State of Rhode Island and Providence Plantations
OFFICE OF THE HEALTH INSURANCE COMMISSIONER
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OFFICE OF THE HEALTH INSURANCE COMMISSIONER REGULATION 5 STANDARDS FOR READABILITY OF HEALTH INSURANCE FORMS

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Preamble

Although the health insurance coverage crisis attracts significant attention, the health illiteracy crisis attracts much less public interest. Scholarship suggests that health care-related information is among the least comprehensible type of information[1] and that this lack of comprehension can lead to poor overall health, less use of preventative care, and inflated health care costs.[2] Health insurance forms contribute to this crisis. Health insurance forms contain critical consumer information. Yet, health insurance forms often contain complex and highly technical language, creating a barrier to comprehension by consumers with low literacy skills. Indeed, such language is often incomprehensible to high-level readers. The following example is taken from a health insurance form currently approved for use in Rhode Island:

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[1] *Evaluation of English and Spanish Health Information on the Internet*, ch. 4, California HealthCare Foundation, 2001, *available at* www.rand.org/publications/documents/interneteval (last visited March 20, 2009).

[2] *How Readable Are Summary Descriptions for Health Care Plans?* Employee Benefit Research Institute, October 2006, *available at* www.ebri.org/pdf/notespdf/EBRI_Notes_10-20061.pdf (last visited March 20, 2009). See also "Regence study shows Steep health plan learning curve," *available at* http://www.regence.com/docs/pressReleases/2008/092208-regence-survey-shows-steep-health-plan-learning-curve-press-release.pdf (last visited March 20, 2009) (study by Regence, a health insurer in the northwest US, compriosed of Regence BlueShield of Idaho, Regence BlueCross BlueShield of Oregon, Regence BlueCross BlueShield of Utah and Regence BlueShield that shows that consumers don't understand the language of their health plans and, thus, don't know how to use them).

> Benefits are payable for Covered Medical Expenses (see "Definitions") less any Deductible incurred by or for a Covered Person for loss due to Injury or Sickness subject to: a) the Maximum Benefit for all services; b) the maximum amount for specific services; both as set forth in the Schedule of Benefits; and c) any coinsurance amount set forth in the Schedule of Benefits or any endorsement hereto. The total payable for all Covered Medical Expenses shall never exceed the Maximum Benefit stated in the Schedule of Benefits. Read the "Definitions" section and the "Exclusions and Limitations" section carefully.

According to the Flesch-Kincaid readability formula, a test that expresses readability scores in U.S. grade levels, this policy provision is written at the 18th grade level.[3]

Here is another example:

> In the event a third party, including your employer/agent, is or may be responsible for causing an illness or injury for which we provided any benefit or made any payment to you, we shall succeed to your right of recovery against such responsible party. This is our right of subrogation. If you do not seek damages for your illness or injury, you must permit us to initiate recovery on your behalf (including the right to bring suit in your name). This right of subrogation extends to, but is not limited to, uninsured and underinsured motorist clauses and no-fault insurance policies. As the subscriber, you acknowledge that our subrogation rights shall be considered as a first priority claim against any party to be paid before any other claims, including claims for compensatory and/or punitive damages. You agree to take such action, furnish such information and assistance, and execute such assignments and other instruments as we may require to facilitate enforcement of our rights, and you agree to take no action prejudicing our rights and interests. We may take such action as may be necessary and appropriate to preserve our rights under this subrogation provision.

The Flesch-Kincaid formula rates this provision at the 15th grade level.

Here is a third example:

> The following rules determine which is the "primary" program:
>
> a) If the other program is not primarily a dental program, this program is primary.
>
> b) If the other program is a dental program, the following rules are applied:
>
> 1. The program covering the patient as an employee or group member is primary over a program covering the patient as a dependent.
>
> 2. The plan covering the patient as a dependent child of a person whose date of birth occurs earlier in the calendar year shall be primary over the plan covering the patient as a dependent of a person whose date of birth occurs later in the calendar year provided. However, in the case of a dependent child

[3] A 12th grade reading level is the reading level of a high school senior. A 16th grade reading level is the reading level of a college senior. An 18th grade reading level is two years beyond that of a college graduate.

