

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

December 27, 2016

William M. Parham, III, Director
Paperwork Reduction Staff
Office of Strategic Operations and Regulatory Affairs
Centers for Medicare and Medicaid Services
7500 Security Boulevard
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Sent electronically via email to: regulations.gov

Re: CMS-2016-0189 Medication Therapy Management

Justice in Aging appreciates the opportunity to comment on the proposed form CMS-10396 which is designed to be used by Medicare Part C and Part D plans in connection with Medication Therapy Management.

Justice in Aging is an advocacy organization with the mission of improving the lives of low income older adults. Justice in Aging uses the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Medicare and Medicaid, with a focus on the needs of low-income beneficiaries, including those dually eligible for both programs.

Justice in Aging appreciates the work of CMS to improve its consumer-facing documents, including this form. We particularly appreciate that CMS undertook beneficiary testing of the form.

Our comments concern the accessibility and usefulness of the form to beneficiaries who have limited English proficiency (LEP). Currently it is only available in Spanish. We request that CMS prepare models of the form in the 15 most common languages in the United States. If models cannot immediately be developed in all these languages, we ask that CMS set up a schedule to create the translated documents in a reasonable time. We also request that CMS clarify for plans that this form is a “significant” document for purposes of Section 1557 of the ACA and thus that multi-language inserts should always accompany the letter.

Translating the form assists plans in meeting their obligations under Section 1557 of the ACA and Title VI of the Civil Rights Act of 1964, including particularly their obligations under 42 C.F.R. 92.201.

Medicare Advantage plans, as recipients of federal funds, have an obligation under both Title VI of the Civil Rights Act of 1964 and Section 1557 of the Affordable Care Act to ensure that individuals who have limited proficiency in English do not experience discrimination in receipt of health care services.

Providing adequate language assistance is a key element of plan obligations. When promulgating regulations implementing Section 1557, the HHS Office of Civil Rights took a contextualized approach in discussing when those obligations should be met by translating documents and when oral translation is sufficient. In that discussion the agency noted that documents that an individual may need to refer back

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to repeatedly are particularly appropriate for translation.¹ The MTM form fits this description, as it is meant to be a long lasting document that the individual will use over time to keep track of changes in medications and dosages.

Further, the MTM form is meant to memorialize a conversation that, if a health or prescription drug plan is fulfilling its language access obligations, should have been conducted in the language in which an individual is most fluent. Memorializing the conversation in the language in which it was conducted is particularly appropriate.

Translating the MTM form is consistent with CMS’s efforts to address health disparities. CMS has well documented health disparities for different populations and has prioritized targeting such disparities, including specifically improving communication and language access for individuals with limited English proficiency and persons with disabilities.² Ensuring that the MTM form is used and understood by LEP plan members in medication therapy management is one step toward those goals.

It is an efficient use of resources for CME to create translations of the MTM form. There are practical considerations that argue for a set of CMS translations. The MTM form is a document that CMS plans to revise infrequently. The current proposal is to keep the same document for at least three years. Thus the translation can be used over a long period of time. Also, creating a single translated model document for all plans to use is a more efficient approach than requiring each plan to develop a document separately

CMS should instruct plans to include multi-language inserts and beneficiary rights statements with MTM letters. The 1557 regulations promulgated by HHS require that covered entities include multi-language inserts and rights statements with all “significant communications.” HHS stressed that it means to interpret “significant communications” broadly and that such documents include “not only documents intended for the public, such as outreach, education, and marketing materials, but also written notices requiring a response from an individual and written notices to an individual, such as those pertaining to rights or benefits.”³

CMS, which closely regulates Part D and Part C plans and the many communications that those plans send to their enrollees, should provide plans with explicit guidance to help the plans achieve compliance with Title VI and Section 1557 compliance. To date, CMS has generally told plans that they must comply with 1557, but has refrained from laying out details with any specificity. We believe strongly that the agency, which itself is subject to Section 1557 requirements, should do more to ensure that beneficiaries receive the full protection of these statutes and regulations. We urge CMS to assist those entities that it regulates to understand compliance obligations by telling plans exactly what documents should include multi-language inserts and beneficiary rights statements. The MTM form should be among the documents listed.

¹ 81 Fed. Reg. 31376, 31416 (May 18, 2016).

² See, e.g., CMS Equity Plan for Medicare, available at <https://www.cms.gov/About-CMS/Agency-Information/OMH/equity-initiatives/equity-plan.html>

³ 81 Fed. Reg. at 31402.

Thank you again for the opportunity to comment. If you need additional information, please do not hesitate to contact me at JGoldberg@justiceinaging.org.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Goldberg". The signature is fluid and cursive, with the first letter of each word being capitalized and larger than the others.

Jennifer Goldberg
Directing Attorney
Justice in Aging