

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

December 17, 2019

By electronic delivery to www.regulations.gov

CMS, Office of Strategic Operations and Regulatory Affairs
Division of Regulations Development
Attention: Document Identifier/OMB Control Number CMS-10716
Room C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Re: CMS-10716 Applicable Integrated Plan Coverage Decision Letter

Justice in Aging appreciates the opportunity to provide comments on the above-referenced document.

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.

We appreciate the efforts of CMS to create a letter that is clear and easy for a beneficiary to understand. It is a significant improvement from previous versions.

Our comments address both the instructions and the decision letter itself.

Instructions

Non-English decision letter: We appreciate that the instructions tell plans that they should conduct routine consumer testing of health plan language with LEP individuals and modify language as needed based on testing results. We believe this is a very important requirement and ask that CMS follow up with plans to ensure that they in fact follow these instructions. We also ask that CMS use the results of consumer testing to develop and modify best practices for all participating plans.

Plain language: The dual emphasis in the instructions on plain language and specificity is critical. We hear continuing frustrations from advocates and beneficiaries about vague decision letters that do not clearly provide information needed to understand why a service is being denied. We ask that CMS provide training and technical assistance to plans with many specific examples to help ensure that plans in fact use clear and appropriate language. As with notices in non-English language, there is much room

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for developing and sharing best practices in terminology and usage. We would like to see routine consumer testing of health plan language in English as well as the testing in non-English languages discussed above.

Instructions for third paragraph of the letter: We recognize that there is a difficult balance between providing too much confusing information about the intersection of Medicare and Medicaid coverage and providing enough information for a beneficiary to make an appeal. We also appreciate the value of instructions that are less complex than [previous instructions for integrated denial notices](#). We do think, however, that there can be some value in instructing plans to be more explicit about sources of coverage. For example, if a service is not covered by Medicare at all, to say. “XX is not a service covered by Medicare so we reviewed your request under Medicaid rules [or the state name for Medicaid] and denied it because . . .” Or “XX can be covered by Medicare or Medicaid. We denied your request under Medicare rules because . . . We also reviewed your request under Medicaid rules and denied it because . . .” This level of specificity would be helpful for beneficiaries and their advocates to understand the grounds for denial and to determine issues for appeal.

Additional instructions: We ask that, in the instructions, CMS encourage plans to send translated decision letters to members whom they know to be limited English proficient (LEP) even in situations where translation is not required. We suggest that the instructions also encourage plans, in situations where a plan is sending an English-language decision letter to a member whom the plan knows to be LEP, to reach out to the member to ensure that the member understands the content of the decision letter and its importance.

Decision Letter

Spanish language translation: We note that there is no Spanish-language decision letter. Generally Spanish-language versions are provided by CMS. See, for example, the [Notice of Denial of Medical Prescription Drug Coverage](#) issued for comment on November 18, 2019 (CMS-10146). It is particularly important that a Spanish language version be available since the [Medicare Managed Care Communications and Marketing Guidelines](#) at 100.4 (p. 36) specifically identify Coverage/Organizational Determination, Discharge, Appeals and Grievance Notices as subject to the 5% translation threshold and it is likely that Spanish will meet that threshold in many integrated plans. We urge CMS to also provide translations of the decision letter in other languages as well in order to facilitate and encourage understandable communications to limited-English proficient beneficiaries who speak languages that do not meet the 5% threshold.

Evidence of Coverage: The last sentence in the “How to appeal” section references the plan Evidence of Coverage. If the plan uses a different name for the document, e.g., Member Handbook, that name should be used to prevent confusion.

Applicability to other appeal notices: We hope that the improvements in this notice and instructions, particularly the very specific instructions on plain language, will be incorporated in other appeal notice models within CMS. Achieving clarity and simplicity in notices is very much an iterative process. We ask that the valuable changes in this iteration be shared within the agency.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Goldberg". The signature is fluid and cursive, with the first name "Jennifer" being more legible than the last name "Goldberg".

Jennifer Goldberg
Deputy Director