



July 29, 2011

The Honorable David Black
Department of Insurance Director
PO Box 100105
Columbia, SC 29202-3105

Re: State External Review Process Determination

Dear Director Black:

This letter follows up on our discussions with your office regarding South Carolina's external review laws. The Affordable Care Act ensures that all 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 Over the past year, we have actively worked with States to provide guidance and assist States seeking to amend their external review processes to meet federal requirements.

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 to provide a strong external review process for consumers in your State's insurance system, which meets the criteria outlined in the Affordable Care Act. Many States' laws and programs exceed the standards set forth in the Affordable Care Act and our regulations, and we encourage all States to continue their efforts to ensure that consumers have access to the care they need. After reviewing South Carolina's external review process, the Center for Consumer Information and Insurance Oversight (CCIIO) at the Centers for Medicare & Medicaid Services (CMS) has found that South Carolina's external review process meets the

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.

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.

standards of the NAIC-parallel process. Therefore, issuers of non-grandfathered health insurance plans and policies in the State of South Carolina must continue to comply with South Carolina external review process. Please note that in order for issuers of non-grandfathered health insurance plans and policies in the State of South Carolina to continue using the State of South Carolina's external review process, South Carolina may not reduce the consumer protections in their external review process below the levels that apply as of July 29, 2011. Failure to uphold the existing consumer protections in the State of South Carolina could result in a redetermination by CCIIO that issuers of non-grandfathered health insurance plans and policies in the State of South Carolina 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 Wendi Moy Akin at Wendi.Akin@cms.hhs.gov with any questions or concerns.

Sincerely,



Steve Larsen, Director
Center for Consumer Information and Insurance Oversight

cc: Leslie Jones