



December 8, 2010

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Request for Information Regarding the Federal External Review Process as Modified by the Patient Protection and Affordable Care Act (OCIIO-9986-NC)

Dear Secretary Solis and Secretary Sebelius:

Forthright is pleased to have the opportunity to respond to the recent Request for Information regarding the Federal External Review Process posted in the Federal Register on November 17, 2010. Forthright is the national leader in administering independent dispute resolution and other claims administration programs involving expert reviewers and other neutral decision makers. We greatly appreciate the opportunity to comment and share with you our learning and experiences in how to run effective, cost efficient, national programs that protect consumers and resolve disputes in a consistent and timely manner.

Below we have listed our responses and recommendations to select questions from the Request for Information:

Question 2: What credentialing standards do IROs require for medical and legal reviewers? Is credentialing required or voluntary?

With regard to legal reviewers, we strongly suggest that the Federal External Review process provide for external reviews involving legal determinations to be decided by qualified legal experts, such as licensed attorneys or former judges. Forthright's experience with private and government dispute resolution programs in the healthcare and insurance domains has demonstrated that legal expertise is critical. Reviews by independent, experienced legal professionals can ensure that:

- Applicable state and federal laws and regulations are consistently followed in all cases, and
- All relevant information is considered and determinations are clearly documented to ensure program credibility and accountability.



Title 1 of the Patient Protection and Affordable Care Act has introduced several important patient coverage and benefit protection measures such as prohibiting rescissions, providing coverage for preventive services, extending dependent care up to age 26, and the elimination of lifetime and unreasonable annual limits. The provision of legal review under the Federal External Review process will be necessary to enforce these new requirements to the benefit of patients.

The inclusion of legal and administrative matters in the Federal External Review process means that reviewers of these cases will need to have a solid understanding of applicable insurance and contract law and of the precedents set by previous judicial decisions in these matters. And because the applicable federal preemption provisions of ERISA and the Public Health Service Act explicitly preserve the application of state insurance law provisions that are stricter than provided by the Affordable Care Act, it is important that legal reviewers be attorneys with active law licenses in the particular state where the external review arises. State-specific law licensure is important to ensure that consistent and accurate determinations are provided under applicable state and federal law.

This credentialing emphasis on state-specific licensure is further supported by the URAC IRO accreditation standard for Administrative/Legal Case Processing. This standard states that administrative/legal reviewers shall consider all information necessary to render a decision, including “the applicable health benefits plan contract; other relevant health benefits plan materials and documents; and applicable state and federal law.” (See URAC IRO Accreditation Guide, Version 4.0, IR 12).

Credentialing for legal reviewers in the form of a valid, current law license from the state in which the external review case arises should be mandatory. The contracting IRO or other central administering organization should be assigned the responsibility of initially selecting properly licensed legal reviewers for the panel and periodically auditing the licensing status of panelists. Legal reviewers should be required to attest in each review report that their law license is valid and current.

In addition to the licensing requirement, legal reviewers should have at least ten years of previous professional practice experience and at least five years demonstrable experience in the areas of healthcare or insurance law. The contracting IRO or central administrator should be responsible for verifying this level of experience and maintaining documentation of the qualifications of legal reviewers.

In sum, Forthright recommends that IROs be required to have legal experts review cases involving state or federal health and insurance laws. These legal reviewers should be subject to both credentialing and



minimum legal experience qualification standards. A statement of recommended standards for legal reviewers could take substantially the following form:

Independent review organizations will establish and implement criteria for the number and qualifications of required legal reviewers considering the population served. At a minimum the criteria should specify that legal reviewers assigned by an independent review organization or external review administrator to conduct external reviews shall be attorneys or other appropriate legal professionals (e.g. former judges or law professors) who meet the following minimum qualifications for each case:

- (1) Be generally knowledgeable about the laws, regulations and other standards applicable to the legal determinations at issue in the external review; and*
- (2) Hold an active law license in good standing in the state where the legal review arises (requirement can be modified under state licensing rules for former judges); and*
- (3) Have at least 10 years of previous professional experience and at least 5 years of relevant previous professional experience related to healthcare or insurance law; and*
- (4) Have no history of disciplinary actions or sanctions from any bar association or other governing body that raise a substantial question as to the legal reviewer's physical, mental, or professional competence or moral character.*

Question10: Do IROs currently operate nationally or in limited geographic areas? Would IROs that currently serve local areas be able to expand their service areas to possibly include other geographic areas such as other States? Are there any State and/or local licensing requirements?

