



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

September 21, 2011

The Honorable Roger A. Sevigny
Insurance Commissioner
21 South Fruit Street, Suite 14
Concord, New Hampshire 03301

Re: State External Review Process Redetermination

Dear Commissioner Sevigny:

This letter follows up on New Hampshire's request for a redetermination of its external review laws. 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 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

We applaud your efforts and progress to date to provide a strong external review process. After reviewing the information New Hampshire submitted, the Center for Consumer Information and Insurance Oversight (CCIIO) at the Centers for Medicare & Medicaid Services (CMS) has determined that New Hampshire's external review process meets the standards of the NAIC-parallel process. Therefore, issuers of non-grandfathered health insurance plans and policies in

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.

the State of New Hampshire must comply with New Hampshire's external review process. This finding is a final determination.

Please note that in order for issuers of non-grandfathered health insurance plans and policies in the State of New Hampshire to continue using the State of New Hampshire's external review process, New Hampshire may not reduce the consumer protections in their external review process below the levels that apply as of September 8, 2011. Failure to uphold the existing consumer protections in the State of New Hampshire could result in a redetermination by CCIIO that issuers of non-grandfathered health insurance plans and policies in the State of New Hampshire must use the federally-administered external review process.

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,

A handwritten signature in black ink, appearing to read 'Steve Larsen', is written over the word 'Sincerely,'.

Steve Larsen, Director

Center for Consumer Information and Insurance Oversight