
Massachusetts Department of
Public Health
Office of Patient Protection

Proposed Emergency Amendments
to 105 CMR 128.000

September 14, 2011

Federal Health Care Reform (PPACA) passed in March 2010

- New requirements around health plan internal and external appeals processes.
- Federal requirements apply to both fully-insured plans (subject to state law) and self-funded employer plans (subject to federal law only).

New federal requirements regarding external review

- All plans must provide external review consistent with the Uniform Health Carrier External Review Model Act written by the National Association of Insurance Commissioners (NAIC).
- Through guidance and regulations issued in July 2010 and June 2011, states are given options regarding the external review process.
- If a state meets the “strict standards” included in the July 2010 rules (16 minimum consumer protections based on the NAIC model act), state process is fully compliant.
- A state may operate an external review process under “similar standards” (13 scaled-back standards) until January 1, 2014.

New federal requirements regarding external review

- If a state has neither implemented the strict standards nor the similar standards, state process is preempted in its entirety.
- A state process that complies with only the 13 similar standards must meet the 16 strict standards by 2014 or the state process will be preempted in its entirety.
- If state process is preempted, insurers must either choose an HHS-administered process or contract with accredited independent review organizations to review external appeals on their behalf.

Massachusetts external review process

- Set out in c. 176O and 105 CMR 128.000.
- Massachusetts does not meet either the 16 strict standards or the 13 similar standards
- Cannot meet the 16 standards without a statutory change.
- Can meet the 13 standards by emergency amendments to 105 CMR 128.000.

Amendments to meet 13 similar standards

- Exhaustion of internal appeal process
The proposed amendments would provide for the two exceptions required by the federal law: in cases where the health plan has failed to meet internal timelines or in cases where the member is seeking an expedited internal review.
- Federal law requires that a health plan member have four months following receipt of a health plan's final adverse determination in which to file an external review.
- Federal law requires that standard external appeals be completed within 60 calendar days and that expedited reviews be completed within four business days.

Proposed amendments will align the current regulation with the required time periods.

Next steps

- Emergency promulgation to meet federal deadline of Oct. 1, 2011.
- Notification to health plans to change policies and procedures.
- Public hearing process and return to PHC for final promulgation.
- Massachusetts external review process will continue until 2014, during which time the administration can:
 - Review desirability of continuing a state process and
 - Work on a comprehensive package of legislative and regulatory changes necessary to bring Massachusetts into compliance with all PPACA requirements.