As an alternative to expecting local or regional IROs to significantly expand their service areas to include additional regions or states, we suggest that the Federal External Review process would be most efficiently and effectively administered by a national organization responsible for standardized administration of medical, legal and administrative external review requests and creation and management of a network of best practice IROs in each region of the country. Centralized administration across multiple IROs organizations would provide many potential benefits to the Federal External Review process, including:

- Allow for random assignment of reviews across multiple qualified IROs to create a competitive market, ensure objectivity and monitor quality.
- Ensure scalability of the program to manage reviews in any region, any specialty and exceed required response times for expedited reviews.



- Enforce rigorous and consistent conflict of interest checking procedures across IROs.
- Assume direct responsibility for ensuring an ongoing, centralized credentialing procedure to ensure a “best practice” external review process.
- Create consistent statistical reporting and monitoring tools for the Office of Consumer Information and Insurance Oversight to evaluate the program.
- Enable the utilization of highly specialized, best in class IROs that would not be able to participate in the federal process standing on their own.

The functions of the centralized administrator would include 1) initial receipt of the request for external review, 2) completion of preliminary review process, 3) assignment of an IRO from the list of approved IROs, 4) notification to the covered person of external review acceptance, 5) coordination of the external review to the selected IRO, 6) monitoring and enforcement of processing deadlines during external review, 7) compliance review and communication of the external review decision. A centralized contracting administrator would perform analogous functions for expedited external review and legal/administrative review matters.

Centralized administration would allow multiple existing regional IROs using intact review panels to complete reviews under the new Federal External Review process in an efficient, timely and consistent manner by applying standard administrative procedures and evaluation standards. Helpful performance and oversight/accountability standards for such a centralized administrative structure are provided by the URAC IRO accreditation standards for Delegation. (See URAC IRO Accreditation Guide, Version 4.0, CORE 6-9). A centralized contracting administrator would be the common repository for information regarding the receipt and disposition of external review cases and would maintain the electronic cases files using imaging, document management, and claims management technologies.

Highly specialized physician or other professional expertise can be quickly located and accessed through one source. Evidence based practice guidelines would be standardized across the country (considering state regulatory requirements) and all appeal reviewers would be using the same peer reviewed best practice guidelines and the same case review tools and references for evaluating the medical appropriateness and appropriate location of care.

The administrator would be responsible for all required statistical and data analyses and for making relevant data available to HHS, Congress and other regulators and stakeholders. In short, centralized administration would enable the Federal External Review program to take advantage of the best local and regional IRO organizations and also enforce system-wide standards of accuracy, efficiency, timeliness,



and data availability. Performance measurement regarding processing timelines, appropriate access to peer reviewers, satisfaction/compliance issues, etc. could be measured and eventually shared across regional IROs to foster common best practices and efficiencies.

An additional advantage of deploying a centralized contracting administrator is the ability to re-scale the size of the Federal External Review program as necessary. If and when the federal program is required to serve a new state or if the volume of reviews increases suddenly in one or more locations, a centralized administrator can respond by integrating the services of additional certified and approved IROs into the administrative structure of the federal system.

In sum, Forthright recommends that a national organization be selected to centrally administer medical, legal and administrative external review requests. Central administration would ensure consistent and standard procedures and increase program accountability and the quality of data access and reporting. Other advantages include diffusion of best practices and the ability to utilize specialized and regional IROs with exceptional capabilities.

Our objective in providing these comments and suggestions is developing Federal External Review processes that will work effectively to ensure the protection of consumer rights. Forthright has developed an expertise in managing independent 3rd party review programs that protect consumer rights and provide cost effective and efficient resolution of disputes. We believe our lessons learned can be useful to the Office of Consumer Oversight in developing the Federal External Review program.

Once again, we greatly appreciate your time and hope the Office will take our suggestions under consideration in developing the Federal External Review program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Legierski".

Dan Legierski
Senior Vice President of Technology and Processing