



December 21, 2011

Honorable Ted Nickel
Insurance Commissioner
P.O. Box 7873
Madison, WI 53707-7873

Re: State External Review Process Redetermination

Dear Commissioner Nickel:

This letter follows up on our discussion with your office regarding Wisconsin's external review laws on December 5, 2011. The Affordable Care Act ensures that health care insurance consumers have access to strong external review processes under section 2719 of the Public Health Service Act (PHS Act).¹ In implementing this provision, the Departments of Health and Human Services (HHS), Labor, and the Treasury (the Departments) 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.

Through this process, the Departments have established two categories of State external review processes that will satisfy these statutory standards: 1) a State external review process that meets the 16 minimum consumer protections described in paragraph (c)(2) of the regulations as authorized under section 2719(b)(1) of the PHS Act (hereinafter referred to as "NAIC-parallel process"); or 2) a State external review process that meets the minimum standards established by the Secretary of Health and Human Services through guidance under section 2719(b)(2) (hereinafter referred to as "NAIC-similar process").³

It has come to our attention that on December 1, 2011, Governor Walker endorsed and consented to the repeal of Emergency Rule 1117 that had brought Wisconsin's external review provisions into compliance with the NAIC-parallel process. It is our understanding from discussions with your office that as soon as the Insurance Commissioner has the ability to repeal the emergency rule, the Department of Insurance will act as directed by the Governor. In our October 4, 2011, re-determination letter, we noted that "Wisconsin may not reduce the consumer protections in their external review process below the levels that apply as articulated in the Emergency Rule." Consequently, the Center for Consumer Information and Insurance Oversight (CCIIO) has determined that due to the imminent repeal of the Emergency Rule, Wisconsin's external review process will not meet all of the standards of the NAIC-parallel process or the NAIC-similar process.

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 (corrected on July 26, 2011, at 76 FR 44491).

³ HHS established these minimum standards in Technical Release 2011-02 on June 22, 2011, which can be found at: http://cciio.cms.gov/resources/files/appeals_srg_06222011.pdf. Beginning January 1, 2014, issuers of non-grandfathered health insurance plans and policies in a State with an external review process that does not satisfy the standards of the NAIC-parallel process will need to participate in a federally administered process.

All issuers of non-grandfathered health insurance plans and policies in Wisconsin's group and individual market will be subject to the Federally-administered external review process. These issuers may continue to follow Wisconsin's external review process during a transition period, but must make good faith efforts to come into compliance with federal law (e.g., inform HHS of Federal external review process elections, make appropriate modifications to consumer notices, etc.) and be fully participating in a Federally-administered external review process on March 1, 2012. Please direct the health insurance issuers in your state to Technical Release 2011-02 as well as to the additional guidance on the CCIIO website ("Instructions for self-insured non-federal governmental health plans and health insurance issuers offering group and individual health coverage on how to elect a federal external review process") for more information on the Federally-administered external review process.⁴ CCIIO will also send issuers in your state a letter outlining their responsibility to participate in a federally-administered process and instructing them on how to make an election by March 1, 2012.

We remain committed to working in partnership with your State to strengthen your external review process. Our goal is to ensure external reviews are conducted under State law, and we will provide whatever assistance we can to work with you and your State in the future to meet that goal.

In our July 29, 2011, initial determination letter, we attached a summary of the components of Wisconsin's external review process that did not meet the components of an NAIC-parallel process or an NAIC-similar process. Since the repeal of the Emergency Rule places Wisconsin law into the same posture as it was on July 29, 2011, we refer you to that attachment for further information on the components of Wisconsin's external review process.

This finding is a final determination. If Wisconsin changes its external review process in the future, Wisconsin may request a new determination at any time by sending a letter to the attention of Ellen Kuhn, Director of the Appeals program in CCIIO at the Centers for Medicare & Medicaid Services (CMS) at externalappeals@cms.hhs.gov. Please include the reason(s) why you believe that Wisconsin's external review process does meet the NAIC-parallel or NAIC-similar standards along with supporting documentation that you would like CCIIO to consider. CCIIO will re-evaluate Wisconsin's external review process and issue a redetermination within 30 days of receipt of your completed re-evaluation request.

As always, CCIIO welcomes questions from state regulators and remains available to provide technical assistance on proposed modifications to the external review processes. Please feel free to contact Veronica Morales at veronica.morales@cms.hhs.gov with any questions or concerns.

Sincerely,


Timothy Hill
Deputy Director
Center for Consumer Information and Insurance Oversight

cc: Julie Walsh

⁴ Guidance is available at http://ccio.cms.gov/resources/files/hhs_srg_elections_06222011.pdf