

Office of Health Plan Standards and Compliance Assistance  
Employee Benefits Security Administration  
Room N-5653  
US Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210  
Attention: RIN 1210-AB45

July 25, 2011

**Re: Group Health Plan and Health Insurance Issuers: Internal Claims and Appeals and External Review Processes [RIN 1210-AB45]**

Dear Sir or Madam:

The New York Lawyers for the Public Interest submits the following comments on the proposed 10% threshold for translation and oral interpretation for private health insurance plan materials in the internal review and appeals contexts. We are a non-profit organization dedicated to increasing access to quality health care, reducing environmental harms in low-income communities of color and advancing the civil rights of people with disabilities through litigation, policy and advocacy initiatives. Our Health Justice Program is a leader in New York State on issues related to language access in the health care setting. Most recently our lobbying efforts resulted in the passage of the Language Access and Pharmacies Act in the New York City Council, which requires pharmacy chains in New York City to provide translation in the six most common foreign languages and oral interpretation in all languages for all limited English proficiency (LEP) patients.<sup>1</sup>

As a staunch proponent of increasing language access services for LEP patients within the healthcare arena, we oppose the proposal that 10% of a county's population that is only literate in a particular non-English language serve as the threshold for determining whether written translation of vital documents is required for group health plans. This threshold is set far too high and we recommend that the Centers for Medicare & Medicaid Services (CMS), the Internal Revenue Service (IRS) and the Department of Labor's Employee Benefits Security Administration (EBSA) adopt the original threshold of 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.

---

<sup>1</sup> Language Access in Pharmacies Act, 20 N.Y.C. ADMIN. CODE §620(2009).

Similarly, the 10% threshold for translation of vital documents for individual plans should also be lowered to 5 percent.

The 10% threshold is unnecessarily high and will exclude the majority of the 23 million limited English proficiency persons residing in the U.S. from effectively accessing and using the internal reviews and appeals process within their health insurance plans. Under these new proposed standards, nationwide only 255 counties, 78 of which are located in Puerto Rico, would be required to provide translation services out of 3,143 counties in the United States. The proposed threshold of 10% would also have the affect of excluding Spanish speakers as only 172 of the 3,143 counties in the US meet the 10% county population threshold.

In New York, only three counties meet this threshold: New York, Bronx and Queens,<sup>2</sup> despite the fact that almost 2.5 million persons with limited English proficiency reside in New York State based on U.S. Census data.<sup>3</sup> Additionally, all three of these counties only meet the threshold for Spanish and no other languages. The proposed regulations establishing a 10% threshold will cause the exclusion of thousands and even millions of LEP persons from translations services in New York alone. Without proper translation services, people with limited English proficiency will be unable to navigate through the often complex appeals and review processes within health plans and would not be able to obtain quality healthcare. We urge you to lower the threshold to 5% of the plan's population or 500 persons in plan's service area for large group plans; 25% of population for small plans; and 5% for individual plans. Doing so will ensure that persons with limited English proficiency can have access to vital information concerning their healthcare in their primary language.

Also the regulations should be amended to require the provision of oral interpretation in all languages at all times, and not just in the languages that meet the 10% threshold. Oral interpretation services are especially vital for persons with limited English proficiency as they are necessary to ensure that these persons have full comprehension of their healthcare options and can make informed decisions. Without oral interpretation services, LEP individuals will be deprived of access to quality healthcare and will be denied their civil rights.

Furthermore, provision of oral interpretation services is not difficult for health care providers or health plans to do. Numerous telephone-based interpretation services as well as other technological innovations make it possible for health care providers to easily, quickly and inexpensively access interpreters in hundreds of languages. For example, the Blue Shield of California Life & Health Insurance Company provides a toll free number that gives access to

---

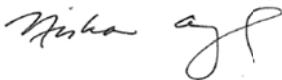
<sup>2</sup> Group Health Plans and Health Insurance Issuers: Rules Relating to Internal Claims and Appeals and External Review Processes, 76 Fed. Reg. 37,208, 37,221(proposed June 24, 2011)(to be codified as 29 C.F.R. 2560.503-1).

<sup>3</sup> See U.S. CENSUS BUREAU, PERCENTAGE OF PERSONS 5 YEARS AND OLDER WHO SPEAK ENGLISH LESS THAN "VERY WELL" IN 2009 (2009). See also U.S. CENSUS BUREAU, LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE POPULATION 5 YEARS AND OVER FOR NEW YORK (2009).

free interpretation services for subscribers with limited English proficiency. New York State's regulations governing language access in hospitals require oral interpretation to be provided for all languages to ensure patient health and safety.<sup>4</sup> The same is true for chain pharmacies covered by the New York City Language Access in Pharmacies Act.<sup>5</sup> There is no reason why private health insurance plans cannot be expected to provide the same level and quality of service to limited English proficient beneficiaries.

The proposed regulations represent a significant step backwards from the regulations originally promulgated in June 2010 and will drastically restrict existing standards for oral interpretation and written translation in unprecedented ways. For the aforementioned reasons, we urge you to reject these proposed regulations and amend them accordingly. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nisha agf".

Nisha Agarwal  
Director, Health Justice Program

---

<sup>4</sup> New York State Patients' Bill of Rights, 10 N. Y. C. R.R. § 405.7(a)(7).

<sup>5</sup> Language Access in Pharmacies Act, 20 N.Y.C. ADMIN. CODE §§ 621, 622 (2009).