



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

July 25, 2011

Dear Sir or Madam:

On behalf of Community Legal Services, I am commenting on the 10% threshold for oral interpretation and written translation of private plan materials in the Amendment to interim final regulations governing internal claims and appeals processes for group health plans and health insurance issuers offering group health insurance coverage, as published in 76 Fed. Reg. 37208 (June 24, 2011).

For over forty years, Community Legal Services (CLS) has helped low-income Philadelphia residents obtain equal access to justice by providing them with advice and representation in civil legal matters, advocating for their legal rights, and conducting community education about the legal issues that affect them. Since its inception, CLS has served well over a million individuals at what is often the most critical time of their lives. One CLS unit, the Language Access Project, is primarily concerned with advocacy on behalf of limited English proficient populations.

We strongly object to the standard for written translations of 10% of county population for both group health plans and individual plans. This standard is inappropriately and unacceptably high. A more reasonable and appropriate standard would be to require large group plans to provide translated materials when “5% of the plan’s population or 500 persons in a plan’s service area” speak a given non-English language. For small plans with less than 100 participants, we recommend that the threshold standard for written translations be when 25% of the plan’s population speaks a given language.

Given the expanding marketplace for insurance and growing linguistic diversity of potential health care consumers, this is not an onerous requirement. Businesses across the nation have determined that it is in their financial interest to market their products and materials to a wide array of linguistic communities. If health insurance issuers are going to offer their plans to individuals in these communities, the federal government must ensure that consumer protections exist to enable health plan participants to engage fully in the plan, communicate with plan personnel, and address denials, terminations, or other adverse decisions. In Philadelphia, we have seen aggressive health insurance marketing practices tailored to non-English-speaking communities. When members of these communities enroll, they have found themselves bewildered by written coverage, or non-coverage, decisions and other important notices communicated solely in English. Consumers can too easily miss deadlines and lose important

appeal rights, and therefore access to critical health care and treatment, when the insurer fails to provide written notice in a language that the consumer understands. The promise of access to affordable health care is unfulfilled if health care participants can't communicate with their health insurance provider.

Similarly, HHS, the IRS, and the DOL in these joint regulations must require that the health insurance plans and issuers provide oral interpretation in all languages at all times. Limiting the requirement to provide oral language services, especially for critical access points such as a telephone customer assistance hotline or the main member services line, to the same numerical threshold as for written communication is completely unacceptable. Health insurance plans and issuers must be required to provide oral language services in any language understood by a participant whenever the participant elects to contact the designated customer assistance contact point. Any numerical standard for oral language assistance defies reason when the plans and issuers are planning to offer coverage to even a single locality with limited or non-English speaking individuals and communities. Plans and issuers have ample opportunity to prepare to meet this requirement by hiring proficient bilingual staff and contracting with competent telephonic interpreter services.

Limited English Proficient plan participants must be able to have access to oral and written information about the health care coverage for which they are eligible.

Sincerely,

Beth Shapiro  
Senior Staff Attorney