

Federal Agencies Issue Interim Guidance Under Health Care Reform Law For External Claims Review For Self-Insured Group Health Plans

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (together, the "Health Care Reform Law") require non-grandfathered group health plans and individual health insurance policies to provide both (i) internal claims and appeals procedures and (ii) external processes to review claims denials issued through the internal procedures. These internal claims and external review procedures must meet minimum regulatory requirements beginning with the first plan year that begins on or after September 23, 2010 (i.e., January 1, 2011 for calendar year plans). The IRS, DOL and HHS jointly issued interim final regulations on July 23, 2010, outlining those minimum requirements. You can read our summary of the interim final regulations by clicking on the following link. [Federal Agencies Issue Interim Final Regulations For Internal and External Claims And Appeals Procedures Under Health Care Reform Law.](#)

The interim final regulations provide that group health plans and health insurance issuers must comply with either a State external review process or the Federal external review process. If a health insurance issuer is subject to a State external review process that satisfies the consumer protections under the National Association of Insurance Commissioners Uniform Health Carrier External Review Model Act (the "Uniform Model Act"), then the issuer must comply with the applicable State external review process and not the Federal external review process. Self-insured group health plans, however, generally will not be subject to a State external review process, nor will certain insured group health plans, so they must comply with the Federal external review process.

The IRS, DOL and HHS have now jointly issued guidance outlining the interim Federal external review process for non-grandfathered self-insured group health plans. HHS will issue additional guidance for external review procedures for insured group health plans and individual health care policies.

The external review procedures for self-insured plans are based on the Uniform Model Act as in effect on July 23, 2010. The DOL and IRS have announced that they will not take enforcement action with respect to Health Care Reform Law claims review requirements against any plan that (i) complies with the announced external claims review procedures or (ii) voluntarily subscribes to the external review process of any State that expands its process to include self-insured plans.

Here are some of the fundamentals of the Federal external claims review process.

- A claimant must file a request for external review with the group health plan within four months after receipt of a qualifying adverse benefit determination.
- In the case of standard external review, the group health plan must determine within five business days whether the claimant qualifies for external review. In the case of expedited external review, this preliminary assessment must be made immediately.
- The group health plan must contract with at least three independent review organizations (IROs) and rotate claims among them to ensure impartiality and independence. The joint agency guidance provides details for the terms of a contract between a plan and an IRO, as well as for the procedures that must be followed by the IRO.
- The IRO must make a final determination within forty-five days in the case of standard external review. The determination must be made within seventy-two hours in the case of expedited external review.
- If the IRO reverses the plan's decision, the plan must immediately provide coverage or pay the claim.

The agencies have also published model notices for adverse benefit determinations, final internal adverse benefit determinations, and final external review decisions. Model summary plan description language is promised for the near

future for the description of internal claims and appeals and external review procedures.

If you have questions or would like additional information about the new Federal external review procedures for health care claims under non-grandfathered self-insured group health plans, please feel free to contact Brian Dougherty at (215) 587-5919 or bdougherty@postschell.com.

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