> of legally separated or divorced parents, the plan covering the patient as a dependent of the parent with legal custody, or as a dependent of the custodial parent's spouse (i.e. step-parent) shall be primary over the plan covering the patient as a dependent of the parent without legal custody. If there is a court decree which would otherwise establish financial responsibility for the health care expenses with respect to the child, the benefits of a plan which covers the child as a dependent of the parent with such financial responsibility shall be determined before the benefits of any other policy which covers the child as a dependent child.
>
> c) If neither (a) nor (b) applies, the program that has covered the patient longer is primary, except that a plan covering the patient as a laid-off or retired employee or the dependent of a laid-off or retired employee shall be determined after those of a plan covering the patient as an employee or the dependent of an employee. However, if the other plan does not have a provision similar to this provision, then this exception shall not apply.

The Flesch-Kincaid formula rates this provision at the 20th grade level.

Also contributing to the problem of low health literacy is our low adult literacy rate. Rhode Island has the lowest adult literacy rate in New England. In 2005 the *Providence Journal* reported that forty-seven percent of Rhode Island's adult population reads at the sixth-grade level or below.[4] Thus, the three examples set out above are at least 12, 9 and 14 grade-levels above this population's reading level and are, as a practical matter, incomprehensible to this population.

In addition, Americans demonstrate poor health care literacy and comprehension of health care plans. Over thirty percent of English-speaking Americans have difficulty comprehending their health care plans. This has been shown to lead to poor overall health, less use of preventative care, and inflated health care costs.[5]

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[4] *Rhode Island Addressing Illiteracy*, PROVIDENCE J., July 17, 2005, *available at* www.projo.com/news/content/projo_20050717_litside.232e346.html (last visited March 20, 2009) (citing Marty Liebowitz, Amy Robins & Jerry Rubin, Rising to the Literacy Challenge: Building Adult Education Systems in New England (April 2002) (report issued by Jobs for the Future, commissioned by the Nellie Mae Education Foundation) (compiling data showing that a high percentage of adults in New England perform at the lowest literacy levels), *available at* www.jff.org/JFF_KC_Pages.php?WhichLevel=1&lv1_id=4&lv2_id=0&lv3_id=0&KC_M_ID=213 (last visited March 20, 2009)). *See also*, Stephen Reder, The State of Literacy in America. (commissioned by the National Institute for Literacy), *available at* www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_&ERICExtSearch_SearchValue_0=ED416407&ERICExtSearch_SearchType_0=no&accno=ED416407 (last visited March 20, 2009) (Rhode Island data available at www.casas.org/lit/litcode/Detail.CFM?census__AREAID=40 (last visited March 20, 2009)).

[5] *How Readable Are Summary Descriptions for Health Care Plans?* Employee Benefit Research Institute, October 2006, *available at* www.ebri.org/pdf/notespdf/EBRI_Notes_10-20061.pdf (last visited March 20, 2009). See also "Regence study shows Steep health plan learning curve," *available at* http://www.regence.com/docs/pressReleases/2008/092208-regence-survey-shows-steep-health-plan-learning-curve-press-release.pdf (last visited March 20, 2009) (study by Regence, a health insurer in the northwest US, comprised of Regence BlueShield of Idaho, Regence BlueCross BlueShield of Oregon,

The Office of the Health Insurance Commissioner is required, among other things, to discharge its powers and duties to protect the interests of health insurance consumers and encourage and direct insurers towards policies that advance the welfare of the public through overall efficiency, improved health care quality, and appropriate access.[6] The purpose of this regulation is to protect the interests and improve the health of health insurance consumers by making health insurance policies easier to read and understand.

This regulation is not intended to increase the risk assumed by insurers or to supersede their obligation to comply with the substance of existing statutes or regulations applicable to health insurance policies. This regulation is not intended to impede flexibility and innovation in the development of policy forms or content or to lead to the standardization of policy forms or content.

In establishing minimum standards, it is recognized that certain terminology used in policies is difficult or impossible to restate in simplified language. This is because there are no suitable alternatives to necessary medical terminology, other insurance words of art, and statutory or regulatory language requirements. It is not the intention of this regulation to preclude the use of such terminology or to penalize insurance companies for its continued use. However, it is the intention of this regulation that consumers of health insurance be able to read and understand their coverage.

Recommendations for readability standards for health-related legal documents generally range from fourth to eighth grade levels.[7] A readability standard of the seventh- to eighth-grade level to certain health coverage-related documents has already been required in other jurisdictions.[8]

Regence BlueCross BlueShield of Utah and Regence BlueShield that shows that consumers don't understand the language of their health plans and, thus, don't know how to use them).

[6] R.I. Gen Laws § 42-14.5-2(b), (e).

