



DATE: November 22, 2011

TO: Issuers of Health Insurance

FROM: Ellen L. Kuhn, Director, Appeals Division
Center for Consumer Information and Insurance Oversight

SUBJECT: Federally-Administered External Review Process for Issuers Licensed in States and Territories

I am the Director of the Appeals and Grievances Division in the Center for Consumer Information and Insurance Oversight (CCIIO), part of the Centers for Medicare & Medicaid Services. As you are aware, the Affordable Care Act gives health care insurance consumers a right to strong external review processes under section 2719 of the Public Health Service Act.¹ In implementing this provision, the Departments of Health and Human Services (HHS), Labor, and the Treasury have focused on ensuring that State external review processes can be maintained to the extent possible.² Over the past year, we have actively worked with States to provide guidance and assist States seeking to amend their external review processes to meet federal standards. Many States' laws and programs exceed the standards set forth in the Affordable Care Act and our regulations, and we have encouraged all States to continue their efforts to ensure that consumers have access to the care they need. We are continuing to encourage and work with States to provide a strong external review process for consumers that meets the criteria outlined in the Affordable Care Act.

CCIIO recently issued a list of states and territories whose external review processes do not satisfy standards established under federal law.³ All self-insured nonfederal governmental health plans, as well as health insurance issuers in the group and individual market in States whose external review processes do not meet the federal standards must participate in a Federally-administered external review process. This includes issuers (and self-insured nonfederal governmental plans) in Alabama, Nebraska, Mississippi, U.S. Virgin Islands, Guam, American Samoa, and Northern Mariana Islands that are currently using the HHS-administered process.

I am contacting you because CCIIO has determined that your company is licensed to sell insurance in one of these States or Territories. Issuers of non-grandfathered plans and policies in these States and Territories may continue to follow the external review process in their state during a transition period, but must make good faith efforts to come into compliance with federal law and be fully participating in a Federally-administered external review process on January 1, 2012.

¹ Section 2719 does not apply to grandfathered health plans. See interim final regulations regarding status of a group health plan or health insurance coverage as a grandfathered plan under section 1251 of the Affordable Care Act issued on June 17, 2010 (75 FR 34538), amended on November 17, 2010 (75 FR 70114).

² Regulations implementing PHS Act section 2719 were published on July 23, 2010, at 75 FR 43330, and amended on June 24, 2011, at 76 FR 37208.

³ Available at http://cciio.cms.gov/resources/files/external_appeals.html.

HHS released technical guidance on June 22, 2011 for self-insured nonfederal governmental plans and health insurance issuers offering group and individual health coverage that are subject to the Federally-administered external review process.⁴ These plans and issuers must comply with either 1) the HHS-administered process described in Technical Release 2011-02 (T.R. 2011-02) or 2) the private accredited IRO process established by the Department of Labor and also described in T.R. 2011-02.⁵ These provisions do not apply to grandfathered plans.

To facilitate the interim federal external review process, all health insurance issuers and self-insured nonfederal governmental plans using a Federally-administered external review process must submit the following information regarding their election of a Federal external review process to HHS via email at externalappeals@cms.hhs.gov by the earlier of January 1, 2012 or the date by which such plans and issuers use the Federal external review process:

- 1) For issuers: Contact information for designated personnel in their appeals department, including name(s), mailing address(es), telephone number(s), facsimile number(s) and electronic mail address(es).
- 2) For self-insured nonfederal governmental plans: Contact information for the plan administrator, including name, mailing address, telephone number, facsimile number, and electronic mail address.
- 3) For issuers and plans: A statement as to whether they will be complying with the HHS-administered process or the private accredited IRO process.

Plans and issuers must notify HHS as soon as possible if any of the above information changes at any time after it is first submitted.

Issuers and self-insured nonfederal governmental health plans choosing to participate in the HHS-administered process will find additional information and instructions on this process in guidance that was originally published on August 26, 2010.⁶ Specifically, all self-insured nonfederal governmental health plans and issuers must provide HHS with the following information:

- Whether section 2719 of the Public Health Service Act is applicable to you. If you believe it does not apply to you explain why;
- A list of the plans or policies you sell that are subject to section 2719 of the Public Health Service Act;
- Contact information for designated personnel in your appeals department, including the name, mailing address, telephone number, facsimile number and electronic mail address for each person. In addition, contact information for a designated individual who will be available to address urgent care cases outside of normal business hours (including weekends and holidays).
- A copy of each of the notices of appeal rights, as required by 45 CFR §147.136(b)(2)(ii)(E) and 45 CFR §147.136(b)(3)(ii)(E).

⁴ Instructions for Self-Insured NonFederal Governmental Health Plans and Health Insurance Issuers Offering Group and Individual Health Coverage on How to Elect a Federal External Review Process is available at http://cciio.cms.gov/resources/files/hhs_srg_elections_06222011.pdf.

⁵ T.R. 2011-02 is available at http://cciio.cms.gov/resources/files/appeals_srg_06222011.pdf,

⁶ This guidance is entitled

“ Technical Guidance For Interim Procedures for Federal External Review Relating to Internal Claims and Appeals and External Review For Health Insurance Issuers in the Group and Individual Markets under the Patient Protection and Affordable Care Act,” and is available at http://cciio.cms.gov/resources/files/interim_appeals_guidance.pdf.

Self-insured nonfederal governmental health plans and issuers choosing to participate in the private accredited IRO process will find additional information about this process in Technical Release 2010-01 issued by the Department of Labor on August 23, 2010, and modified by Technical Release 2011-02. Plans and issuers electing the private accredited IRO process should consult these technical releases, as well as any amendments that the Department of Labor makes to Technical Release 2010-01 (as modified) in the future, for instructions on how to participate in this external review process.⁷

Please do not respond to the email to which this letter is attached. I look forward to working with you to establish the federal external appeals process. For technical assistance, please call 301-492-4263, or email externalappeals@cms.hhs.gov.

Sincerely,

Ellen L. Kuhn
Director, Appeals Division
Center for Consumer Information and Insurance Oversight

⁷ Department of Labor technical releases are available at www.dol.gov/ebsa/healthreform.