



Legal Services of Eastern Missouri, Inc.

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July 25, 2011

Ellen Kuhn
Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Attention: CMS-9993-IFC2,
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850.

**Re: Proposed Regulations: Group Health Plans and Health Insurance
Issuers: Internal Claims and Appeals and External Review Processes**

Dear Ms. Kuhn:

We appreciate the opportunity to comment on the proposed regulations regarding group health plans and health insurance issuers. Legal Services of Eastern Missouri (LSEM) is a nonprofit organization that provides free legal assistance to low-income clients in twenty-one Missouri counties in the areas of consumer law, housing, health, public benefits, family law, immigration and education. Similarly, Legal Aid of Western Missouri (LAWMO) serves a forty-county area of Western Missouri providing free legal assistance to low-income clients. Assisting our clients in obtaining health benefits through the Missouri Medicaid program (called "MO HealthNet") is one of our key priorities. We also work with Limited English Proficiency (LEP) clients, who would be affected by the proposed regulations on translation and oral interpretation services in the context of internal review and appeals by group health plans.

First, the July 2011 Interim Final Rule (IFR) inappropriately changed the determination of thresholds for providing language access from the numbers of LEP enrollees in a plan to the number of LEP enrollees in a county. This change fails to recognize that county demographics may not be reflective of a plan's demographics because a plan may operate regionally or nationally or may market specifically to particular ethnic/cultural/language groups and thus have greater numbers of LEP enrollees than a given county in which the plan operates. We strongly believe that a plan must track data on its LEP enrollees and provide translated notices when thresholds are met for plan enrollees.

Next, we are extremely concerned about the proposed 10 percent threshold for translation and oral interpretation of private health plan materials in the internal review and appeals context. These proposed standards fail to recognize the needs of approximately 12

million LEP individuals who could be affected by these proposed changes. Many of these individuals will not be able to access plan review and appeals in their languages. For example, Spanish speakers would be negatively affected because only 172 counties (out of 3,143 counties) even meet the 10 percent threshold. In fact, as recognized by the IFR, only 6 counties in the entire country meet the threshold for any language other than Spanish.

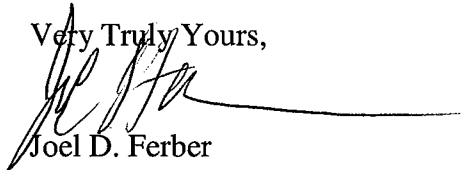
This threshold is too high and should be lowered to “5% of the plan’s population or 500 persons in the plan’s service area” for large group plans or 25% of the plan’s population for small plans. The 5% figure is used in both the Department of Justice/Health and Human Services LEP Guidance as well as recently revised regulations from the Centers for Medicare & Medicaid Services governing marketing by Medicare Part C & D plans.

The current IFR only requires plans to provide language services when the thresholds are met. This does not meet the letter or spirit of § 1001 or § 1557 since this would leave millions of LEP individuals without any assistance from their plans when trying to understand their legal rights and whether to file an appeal. The statutory requirement to provide culturally and linguistically appropriate notices is meaningless if plans can ignore the most basic communication needs of LEP individuals. It has been a longstanding recognition under Title VI of the Civil Rights Act of 1964, reiterated with the enactment of the nondiscrimination provision in Section 1557 of the Affordable Care Act, that oral communication with LEP enrollees must be provided to every individual, regardless of whether thresholds to provide written materials are met. Therefore, oral interpretation should be provided in all languages at all times. This policy would better serve the LEP individuals who would be negatively affected by these proposed threshold amounts.

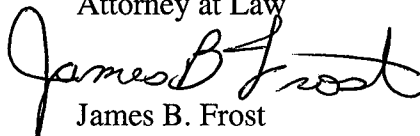
Conclusion

Thank you for your time and consideration of these comments.

Very Truly Yours,

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Joel D. Ferber
Attorney at Law

A handwritten signature in black ink, appearing to read "James B. Frost", with a long horizontal line extending to the right.

James B. Frost
Attorney at Law

A handwritten signature in black ink, appearing to read "Jennifer Wieman", with a long horizontal line extending to the right.

Jennifer Wieman
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