



Education Fund of
Family Planning Advocates of NYS
17 Elk Street
Albany, NY 12207
Phone: (518) 436-8408
Fax: (518) 436-0004

To: CMS
From: Laura T. Darman, General Counsel, Family Planning Advocates of New York State
Date: July 20, 2011
Re: EBSA-2010-0019 “Group Health Plans and Health Insurance Issuers: Internal Claims and Appeals and External Review Processes”

The Diverse Communities Health Initiative (DCHI) is writing in strong opposition to the proposed regulation from the Department of Labor’s Employee Benefits Security Administration (EBSA) that would allow private group and individual plans to translate written materials and provide oral interpretation **into languages spoken by 10% of a county population**. DCHI is an initiative of the Education Fund of Family Planning Advocates of New York State. DCHI has had a successful history of promoting and strengthening culturally and linguistically appropriate services (CLAS) in health care, pushing for quality healthcare and advocating for, and with, communities of color to access quality services across New York State. DCHI has serious concerns about EBSA’s proposed regulation for the following reasons:

- The 10% threshold proposed is discriminatory as it will leave out many limited English proficient (LEP) individuals who often make up small pockets of residents in communities. In fact, in many areas of the country LEPS make up less than 1-3% of the population-far less than the 10% proposed by EBSA. Were the 10% threshold to be adopted it means that approximately 3 million LEP Medicare enrollees would not get translated materials from their plans. Every individual deserves access to quality health care services, so it makes sense to set a regulatory threshold that will ensure the maximum number of LEPs can be served in a Medicare insurance plan’s service area. In New York State, hospitals are required to provide translation services for language spoken by 1% of the population or more.
- A 10% threshold is a dangerous precedent to set for translation services in federal regulations. Given EBSA’s broad regulatory oversight this proposed 10% standard must be rejected as it could set a threshold that would erode existing and future protections in the health care arena.
- Any increased costs associated with providing translated materials would be offset by the decrease in health care costs for LEPs. An individual who can understand

instructions for care from a provider is more likely to trust their provider and follow treatment regimens. This leads to effective patient follow up and improved health outcomes for LEP patients.

- Social justice principles dictate that every individual deserves access to quality health care. Setting arbitrary thresholds that serve certain percentages of the population is contrary to the concept of social justice.

In conclusion, DCHI recommends rejection of the 10% threshold proposed by EBSA. In the alternative, DCHI strongly encourages EBSA to follow New York State's lead and require private group and individual plans to provide translated materials into languages spoken by 1% of the population in the plan's service area.