



TECHNICAL RELEASE 2013-01

DATE: MARCH 15, 2013

SUBJECT: EXTENSION OF THE TRANSITION PERIOD FOR THE TEMPORARY NAIC-SIMILAR
STATE EXTERNAL REVIEW PROCESS UNDER THE AFFORDABLE CARE ACT

I. Introduction

The Departments of Labor, Health and Human Services (HHS), and the Treasury (the Departments) have been issuing regulations in several phases to implement the revised Public Health Service Act (PHS Act), 42 U.S.C. 300gg et seq., sections 2701 through 2719A and related provisions of the Patient Protection and Affordable Care Act, Public Law 111-148 (March 23, 2010) and the Health Care and Education Reconciliation Act, Public Law 111-152 (March 30, 2010) (known collectively as the Affordable Care Act).¹ Section 2719 of the PHS Act sets forth standards for group health plans and health insurance issuers in the group and individual markets that are not grandfathered health plans regarding internal claims and appeals and external review. The Departments published interim final regulations implementing PHS Act section 2719 on July 23, 2010, at 75 FR 43330 (the July 2010 regulations), and an amendment to the interim final regulations on June 24, 2011, at 76 FR 37208 (the June 2011 amendment).²

On June 22, 2011, the Departments issued Technical Release 2011-02 (T.R. 2011-02), which established a transition period until January 1, 2012 for State external review process implementation and a set of temporary standards similar to the consumer protections set forth in the Uniform Health Carrier External Review Model Act issued by the National Association of Insurance Carriers (the NAIC-similar process) that would apply until January 1, 2014 for a State-administered external review process authorized under section 2719(b)(2) of the PHS Act and paragraph (d) of the July 2010 regulations.³ This technical release updates and clarifies T.R. 2011-02 and extends the applicability of the temporary NAIC-similar process standards until January 1, 2016. During this extended transition period, States that CCIIO has already determined to meet the NAIC-similar process standards will continue to be considered compliant with the requirements of section 2719 of the PHS Act until January 1, 2016.

¹ The Affordable Care Act adds section 715(a)(1) to the Employee Retirement Income Security Act (ERISA) and section 9815(a)(1) to the Internal Revenue Code (the Code) to incorporate the provisions of part A of title XXVII of the PHS Act into ERISA and the Code, and make them applicable to group health plans, and health insurance issuers providing health insurance coverage in connection with group health plans.

² Additionally, a technical correction was published on July 26, 2011, at 76 FR 44491.

³ Available at <http://www.dol.gov/ebsa/newsroom/tr11-02.html> and http://cciio.cms.gov/resources/files/appeals_srg_update.pdf

II. Background

Section 2719 of the PHS Act sets forth standards for group health plans and health insurance issuers offering coverage in the group and individual markets regarding both internal claims and appeals process and external review. Section 2719(b)(1) of the PHS Act requires that group health plans and health insurance issuers in the group and individual markets comply with a State external review process if that process includes, at a minimum, the consumer protections set forth in the Uniform Health Carrier External Review Model Act issued by the National Association of Insurance Commissioners (the NAIC Uniform Model Act).⁴ Paragraph (c)(2) of the July 2010 regulations sets forth the 16 minimum consumer protection standards from the NAIC Uniform Model Act that a State external review process must include in order to be authorized under section 2719(b)(1) of the PHS Act.

Under section 2719(b)(2) of the PHS Act, if a State's external review process does not meet these minimum consumer protection standards, group health plans and health insurance issuers in the group and individual markets in that State must implement an effective external review process that meets minimum standards established by the Secretary through guidance. These standards must be similar to the standards established under section 2719(b)(1) of the PHS Act and must meet the requirements set forth in paragraph (d) of the July 2010 regulations.

On June 22, 2011, contemporaneously with the June 2011 amendment, the Departments issued T.R. 2011-02, which, among other things, established a set of temporary standards, applicable until January 1, 2014, for State-administered external review processes authorized under section 2719(b)(2) of the PHS Act and paragraph (d) of the July 2010 regulations. T.R. 2011-02 explains that there are external review processes authorized under PHS Act section 2719(b)(1) and paragraph (c) of the July 2010 regulations (NAIC-parallel processes) and external review processes authorized under PHS Act section 2719(b)(2) and paragraph (d) of the July 2010 regulations (NAIC-similar processes).

The Departments understand that many States have been working to make changes to implement NAIC-parallel processes. The Departments continue to work with health insurance issuers (and plans), States, and other stakeholders to assist them in coming into compliance with the law through an orderly and expeditious implementation process. Accordingly, this guidance seeks to minimize both cost and delay, and avoid confusion for participants, issuers, and plans alike, by extending the transitional relief provided by the temporary NAIC-similar process standards in T.R. 2011-02, to give States additional time to bring State external review processes into compliance with the standards for an NAIC-parallel process. This extension of transitional relief will serve as a bridge until additional clarification regarding State standards for external review is issued. The Departments intend to issue additional clarification regarding the State standards for external review that takes into account comments, inquiries, and other feedback received from stakeholders on the July 2010 regulations, the June 2011 amendment, and subsequent guidance.

⁴ The July 2010 regulations specify that the relevant NAIC Uniform Model Act is the version in place on July 23, 2010. This version of the NAIC Uniform Model Act is available at <http://www.dol.gov/ebsa/healthreform/> and www.cciio.cms.gov.

III. Conclusion

Until January 1, 2016 (or earlier if a State enacts an NAIC-parallel process prior to January 1, 2016), issuers (and, if applicable, self-insured nonfederal governmental plans) will be considered to comply with the requirements of paragraph (c)(2) of the July 2010 regulations if they comply with an applicable State external review process that meets the temporary NAIC-similar process standards established in T.R. 2011-02, even if it does not meet all the minimum consumer protections of paragraph (c)(2) of the July 2010 regulations, as amended. Beginning January 1, 2016, a State external review process will need to satisfy the standards of paragraph (c)(2) of the July 2010 regulations, as amended, or issuers (and, if applicable, self-insured nonfederal governmental plans) in that State will need to comply with a Federally-administered external review process.

IV. For Further Information Contact

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