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Office of Management and Budget (OMB)

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Centers for Medicare and Medicaid Services (CMS)

Date: December 12, 2024

Subject: Non-Substantive Change Request – Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered and Grandfathered Group Health Plans and Issuers and Individual Market Issuers (OMB Control Number 0938-1099/CMS-10338)

This memo requests approval of a non-substantive change to the approved information collection under Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered and Grandfathered Group Health Plans and Issuers and Individual Market Issuers.

BACKGROUND

Sections 2715 and 2719 of the Public Health Service (PHS) Act requires group health plans and health insurance issuers offering group or individual health insurance coverage (plans and issuers) to provide the summary of benefits and coverage (SBC) and internal claims and appeals and external review notices in a culturally and linguistically appropriate manner. To meet this requirement, regulations implementing section 2715 and 2719 of the PHS Act specify that plans and issuers must provide the following in any applicable non-English language: (1) oral language services; (2) translated notices and SBCs upon request; and (3) taglines on notices and SBCs indicating how to access the language services provided by the plan or issuer.¹ These regulations specify that a non-English language is an applicable non-English language, with respect to an address in any United States county to which a notice is sent, if ten percent or more of the population residing in the county is literate only in the same non-English language, as determined in guidance published by the Secretary of Health and Human Services.

The Departments of Labor, Health and Human Services, and the Treasury (the Departments) previously published guidance identifying Spanish, Chinese, Tagalog, and Navajo as applicable non-English languages in which plans and issuers must provide oral language services, translated notices, and taglines on notices, if sent to certain U.S. counties.² To help plans and issuers meet

¹ 26 CFR 54.9815-2715(a)(5), 29 CFR 2590.715-2715(a)(5), and 45 CFR 147.200(a)(5); 26 CFR 54.9815-2719(e), 29 CFR 2590.715-2719(e), and 45 CFR 147.136(e).

² CLAS County Data (January 2016), available at https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/CLAS-County-Data_Jan-2016-update-FINAL.pdf.

this requirement, the Departments previously included model notices for adverse benefit determinations, external review decisions, and internal adverse benefit determinations in the internal claims and appeals and external review PRA package. The Adverse Benefit Determination Model Notice and Final Internal Adverse Benefit Determination Model Notice include taglines in Spanish, Chinese, Tagalog, and Navajo. The Final External Review Decision Model Notice does not include taglines.

In November 2023, the Departments published updated guidance identifying four additional languages (Pennsylvania Dutch, Samoan, Carolinian, and Chamorro) that meet the ten percent threshold based on recent U.S. Census data.³ As such, plans and issuers must provide oral language services, translated notices upon request, and taglines on notices in those four additional languages, if sent to certain U.S. counties. This guidance is applicable beginning with plan years (in the individual market, policy years) beginning on or after January 1, 2025.⁴

OVERVIEW OF REQUESTED CHANGES

CMS is requesting non-substantive change to the Internal Claims and Appeals and External Review PRA package to update the taglines in accordance with recent guidance:

1. Incorporate four additional taglines in Pennsylvania Dutch, Samoan, Carolinian, and Chamorro into the following existing model notices:
 - Adverse Benefit Determination Model Notice, and
 - Final Internal Adverse Benefit Determination Model Notice.
2. Incorporate taglines in all eight required languages (Spanish, Chinese, Tagalog, Navajo, Pennsylvania Dutch, Samoan, Carolinian, and Chamorro) in the Final External Review Decision Model Notice.

These changes do not affect any of the burden descriptions or estimates in the existing Internal Claims and Appeals and External Review PRA package because the calculations in the current package account for plan and issuer compliance with the requirement to provide oral language services, translated notices upon request, and taglines on notices in accordance with regulations implementing section 2719 of the ACA. Additionally, we expect any cost incurred by plans and issuers to comply with those requirements with respect to the four additional languages would be de minimis because CMS is providing model internal claims and appeals and external review notices that include taglines in all 8 applicable non-English languages.

We believe these non-substantive changes will empower individuals with limited English proficiency (LEP) to understand and exercise their rights to appeal adverse benefit determinations and to participate in the external review process. By doing so, they may be able to avoid unnecessary medical expenses and access essential medical treatments, medications, or

³ See FAQs about Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 63 (November 28, 2023), available at <https://www.cms.gov/files/document/faqs-part-63.pdf>.

⁴ County Data for Culturally and Linguistically Appropriate Services (CLAS County Data), November 2023, available at <https://www.cms.gov/files/document/clas-county-data-2023.pdf>

procedures that may be critical to their health. We expect this will improve health outcomes and advance health equity.

Time Sensitivities

Plans and issuers must begin providing revised internal claims and appeals and external review notices starting with plan years (in the individual market, policy years) beginning on or after January 1, 2025. Therefore, we request that OMB approve this change as soon as possible to allow sufficient time for plans and issuers to update their notices in accordance with the updated guidance.