

REFORM UPDATE

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CHANGES TO THE FEDERAL EXTERNAL REVIEW PROGRAM

The Affordable Care Act (ACA) made material changes to the appeals process for denied claims. These changes include applying the ERISA claim appeal rules to government plans and individual insurance plans. Now all claimants, regardless of their health plan, have the right to appeal an adverse benefit determination.

The ACA rules include steps for internal claim reviews. The rules also require plans to establish an external review process. The details on both the internal rules and external rules are discussed in our *Reform Update* at http://www.mcgrawwentworth.com/Reform_Update/2011/Reform_Update_29.pdf.

Not all denied claims are eligible for appeal under external review. Claim denials based on medical judgments and coverage rescissions can be considered by an external review program. (Please note that a rescission of coverage is generally a coverage termination that applies retroactively.) The decision of the external review entity is binding.

In many states, insured plans were already subject to external review under state insurance laws. However, most self-funded plans did not have an external review process before the ACA added this requirement.

States with an acceptable external review process typically extended that process to self-funded employers. In addition, self-funded plans and insured plans without a state external review option could elect a federal external review process. Initially, health plans would send an email to a specific address at the Centers for Medicare and Medicaid Services (CMS). However, CMS and the Center for Consumer Information and Insurance Oversight (CCIIO) just released new technical guidance on how to elect the federal external review program.

This technical guidance can be found at <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/20150608-HHS-SRG-on-elections-FINAL-6-8-15-MM508.pdf>. It gives very explicit step-by-step instructions to elect the federal external review program. The high-level action steps require:

1. Registering for access to the Health Insurance Oversight System (HIOS).
2. Requesting access to the External Review Election Module.
3. Choosing the submitter role for their submitter.

These instructions only apply to plans that want to apply for the federal external review process. A self-funded plan should first check with their third party administrator to see if they have access to the federal external review program before undertaking the election process for their plan.

Most employers already have an external review process associated with their health plan. If you are not sure, contact your health plan vendor to ask if an external review process is available to your plan's participants. If you need to establish an external review process, work with your health plan to determine whether the state or federal review program is the better option. The process described above only needs to be completed for a plan that is newly electing the federal external review program.

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