



Benefit Trends

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Health Care Reform – Special Edition

Health Care Reform: Claims Appeals Notices and Safe Harbors

LEGISLATIVE BRIEF

August 27, 2010

As a follow up to the Agencies' release on July 22, 2010 of [Interim Final Rules](#) for claims appeals processes, the Department of Labor (DOL) has now published model notices in its [Technical Release 2010-01](#) dated August 23, 2010. This release also, and more importantly, sets forth a temporary safe harbor applicable to federal external reviews available to most non-grandfathered self-insured plans.

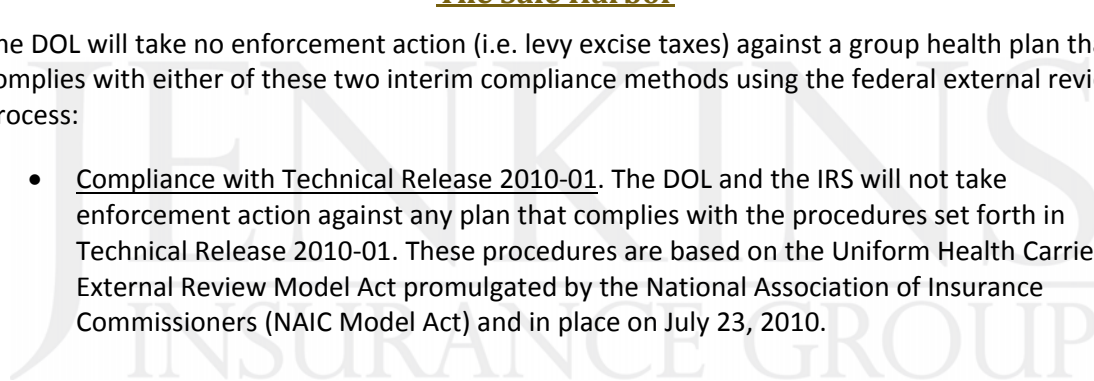
Applicability of Safe Harbor Rule

The temporary safe harbor rule applies to self-insured group health plans governed by the Employee Retirement Income Security Act (ERISA) and to all insured health plans including public agencies and church plans in states without a qualifying external review process. HCR requires all plans and issuers to offer both an internal and external review process. If the state maintains a qualifying external review process (i.e. meets the NAIC standards), then insured plans, church and public agency plans, must use the state external review process. If the state process does not meet the qualifying standards, then plans and issuers can use the federal external review process and take advantage of the safe harbor for plan years beginning prior to July 1, 2011.

The Safe Harbor

The DOL will take no enforcement action (i.e. levy excise taxes) against a group health plan that complies with either of these two interim compliance methods using the federal external review process:

- Compliance with Technical Release 2010-01. The DOL and the IRS will not take enforcement action against any plan that complies with the procedures set forth in Technical Release 2010-01. These procedures are based on the Uniform Health Carrier External Review Model Act promulgated by the National Association of Insurance Commissioners (NAIC Model Act) and in place on July 23, 2010.



- Voluntary compliance with State external review processes. Alternatively, States may choose to expand access to their State external review process to plans that are not subject to the applicable State laws such as self-insured plans, and such plans may choose to voluntarily comply with the provisions of that State external review process. In such circumstances, while the interim enforcement safe harbor is in effect, the DOL and the IRS also will not take enforcement action against a plan that voluntarily complies with the provisions of a State external review process that would not otherwise be applicable or available.

Federal Safe Harbor Standards for External Reviews for Self-insured Group Health Plans

1. **Request for External Review.** A claimant must file the request for the external review with the group health plan within four months after receipt of notice of an adverse benefit determination or final internal adverse determination.
2. **Preliminary Review by the Group Health Plan.** The group health plan must complete its preliminary review within 5 days of receipt of the request and must do the following:
 - Verify eligibility for coverage at time claim was incurred;
 - Certify that the adverse determination is not based on ineligibility for coverage at the time the claim was incurred;
 - Certify that the claimant has exhausted all internal appeals (if required by the final rule, once it is issued);
 - Certify that the claimant provided all necessary information/forms needed to process the federal external review;
 - Notify claimant in writing within one business day after it completes its review.
3. **Referral to an Independent Review Organization.** The group health plan must assign an independent review organization (IRO) that is accredited for purposes of conducting an external review. The standards also require the IRO to notify the group health plan within one day of receipt of the claimant's information. The IRO will review the claim "de novo" and not be bound by the earlier decisions of the internal reviewers. This means the IRO will "re-adjudicate" the claim as if it were being reviewed for the first time. The IRO will have 45 days from receipt of the request, to complete its process and render its decision.

The safe harbor rule also sets forth the content requirements for the final determination letter. You may view the entire rule including the detailed content requirements applicable to the determination letter by viewing the [DOL's Technical Release](#).

4. **Expedited External Review Process.** The group health plan must also allow a claimant to request an expedited review in two situations:
 - If the adverse determination involves a serious threat to the life or health of the claimant where the standard external review process would seriously jeopardize the life or health of the claimant or his/her ability to regain "maximum function"; or,
 - If the adverse determination concerns an admission, availability of care, continued stay, or if the claimant has received emergency services but has not yet been discharged from the facility.

The expedited review eliminates the five day response time and requires immediate action by the group health plan. The IRO is to use whatever information or documents are available, and, if the IRO is satisfied that the documents are appropriate, must conduct its review. It must provide its written response no later than 72 hours after receipt of the claimant's initial request or if not in writing, within 48 hours.

Voluntary State Compliance

The Technical Release also will provide a safe harbor (from excise taxes) for states that choose to expand services to include ERISA plan which choose to use the state law process.

Model Notices

The DOL has created model notices (Word formatted) to be used in the federal external review process, including:

- [Model Notice of Adverse Benefit Determination](#)
- [Model Notice of Final Internal Adverse Benefit Determination](#)
- [Model Notice of Final External Review Decision](#)

The DOL will provide additional language for inclusion in ERISA Summary Plan Descriptions at a later date.

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