one state agency.** A state language access plan would be the first step in



planning to ensure all needs are accounted for in designing a comprehensive program to serve state agencies and Washington's LEP residents. A statewide language access coordination program could provide technical assistance and ensure the needs of each agency are adequately met. A statewide language access program could build upon the excellent services existing in some state agencies to raise the level of access in all state agencies. In absence of such a statewide language access plan, it is unwise to mandate system changes for spoken-language interpreter services—a single component of language assistance services.

WASCLA hopes you will consider our well-considered opposition to this premature action and work with WASCLA and other stakeholders to develop a proposal to create a system that will improve upon existing language access services, improve access, support and increase the numbers of language professionals, and create efficiencies across state agencies. We share this goal and look forward to working with you on this endeavor.

Sincerely,

/s/

Sarah Leyrer

Joana Ramos

Co-Chairs, WASCLA Board of Directors



cc: Members of the House Labor & Workforce Committee