



September 7, 2018

Commissioner Mike Conway
Colorado Division of Insurance
1560 Broadway, Ste. 850
Denver, CO 80202

RE: Proposed Rule 4-2-17: Prompt Investigation of Health Claims Involving Utilization Review and Denial of Benefits and Rules Related to Internal Claims and Appeals Processes.

Dear Commissioner Conway:

On behalf of the American Council of Life Insurers (ACLI¹), America's Health Insurance Plans (AHIP²), and the National Association of Dental Plans (NADP³) thank you for the opportunity to provide comments on proposed rule 4-2-17: Prompt Investigation of Health Claims Involving Utilization Review and Denial of Benefits and Rules Related to Internal Claims and Appeals Processes.

We have concerns about multiple provisions of the proposed rule, which would amend existing utilization review requirements by making changes to the minimum standards and processes for handling claims appeals.

First, sections 11 and 12 of the rule would require carriers to create additional procedures for claim review. These sections would require carriers to:

¹ The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. Learn more at www.acli.com.

² America's Health Insurance Plans (AHIP) is the national association whose members provide coverage for health care and related services. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access and well-being for consumers.

³ The National Association of Dental Plans (NADP) is the largest non-profit trade association focused exclusively on the dental benefits industry. NADP's members provide dental HMO, dental PPO, dental Indemnity and discount dental products to more than 195 million Americans with dental benefits. Our members include the entire spectrum of dental carriers: companies that provide both medical and dental coverage, companies that provide only dental coverage, major national carriers, regional, and single state companies, as well as companies organized as non-profit plans.

- a) provide covered persons new or additional evidence used by the carrier in connection with the claim sufficiently in advance of the date on which the notice of the final adverse benefit determination (ABD) is required; and
- b) provide covered persons reasonable opportunity to respond if the ABD is based on a new or additional rationale.

Our understanding is that the Division interprets these requirements as applying only where a carrier issues a claim denial based on evidence distinct from the evidence used for the initial adverse determination. Because this language has led to some confusion among our members, we propose to adjust the language of sections 11(A)(5) and 12(G)(5) of the proposed rule for clarity:

1. Full and fair review

- a. Before the carrier issues a final internal adverse benefit determination based on a rationale that is new or additional to the rationale relied upon in the initial adverse determination, the carrier shall provide the covered person, free of charge:
 - i. Any new or additional evidence considered, relied upon, or generated by the carrier in connection with the claim. Such evidence shall be provided as soon as possible and sufficiently in advance of the date on which the notice of the final internal adverse benefit determination is required to be provided pursuant to section 11.E. to give the covered person a reasonable opportunity to respond prior to that date.
 - ii. The new or additional rationale. The new or additional rationale shall be provided as soon as possible and sufficiently in advance of the date on which the notice of the final internal adverse benefit determination is required to be provided pursuant to section 11.E. to give the covered person a reasonable opportunity to respond prior to that date.

Second, Section 6(A) would require that in the English version of all notices, a statement must be displayed in any applicable non-English language indicating how to access the language services provided by the carrier, and that the carrier shall, upon request, provide a notice in any applicable non-English language (defined as a non-English language that 10% or more of the population residing in the county is literate in), and allow the covered person the option of electing to receive all subsequent notices in the requested applicable non-English language.

Specifically, we are concerned with subsection A(2), which will require carriers to provide the option of electing to receive all subsequent notices in the requested applicable non-English language. We understand many of the elements of the proposed regulation may be an effort to comply with existing federal regulations promulgated as part of the Affordable Care Act, namely 45 CFR 147.136 and 29 CFR 2590.715-2719. It is important to note that these federal regulations do not currently apply to stand-alone dental plans (SADPs), in keeping with longstanding acknowledgement of these plans as excepted benefits. Also, the new provision in subsection

A(2) goes further than the federal regulation, which requires health carriers to provide individual notices in non-English languages upon request.

Dental plan carriers offer language assistance call centers, which have been used with great success by enrollees, and provide assistance with filing claims and appeals. We agree that carriers should offer a notice to their enrollees regarding the availability of language assistance call centers. Additional interpretation elements, such as translated documents, are not warranted for SADPs, and through the course of an appeals process can add significant cost, which must be considered in light of the small and voluntary nature of dental premiums.

We appreciate the opportunity to share our views, and we are available to answer questions or provide additional information. Thank you again for your attention to this important matter.

Sincerely,



James D. Hall
Regional Vice President, State Relations
American Council of Life Insurers



Sara Orange
Regional Director, State Affairs
America's Health Insurance Plans



Eme Augustini
Director of Government Relations
National Association of Dental Plans