



**National
Business
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Health**

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Creative Health Benefits Solutions for Today, Strong Policy for Tomorrow

December 7, 2010

Mr. Jay Angoff
Director
Office of Consumer Information and Insurance Oversight (OCIIO)
U.S. Department of Health and Human Services (HHS)
Attention: **OCIIO-9986-NC**
Hubert H. Humphrey Building
200 Independence Avenue, SW
Room 445-G
Washington, DC 20201

Re: File Code OCIIO-9986-NC RFI to solicit information that will enable the Departments of Health and Human Services (HHS) and Labor (DoL) to conduct a market analysis and assist the Departments in planning and developing the Federal external review process.

Dear Mr. Angoff,

The National Business Group on Health (Business Group) appreciates the opportunity to submit comments on the Request for Information (RFI) relating to operational issues in States that do not have an applicable external review process that meets the minimum Federal standards under the Patient Protection and Affordable Care Act (Affordable Care Act). Though the Business Group supports a rigorous accreditation process and high standards for Independent Review Organizations (IRO), the Business Group is concerned that IROs may have difficulty implementing some of the new requirements. Difficulties will limit the number of IROs accredited, increase IROs' administrative costs, and ultimately increase employer plans' administrative costs without improving the quality of their services.

The National Business Group on Health represents approximately 308, primarily large, employers (including 64 of the Fortune 100) who voluntarily provide health benefits and other health programs to over 50 million American employees, retirees, and their families.

As you know, Independent Review Organizations (IRO) provide external reviews for employer health plans. IROs play a crucial role in the external review process and in providing employer plans with key information. We are concerned in particular about the following proposed requirements.

Providing Notices in Culturally and Linguistically Appropriate Manner

It would be cost prohibitive for IROs to produce materials in many non-English languages for

appeals based only on workforce demographics. It is unclear whether this requirement applies to external reviews by IROs. The Monterrey Language Institute in California currently provides language translation services for over 175 different languages to government agencies and private employers at a substantial cost. To produce materials in non-English languages for IRO decisions would be costly. The Departments should only require plans to make linguistically appropriate materials available when plan participants' request them, rather than basing it on minimum thresholds for the non-English speaking plan participants.

24 Hour Timeframe for Urgent Care Appeals and External Review

Shortening the required time for urgent claims from the current 72 hours to 24 hours may not be feasible. Though eventually IROs will receive much more information for their decisions electronically, many records are not digitized and only available in hardcopy and sometimes very hard to read. In addition, the volume of information to review continues to increase with advances in medical technology, accelerated by new medical research, and electronic transmission makes it easier to send volumes of information. Additionally, accelerating the timeframe will raise costs significantly. It also still takes time in the IRO process to reach good decisions IROs would find it cost prohibitive to have medical experts in a variety of medical specialties available practically on call anytime to meet the 24 hour timeframe.

Expanded Scope of Reviews

IROs do not currently review eligibility determinations or challenges to rescissions of coverage which have to do with eligibility not medical appropriateness. The IROs will incur additional costs to train and maintain staffs with expertise in non-medical areas, including legal experts. If the scope of IRO reviews broadens to include these types of decisions, challenges to eligibility determinations and rescissions will grow significantly, adding to the costs and workload of IROs.

Also, IRO reviews of eligibility and legal coverage issues raise issues of fiduciary liability under ERISA for the plans, which does not usually extend to IROs. If they have responsibility for these issues, they then become fiduciaries and therefore, no longer independent. They would no longer satisfy the requirement that they be independent.

The Business Group recently completed a study of large employers that found the four most common external reviews by IROs' were for:

- Medical necessity;
- Appropriateness of medical care;
- Experimental or investigative medical procedures; and
- Appropriateness of health care setting or level of care.

Therefore, this expansion will require many more resources that could be better spent on improving clinical decision making in reviews.

Thank you for considering our comments and recommendations on the RFI for the Federal

external review process for group health plans and health insurance issuers relating to the external review processes under the Affordable Care Act. We look forward to continuing to work with you as you implement the various provisions of the new law. Please contact me or Steven Wojcik, the National Business Group on Health's Vice President of Public Policy, at (202) 558-3012, if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink that reads "Helen Darling". The signature is written in a cursive style with a large, looped initial "H".

Helen Darling
President