

U.S. House and Senate Notification
Wednesday, June 22, 2011

To: Congressional Health Staff

From: Amy Hall
Director, Office of Legislation
Centers for Medicare & Medicaid Services

Re: Amended Appeals IFC and Additional Guidance on External Review

Today the Departments of Health and Human Services, Labor and Treasury released amendments to the July 23, 2010 Interim Final Rule with Comment (IFC) regarding internal claims and appeals and the external review processes for group health plans and health insurance issuers offering coverage in the group and individual markets. Amendments to the IFC maintain the consumer protections provided in the Affordable Care Act while reflecting comments from stakeholders and providing States the flexibility they need to implement the law. Comments will be accepted for 30 days following publication of the IFC.

The July 2010 IFR set forth 16 minimum consumer protections based on the Uniform Health Carrier External Review Model Act written by the National Association of Insurance Commissioners (NAIC) that, if provided by a State external review process, will result in the States' process applying in lieu of a Federal external review process. Many States have made progress in meeting the minimum standards laid out. To give States a reasonable opportunity to continue to implement these important consumer protections, the amended IFC extends the transition period for State external review processes to January 1, 2012.

Separate guidance being issued contemporaneously with the publication of this amendment announces standards under which, until January 1, 2014, a State may operate an external review process under Federal standards similar to the required consumer protections outlined in the July 23, 2010 IFC. Under this guidance, if HHS determines that a State has neither implemented the required consumer protections nor implemented a process that meets the Federal standards that are similar to the required consumer protections, issuers in the State will have the choice of participating in either the HHS-administered external review process or contracting with accredited Independent Review Organizations (IROs). This guidance also phases in the use of multiple IROs for the plans that use them starting next year as a way of ensuring that the external review is unbiased.

During the transition period, plans and issuers are expected to follow the State laws and processes for external review in the States in which they are operating. Plans and issuers in States and territories where the HHS-administered Federal external review process already applies as of the date of this guidance are expected to continue their participation in the Federally-administered external review process until HHS determines otherwise.

HHS is adopting this approach to permit States to operate their external processes under standards established by the Secretary until January 1, 2014 to avoid unnecessary disruption while States work to adopt the consumer protections set forth in the July 2010 regulations. Starting in 2014, the appeals process across all types of plans will be aligned.

- The amended IFC released today includes details of all of the changes made from the original IFC. You can find the text of this amended IFC here:
http://www.ofr.gov/OFRUpload/OFRData/2011-15890_PI.pdf
- The additional guidance can be found here:
<http://cciio.cms.gov/resources/regulations/index.html#csi>
- A fact sheet on today's announcement can be found here:
<http://cciio.cms.gov/resources/factsheets/index.html#csi>

If you have any questions, please contact the CMS Office of Legislation at 202-690-8220. Thank you.