

July 25, 2011

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9993-IFC2  
P.O. Box 8010  
Baltimore, MD 21244-8010

**Comments of The Greenlining Institute on the revised joint Interim Regulation for Internal Revenue Service (IRS), Department of the Treasury, Employee Benefits Security Administration, Department of Labor (DOL), Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS) on the internal claims and appeals and external review processes for private group health file code CMS-9993-IFC2**

On behalf of The Greenlining Institute, we wish to comment on the 10% threshold for translation and oral interpretation of private health plan materials in the internal review and appeals context. The Greenlining Institute urges the Internal Revenue Service, Department of the Treasury, Employee Benefits Security Administration, Department of Labor, Centers for Medicare & Medicaid Services, and Department of Health and Human Services for stronger language requirement standards.

**Consumers will be harmed without stronger language requirement standards as required in Title VI of the Civil Rights Act**

As health plan and insurance members, enrollees pay premiums and receive marketing materials and phone calls in their primary language. Under these proposed regulations, enrollees would not be able to access plan review and appeals materials to ensure they receive the care they need. The 10% standard is far too high and fails to recognize the needs of the 12 million residents in the United States who do not speak English well, over half of whom reside in California. A more appropriate standard would be 5% of the plan's population or 500 persons in plan's service area for large group plans. Oral interpretation should be provided in all languages at all times as required by Title VI of the Civil Rights Act.

**The Greenlining Institute Urges the Centers for Medicaid & Medicare Services, Internal Revenue Service, and Department of Labor to immediately revise these joint Interim Regulations**

The Greenlining Institute requests that these proposed regulations take into account the needs of all communities and that specifically they should:

- Provide oral interpretation in all languages at all times under Title VI of the Civil Rights Act of 1964, reiterated in Section 1557 of the Affordable Care Act, and by Executive Order published at 65 Fed. Reg. 50, 121-22 (Aug. 16, 2000).
- Require the identification ("tagging and tracking") of a member's spoken and written language need as required by Title VI Office of Civil Rights in order to ensure effective communication about medical instructions and vital patient information critical to the provision of quality care.

- Reject bogus claims by health plans that these regulations will be too costly by using California's language access law, SB 853. SB 853 holds health plans accountable for language services – requiring health plans and health insurers to provide their enrollees with interpreter services, translated materials, and to collect data on race, ethnicity, and language to address health inequities. Under SB 853 the languages that become the top threshold languages are determined by a needs assessment of the plan's enrollees. These federal regulations apply to a much narrower set of documents – notices about appeals and denials of medical coverage – than those covered by SB 853, and therefore health plans should not have an issue adhering to the proposed rules due to cost. In addition, the costs health plans are citing as prohibitive are a onetime cost to translate necessary documents. These documents will be useful for multiple years.

Without these needed requirements the nation's most vulnerable communities will be drastically hurt since they will not have access to information vital to their wellbeing if they do not fall within the region that has the information available in their language.

### **Conclusion**

It is imperative that the proposed interim regulations reflect the needs of all communities in order to protect the most vulnerable communities from potential harm due to lack of access to linguistic competent information, both translated and oral interpretation of private health plan materials in the internal review and appeals context.

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Respectfully submitted,

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