[7] See, e.g., Michael K. Paasche-Orlow, Holly A. Tayor & Frederick L. Brancati, *Readability Standards for Informed-Consent Forms as Compared with Actual Readability*, 348 NEW ENG. J. MED. 721, 725 (2003) (suggesting that a fourth- to sixth-grade reading level is a suitable target for consent forms for institutional review boards); Sharona Hoffman, *Symposium on Bioethics: Thinking About Biomedical Advances: The Role of Ethics & Law: Regulating Clinical Research: Informed Consent, Privacy, and IRBs*, 31 CAP. U.L. REV. 71, 89 (2003) (recommending that informed consent documents be written at an eighth grade reading level); State Children's Health Insurance Program (SCHIP) Renewal Process, U.S. Dep't Health & Human Servs., Office of Inspector General, Rep. No. OEI-06-01-00370, at 3 (Sept. 2002) (noting that "[m]aterials written at the 7th to 8th grade reading level are the standard for what is readable by and suitable for the general public."); Martha Williams-Deane & Linda S. Potter, *Current Analysis of Oral Contraceptive Use Instructions: An Analysis of Patient Package Inserts*, 24 FAM. PLAN. PERSP. 111, 114 (1992) (concluding that patient labeling should be drafted at the fifth or sixth grade level); T. M. Grundner, *On the Readability of Surgical Consent Forms*, 302 NEW ENG. J. MED. 900, 901 (1980) (suggesting that adult consent forms should be at a maximum of a seventh or eight grade level).

[8] See, e.g., Minn. R. 9506.0400 (MinnesotaCare) ("A health plan shall provide each enrollee a certificate of coverage approved by the commissioner, a health plan identification card, a list of participating providers, and a description of the health plan complaint and appeal procedure. All written information provided enrollees must be understandable to a person reading at the seventh grade level . . . ."); Tenn. Comp. R. & Regs. R. 1200-13-1-.10 (requiring sixth-grade reading level notifications to Medicaid nursing facility residents); Centers for Medicare & Medicaid Services, Medicare Program; Criteria and Standards for Evaluating Intermediary, Carrier, and Durable Medical Equipment, Prosthetics, Orthotics, and Supplies

Balancing the high level of adult illiteracy in Rhode Island and the burden of implementing a readability standard, we have chosen to require a readability standard no higher than the eight-grade level for all health insurance policies.

Section 1 ***Authority***

These standards are issued pursuant to R.I. Gen Laws §§ 42-62-1, *et seq.*; 42-14.5-1, *et seq.*; 42-14-5; and 42-14-17.

Section 2 ***Purpose***

This regulation is intended to make health insurance forms easier to read.

Section 3 ***Definitions***

As used in this regulation:

(a) "Policy" or "policy form" means all health insurance forms required to be submitted to OHIC for approval. These forms include, but are not limited to, certificates of coverage, subscriber agreements, endorsements and modifications to contracts, policies, benefits booklets, and summary plan descriptions.

(b) "Carrier" or "insurer" or "health insurance carrier" means any entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the health insurance commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including, without limitation, an insurance company offering accident and sickness insurance, health insurer, dental insurer, nonprofit hospital service corporation, nonprofit medical service corporation, nonprofit dental service corporation, nonprofit optometric service corporation, association, fraternal benefit society, health maintenance organization or similar entity subject to the provisions of title 27 of the Rhode Island General Laws, or any other entity providing a plan of health insurance or health benefits by which health care services are paid or financed for an eligible individual or his or her dependents by such entity on the basis of a periodic premium, paid directly or through an association, trust, or other intermediary, and is either issued, renewed, or delivered within Rhode Island, including a certificate issued that evidences coverage under a policy or contract issued to a trust or association.

(c) "Health insurance" means any policy, contract, certificate, or agreement offered by a health insurance carrier to provide, deliver, arrange for, pay for or reimburse any of the

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(DMEPOS) Regional Carrier Performance During Fiscal Year 2004, 68 FR 74613, 74615 (Dec. 24, 2003) (noting that letters, decisions, or correspondence that go to Medicare beneficiaries from a Medicare contractor should be written below the 8th grade reading level "unless it is obvious that an incoming request from the beneficiary contains language written at a higher level"); Minn. Stat. § 144.056 ("To the extent reasonable and consistent with the goals of providing easily understandable and readable materials and complying with federal and state laws governing the program, all written materials relating to determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under a program administered or supervised by the commissioner of health must be understandable to a person who reads at the seventh-grade level . . . ."). See also section 2.05.14.01 of the RIte Care contract, which specifies that the RIte Care member handbook must be written at no higher than a sixth-grade level.

costs of health care services. It also includes "health insurance coverage," as defined in R.I. Gen Laws §§ 27-18.5-2 and 27-18.6-2; "health benefit plan," as defined in R.I. Gen Laws § 27-50-3; and a "medical supplement policy," as defined in R.I. Gen Laws § 27-18.2-1 or coverage similar to a Medicare supplement policy that is issued to an employer to cover retirees.

