



National Senior Citizens Law Center

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

HEALTH NETWORK ALERT

Monthly Webinar

Series:

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Integration &
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July 21

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URGENT: Comments Needed on Important Language Access Standard

NSCLC and NHeLP asking advocates to submit by July 25

IMPORTANT: Please provide comments to the Centers for Medicare and Medicaid Services (CMS), Internal Revenue Service (IRS) and the Department of Labor (DOL) on proposed regulations governing private health care plans. The regulations as proposed are a significant step backward from the version issued in 2010 and affect about 12 million individuals. They change the existing standards for oral interpretation and written translation in unprecedented ways. Please send in comments now and urge colleagues and networks to also take action.

The deadline for submitting comments to CMS on this proposed rule is 5 pm Eastern Time on Monday, July 25, 2011.

The National Senior Citizens Law Center (NSCLC), and the National Health Law Program (NHeLP) urge you to submit comments using the guidelines below. Then, please spread the word to your listservs, networks, colleagues, and affected beneficiaries, near and far, who may care about language access issues!

Issue: CMS, IRS and the DOL's Employee Benefits Security Administration (EBSA) have jointly issued regulations governing the internal claims and appeals and external review processes for private group health plans and health insurance issuers (note: this does not directly impact Medicare and Medicaid plans).

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GET INVOLVED

NSCLC invites you to join us in protecting health care, income security, and court access for older adults.

Join Us

Do you know someone interested in joining our Health Network?

Forward to a friend

Please help us protect the rights of low income older adults and persons with disabilities.

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Case consultation help for advocates

These rules were first promulgated as interim final regulations in June 2010, and were relatively strong. After industry complaints, they were amended as of July 2011, and significantly watered down. The public has this opportunity to comment.

Here are the three major language access issues relating to internal claims and appeals and external review:

1. Written translations for group health plans: The threshold for determining whether translation of vital documents is required is set at: 10% of county population for group health plans. *Formerly this was at 10% of plan participants in a given language or 500 persons, whichever is less; where a group plan has less than 100 participants, 25% was used.*
2. Written translations for individual plans: The threshold for this group is also 10% of county population. *This was set based on the Medicare Part C and D marketing regulation (a proposal that has since been changed as of 4/15/11 to 5%, as a result of many persons submitting comments against the 10%).*
3. Oral interpretation: Although it has been well settled that civil rights law mandates that oral interpretation should be provided in the health and health insurance contexts for all languages, the proposed regulations set a new precedent and require oral interpretation ONLY in the languages that meet the 10% threshold. *This is a major issue that needs to be addressed.*

The new proposed standards completely fail to recognize the needs of the approximately 12 million limited English proficient individuals in the United States that are estimated to be affected. Many of these individuals may receive marketing materials and calls in their primary languages, but will not be able to access plan review and appeals under the new rules. Even Spanish speakers will be left out in most of the country, as only 172 counties meet the 10% county population threshold for Spanish (out of 3,143 counties in the United States). Besides Spanish, the new proposed translation threshold is met by Navajo in 3 counties (1 county each in AZ, NM, UT), Tagalog in 2 counties (both in AK), and Chinese in one county (CA). Only 177 counties would require translated materials. Only one county in the entire nation would have

translations in more than one language: the Aleutians West Census Area (population of 5,505 total persons) would have Spanish and Tagalog translations.

We need everyone - even advocates that don't usually work on private insurance issues and those who have never commented on a federal rule - to take action now.

What You Can Do:

1. FILE COMMENTS:

- a) Go to www.regulations.gov
- b) Enter keyword or ID as "group plan" and hit the "SEARCH" button
- c) Scroll down and choose "Group Health Plans and Health Insurance Issuers: Internal Claims and Appeals and External Review Processes" and click on "submit a comment" on right side
- d) Although the regulation is proposed by three agencies, you only need to submit once. The agencies will share the information.
- e) Paste in the comments below and edit them, or write your own, then "Submit."
- f) You are not required to fill out other fields, although it may be helpful to provide your affiliation. If you wish, you may be anonymous. Comments submitted are viewable online (after a processing period) by the general public.

SAMPLE COMMENT:

On behalf of [organization/myself], I wish to comment on the 10% threshold for translation and oral interpretation of private plan materials in the internal review and appeals contexts. I am... [add 1-2 sentences about yourself, organization or work with LEP individuals]. The 10% standard is far too high. A more appropriate standard would be "5% of the plan's population or 500 persons in plan's service area" for large group plans, and 25% of population for small plans. Oral interpretation should be provided in all languages at all times. {Consider adding information about the impact on your clients when they cannot get documents in a language that they understand.}

2. Forward this email to all of your contacts - other advocates, providers, interpreters, beneficiaries affected, and urge them to also file comments. The more comments filed, the more CMS/IRS/EBSA are likely to pay serious attention to this issue.

3. If you are bilingual or work with LEP populations, consider having them file comments in other languages as well as in English, for impact.

For more information about commenting and the proposed regulations, see

<http://www.regulations.gov/#!documentDetail;D=HHS-OS-2011-0019-0001>.

For more detailed information, see the comments that NHELP and NSCLC will be submitting, available very shortly at www.nsclc.org and www.healthlaw.org. Please feel free to submit detailed comments if you prefer.

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