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Corporate & Financial Weekly Digest

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New Rules Published for External Claims Appeals Procedures

The Internal Revenue Service, Department of Labor and Department of Health and Human Services published new rules in the *Federal Register* on August 26 regarding the new requirements for external claims appeals procedures for group health plans. These rules, under section 2719 of the Public Health Service Act, were enacted as part of Health Care Reform. The rules apply to group health plans which are NOT considered "grandfathered" under Health Care Reform.

The rules are contained in Employee Retirement Income Security Act (ERISA) Technical Release No. 2010-01. They are in the form of an "interim enforcement safe harbor," meaning that compliance with the safe harbor will protect the plan (and insurer) from violation of the statute. The safe harbor rules apply for plan years starting after September 23 until superseded by future guidance (which is to be published by July 1, 2011).

New Requirements

The highlights of the new federal procedure are:

1. Plan must allow filing of request for external review within four months of receipt of adverse determination.
2. Plan must complete review within five business days to determine whether request is complete/eligible.
3. Within one day of completion of review, Plan must issue notification to claimant. If claimant's request is incomplete, Plan must permit claimant to perfect the claim within the four-month filing period or 48 hours (whichever is later).
4. If external review is requested, Plan must assign review to accredited independent review organization (IRO).
5. Plan must have contracts with three IROs and must rotate claims assignment or use random process. Numerous provisions must be included in Plan's contract with IRO.
6. Plan must *immediately* provide coverage/payment if denial decision is overturned by external review.

Three model notices are provided for: adverse benefit determinations, final internal adverse benefit determinations, and final external review decisions.

Insured plans are to comply with state external claims requirements rather than the new federal procedure. However, if there is no applicable state procedure, insured plans must comply with the new federal procedure. (Six of the 50 states have no required state procedure.) Self-insured plans that are not otherwise subject to state insurance requirements (such as ERISA plans and governmental plans) may comply with *either* the new federal procedure *or* a state procedure

A copy of ERISA Technical Release No. 2010-01 can be found here.

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