Disability Rights
Education & Defense Fund DREDF

July 25, 2011

The Honorable Donald M. Berwick
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW.
Washington, DC 20201

Re: Group Health Plans and Health Insurance Issuers: Internal Claims and Appeals and External Review Processes (Document ID EBSA-2010-0019-0002)
File Code CMS-9993-IFC

Dear Administrator Berwick:

The Disability Rights Education and Defense Fund (DREDF) is a national law and policy center that advances the civil and human rights of people with disabilities through legal advocacy, training, education, and public policy and legislative development. We appreciate the opportunity to comment on the proposed regulations regarding Group Health Plans and Health Insurance Issuers: Rules Relating to Internal Claims and Appeals and External Review Processes, as well as the CMS, IRS and DOL's Employee Benefits Security Administration (EBSA) encouragement of, and engagement in, public dialogue concerning these important issues.

DREDF wishes to comment on the proposed regulations' 10% threshold for translation and oral interpretation of private plan materials in the internal review and appeals contexts. This 10% standard is far too high. A more appropriate threshold for large group plans would be 5% of the plan's population or 500 persons in the plan's service area; and 25% of population for small plans. Oral interpretation should be provided in all languages at all times, regardless of the plan's size, the number of participants in the plan, or the number of threshold languages spoken in a particular plan or geographic area. The proposed regulation's creation of such a high threshold requirement for oral interpretation in the health plan and health insurance context contradicts settled construction of Title VI of the Civil Rights Act of 1964, which has been incorporated by reference in Section 1557 of the ACA, as well as Executive Order 13166, published at 65 Fed. Reg. 50,121-22 (Aug. 16, 2000).

This proposed regulation will essentially limit translation to Spanish, as only six counties in the US have a population over 10% speaking another language. The new proposed standards fail to recognize the needs of approximately 12 million limited English

proficient individuals who are estimated to be affected. Under the proposed rules, only 177 counties out of well over 3000 counties in the U.S. would require translated materials, thus even Spanish speakers would be left out in most of the country. The effect of this is substandard healthcare for this sizeable population. It is ironic these individuals may be subject to marketing materials and calls from plans in their primary language, but will not have the right under the new rules to obtain understandable information about plan review and appeal procedures that are essential to the full exercise of their consumer and civil rights.

DREDF understands and supports the critical nature of effective communication in all aspects of healthcare, including providing American Sign Language (ASL) interpretation and video captions to individuals who are Deaf or hard of hearing, and materials in alternate formats such as Braille, large font print and audio-recording for those who are visually impaired. Access to information is the necessary first step in obtaining and maintaining optimal healthcare. To that end, we also strongly support the explicit inclusion in the proposed rule of a requirement for the identification ("tagging and tracking") of a plan member's oral/ASL, written language translation, and alternate format needs as a matter of compliance with Title VI and Section 504 of the Rehabilitation Act. This will be a significant step to ensuring effective and accurate communication of vital patient information ranging from medicine and self-care instruction to the review and appeal procedures that are the subject of the instant rules. DREDF recommends that CMS, IRS and DOL do outreach to, and seek input from the disability community on this and other mechanisms for assisting plans to consistently meet the communication needs of members throughout multiple systemic layers of health care administration and delivery.

Thank you for the opportunity to comment on these proposed rules.

Yours Truly,

Susan R. Henderson