Section 4 ***Applicability***

(a) This regulation applies to the policy forms of every individual or group health insurance policy, contract, certificate or agreement delivered, issued for delivery, or renewed in Rhode Island on or after August 31, 2010.

(b) Any non-English language policy form delivered or issued for delivery in Rhode Island on or after August 31, 2010 shall be deemed to be in compliance with this regulation if the insurer certifies that the policy is translated from an English language policy that does comply with this regulation.

Section 5 ***Minimum Policy Language Simplification Standards***

(a) In addition to any other requirements of law, no policy form may be approved under this regulation, unless:

(1) The text of the policy form does not exceed the eighth-grade reading level as measured by the Flesch-Kincaid formula;

(2) The policy form is printed in not less than twelve point type, except for type used for specification pages, schedules, tables and minor instructions concerning the preparation of forms by the consumer (e.g., instructions indicating where a consumer should provide his or her name, address or other information);

(3) The style, arrangement and overall appearance of the policy form gives no undue prominence to any portion of the text of the policy or to any endorsements or riders; and

(4) The policy form contains a table of contents or an index of the principal sections of the policy form, if the policy has more than 3,000 words or than three pages regardless of the number of words.

(b) An insurer may use an alternate method or formula for evaluating the readability of a policy form instead of the Flesch-Kincaid formula as long as the insurer can demonstrate that the alternate method or formula can be used to determine a reading level at or below the eighth-grade reading level.

(c) If a policy form contains 10,000 or fewer words of text, the entire form shall be analyzed by the health insurer for compliance with subsection (1) of this section. If a policy form contains more than 10,000 words of text, two 200-word samples per page may be analyzed by the health insurer for compliance with subsection (1) of this section instead. The samples shall be separated by at least 10 printed lines.

(d) The term "text" as used in this section shall include all printed matter except the following:

(1) The name and address of the insurer; the name, number or title of the policy; the table of contents or index; captions and subcaptions; specification pages, schedules or tables; and

(2) Any policy language which is drafted to conform to the requirements of any federal law, regulation or agency interpretation; any policy language required by any collectively bargained agreement; any medical terminology; any words which are defined in the policy; and any policy language required by law or regulation; provided, however, the insurer identifies the language or terminology excepted by this paragraph and certifies, in writing, that the language or terminology is entitled to be excepted by this paragraph.

(e) At the option of the insurer, riders, endorsements, applications and other forms may be scored as separate forms or as part of the policy with which they may be used.

(f) Policy forms subject to this regulation shall be accompanied by a certificate signed by an officer of the insurer, or someone else who has specific authority to sign on behalf of and bind the insurer, that provides a Flesch-Kincaid grade score (to the closest tenth of a point) for the policy form and

(1) A certification that the policy form meets the minimum reading level requirement and other standards set out by this section; or

(2) A statement that the policy form does not meet the minimum reading level requirement and/or other standards set out by this section, but requests approval of the policy form pursuant to Section 6 of this regulation.

(g) To confirm any certification, the health insurance commissioner may require the submission of further information to verify the certification in question.

(h) A failure to comply with the requirements of either subsection (f) will result in rejection of the policy form.

Section 6 ***Power of the Commissioner to Approve a Higher Reading Level***

(a) Every request by a carrier for approval pursuant to this shall include a statement explaining why the request is being sought and shall provide documentation and information to support the request.

(b) The commissioner may authorize a level higher than an eighth grade reading level required by Section 5 or a waiver or modification of the other standards established by Section 5 whenever, in his sole discretion, he finds that a higher level or a waiver or modification of the other standards:

(1) Will provide a more accurate reflection of the readability of a policy form;

(2) Is warranted by the nature of a particular policy form or type or class of policy forms; or

(3) Is caused by certain policy language that is drafted to conform to the requirements of any state law, regulation or agency interpretation.

Section 7 ***Approval of Forms***

A policy form meeting the requirements of Section 5A shall be approved notwithstanding the provisions of any other laws which specify the content of policies, if the policy form provides the

policyholders and claimants protection not less favorable than they would be entitled to under such laws.

Section 8 ***Severability***

If any provision of this regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this regulation are severable.

Section 9 ***Effective Date***

This regulation shall be effective as indicated below.

EFFECTIVE DATE: August 31, 2010