

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

August 9, 2019

By electronic delivery to OIRA_submission@omb.eop.gov

OMB, Office of Information and Regulatory Affairs,
Attention: CMS Desk Officer

Re: Form Number: CMS–10003 (OMB control number: 0938–0829) -- Notice of Denial of Medical Coverage (or Payment) (NDMCP)

Justice in Aging appreciates the opportunity to respond to the above-referenced request for comments on the draft Notice of Denial of Medical Coverage (or Payment) (NDMCP).

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use 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 and populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Our comments are focused primarily on the required statements at the end of the NDMCP and the accompanying instruction sheet for plans.

Heading: Get help and more information:

Third bullet: For the referral to the Medicare Rights Center, we suggest listing an all-numerical phone number rather than mixing numbers and letters. Doing so would be consistent with the format of other phone numbers on the list, and, in our experience, is easier for beneficiaries.

Last bullet: The instruction document tells plans to list state and local aging and disability resources “where appropriate.” Because every state has, at the very least, a SHIP program and an Administration on Aging-funded program, we ask that the current parenthetical on the NDMCP be amended to state “Insert instructions . . .” rather than “May state instructions . . .” and that the directions to plans make it clear that in all cases, the plan must list appropriate contacts.

Draft parenthetical: {May insert instructions for how enrollees can receive this notice in an alternate language or format from the plan.}

We ask that plans be instructed more clearly that they must, not may, include instructions for how enrollees can receive the NDMCP in other formats and, if any language meets the 5% threshold, in that alternate language. The disclaimer that had been required in the 2019 Medicare Communications and Marketing Guidance (MCMG), www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/Downloads/CY2019-Medicare-Communications-and-Marketing-Guidelines_Updated-090518.pdf, at Appendix 2, No. 3, which alerts beneficiaries to the availability of language assistance, would be appropriate for the NDMCP. Additionally, if the plan is providing any Medicaid services to its members, the disclaimer and translations of the NDMCP into alternate

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languages should also comply with any other language assistance or translation requirements that the state Medicaid program imposes. The instruction sheet should highlight these duties for plans.

Heading: CMS does not discriminate in its programs and activities. To request this publication in an alternative format, please call 1-800-MEDICARE or email: AltFormat@cms.hhs.gov.

Because these notices are sent by plans to members and include particularized information that is unique to the member's situation, we question whether this statement is accurate or helpful. If an individual were to call 1-800-MEDICARE or make the email contact, would CMS actually be of assistance or would the agency just refer the individual to the plan? Are there scripts for CSRs to handle these issues?

Instruction sheet, third paragraph: When the Spanish-language version of this notice is used, the Medicare health plan must make insertions on the notice in Spanish.

Change to "When a non-English language version of this notice is used, the Medicare health plan must make insertions on the notice in the non-English language." We propose this change because, although CMS is providing a model notice in Spanish, plans are required to provide the notice in any 5% threshold language and, if the plan provides Medicaid services, it may have state Medicaid obligations to translate the notice into additional languages. In all cases, the whole notice, including the beneficiary-specific information, must be in the non-English language.

Additional Issue: Review of Spanish language version: While we understand the decision of CMS to wait to create a Spanish translation of the notice until the English version is finalized, we do ask that the agency make the Spanish version available for some level of stakeholder review. Even if not done through a formal Federal Register process, getting a review by stakeholders who work with Spanish-speaking beneficiaries would bring value and help ensure that the Spanish-language notice can be clearly understood.

Thank you for considering our comments. If any questions arise concerning this submission, please contact Georgia Burke at gburke@justiceinaging.org.

Sincerely,



Jennifer Goldberg
Deputy Director