

July 25, 2011

Assistant Secretary Phyllis C. Borzi
U.S. Department of Labor
200 Constitution Ave, NW
Suite S-2524
Washington, DC 20210

RE: RIN 1210-AB45

Dear Assistant Secretary Borzi:

The National Family Planning & Reproductive Health Association (NFPRHA) submits these comments to the proposed rule from the Department of Health and Human Services, “Group Plans and Health Insurance Issuers, Internal Claims and Appeals and External Review Processes.” NFPRHA is a national membership organization representing publicly supported family planning providers throughout the country, serving primarily the poor and low-income. Our systems offer a range of preventive health services including education and counseling about sexual health; breast and pelvic examinations; breast and cervical cancer screening according to nationally recognized standards of care; STD and HIV prevention education, counseling, testing and referral; and pregnancy diagnosis and counseling.

Each year, publicly supported family planning services help women to prevent 1.9 million unplanned pregnancies, which would have resulted in 860,000 unintended births and 810,000 abortions.¹ Medicaid is the major source of funding for family planning in the United States, accounting for 71 percent of all family planning dollars spent in the U.S. in 2006, up from 20 percent in 1980.² Medicaid’s role in providing health care to the poor and low-income has only grown during the recession, and will expand significantly further in the planned expansion of full-benefit Medicaid to individuals with incomes up to 133% of the federal poverty level in 2014.

As you know, many Title X clients experience language access difficulties. Fourteen percent of Title X users are described as limited English proficient (LEP). Since 2005, the number of LEP individuals receiving Title X services has grown by 26%, from 557,034 in 2005 to 699,590 in 2009.³ The Title X program recognizes the importance of ensuring that LEP women and men have access to these vital services and requires that all Title X grantees to provide language assistance services to LEP individuals.

¹ Family Planning Annual Report. Available online:
http://www.hhs.gov/opa/familyplanning/toolsdocs/fpar_2009_national_summary.pdfhttp://www.hhs.gov/opa/familyplanning/toolsdocs/fpar_2009_national_summary.pdf.

² Family Planning Annual Report.

³ Family Planning Annual Report.

As the Affordable Care Act is implemented it is imperative that we protect LEP individuals' access to services regardless of payer source. Family planning providers will continue to provide care for many LEPs who may now have coverage through Medicaid or commercial plans operating through state based exchanges and it is important that all materials available allow LEP individuals to make the best decisions for their care.

Unfortunately, the proposed rule sets the threshold for determining whether translation of vital documents at 10% of county population for group health plans. The new proposed standard fails to recognize the needs of the approximately 12 million LEP 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 10% standard. A more appropriate standard would be 5% of the plan's population or 500 persons in a plan's service area for large group plans, and 25% of population for small plans. Under the proposed rule, only 172 counties (out of 3,143 in the U.S.) will meet the 10% county population threshold for Spanish, the second most common language in the United States. The population threshold in the proposed rule is so high that only 177 counties would require translated materials for any language. The proposed regulations also set a new precedent for oral translation and require oral interpretation only in the languages that meet the 10% threshold.

In any health care delivery setting, it is paramount for patients to receive as much information as possible about their health care decisions and to do so in a culturally responsive manner. This care must include linguistically appropriate materials and services, from the explanation of coverage to informed consent forms.

NFPHRA strongly urges you to reduce the population threshold for LEP patients so that all patients seeking care in America can have access to the health care coverage they need.

Sincerely,



Clare Coleman
President & CEO
National Family Planning & Reproductive Health Association