GROOM LAW GROUP

Publications

Amendment to Affordable Care Act's Claims and Appeals Rules

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Last week, the Departments of Labor, Health and Human Services, and Treasury released a long-anticipated amendment to the interim final rule (the "IFR") published last year governing the claims and appeals under the Patient Protection and Affordable Care Act (the "ACA"). The Agencies are accepting public comment on the amendment, which must be submitted by July 25, 2011. Additionally, the Agencies published separate guidance – in the form of Technical Releases – addressing the external review processes for insurers and self-funded group health plans.

As described in greater detail in the attached memo, the amendment makes a number of important changes to the IFR, and provides, among other things, that:

- Urgent care claims must be decided in no more than 72 hours (instead of 24 hours, as was required under the IFR);
- Diagnosis and treatment codes, and their corresponding meanings, do not have to be listed on notices of adverse benefit determinations (reversing a requirement of the IFR, but must be provided upon request);
- A plan's internal appeals process will not be deemed exhausted based on *de minimis* violations of the IFR that do not cause prejudice or harm to the claimant (reversing another provision of the IFR);
- The numerical threshold that triggers a plan's obligation to issue claim and appeal notices in a "culturally and linguistically appropriate manner" is standardized;
- The scope of the federal external review process applicable to self-funded group health plans is narrowed to only denied claims involving medical judgments and rescissions (in contrast to the IFR, which subjected virtually all claim denials (other than those involving eligibility for coverage) to external review);
- Self-funded group health plans subject to the federal external review process must contract with at least two independent review organizations by January 1, 2012, and with at least three IROs by July 1, 2012; and
- A state's external review process does not have to satisfy the 16 consumer protections detailed in the IFR until January 1, 2014; prior to that date, the amendment

establishes multiple "transition periods" during which state external review processes will be deemed compliant with the IFR if specified criteria are satisfied.

The Agencies also issued several model notices relating to adverse benefit determinations and external reviews that plans and insurers will likely find useful. The amendment is effective July 22, 2011, but the Agencies retain some of the earlier grace periods they had adopted, meaning that different provisions have varying applicability dates.

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