WELLPOINT

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Submitted via Federal e-Rulemaking Portal: www.regulations.gov

December 8, 2010

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

ATTENTION: OCIIO-9986-NC

RE: Affordable Care Act; Federal External Review Process; Request for Information

Dear Secretary Sebelius:

WellPoint Inc. (WellPoint) appreciates the opportunity to respond to the "Affordable Care Act; Federal External Review Process; Request for Information" published November 17, 2010. We recognize the importance of establishing a clear approach for a Federal external review process for use in states that do not have their own appropriate external review process in place. We look forward to working with the Department of Health and Human Services (HHS) to successfully implement these reforms.

WellPoint is the largest publicly traded commercial health benefits company in terms of membership in the United States with more than 33 million members in its affiliated health plans, and a total of more than 70 million individuals served through all subsidiaries as of September 30, 2010. WellPoint is an independent licensee of the Blue Cross Blue Shield Association and serves its members as the Blue Cross licensee for California; the Blue Cross and Blue Shield licensee for Colorado, Connecticut, Georgia, Indiana, Kentucky, Maine, Missouri (excluding 30 counties in the Kansas City area), Nevada, New Hampshire, New York (as Blue Cross Blue Shield in 10 New York City metropolitan counties and as Blue Cross or Blue Cross Blue Shield in selected upstate counties only), Ohio, Virginia (excluding the Northern Virginia suburbs of Washington, D.C.), and Wisconsin; and UniCare Life and Health nationwide.

Overview

WellPoint shares the Department's interest in ensuring appropriate access to a Federal external review conducted by qualified, accredited independent review organizations (IROs) for individuals in states without a process meeting minimum consumer protections by July 1, 2011. First, we encourage the Department to rely on the National Association of Insurance Commissioners (NAIC) Uniform Model Act when creating the new, permanent Federal external review process. Developing federal standards that mirror the current NAIC standards and state processes should allow for administrative efficiencies for plans, IROs, and consumers. Given that plans, clinicians and consumers are all affected by and involved in the external review process, we suggest that HHS involve clinicians, plans and consumers in the development, maintenance, distribution and updating of decision support protocols that will be utilized by IRO reviewers.

We remain concerned that the scope of the proposed Federal external review process, as laid out in the interim final rule (IFR) published July 23, 2010, will have the unintended consequence of significantly increasing the number of cases subject to external review and therefore will strain the limited capacity of

existing, qualified IROs. A significant increase in the number and type of cases subject to external review will increase costs for plans, employers and consumers.

WellPoint also recommends that the Department specify through regulation that IROs selected to contract with the federal government must be appropriately accredited by URAC and demonstrate sufficient capacity and expertise. This will be particularly important if HHS decides to award a national contract; the selected IRO would have to demonstrate adequate depth and breadth of personnel with all relevant competencies to handle the volume of external reviews in all applicable states.

In addition, IROs will need time to transition from the interim federal external review process to the final, permanent one. As such, we respectfully request that the Department publish the requirements for the permanent process as far in advance of the implementation date as possible.

WellPoint's responses to the Department's questions are below.

Scope of Federal External Review Process

As we commented in our response to the IFR published July 23, 2010, the scope of the proposed external review process far exceeds the requirements of the NAIC Uniform Model Act and the processes currently in place in most states. The rule itself references the NAIC guidelines as the standard for a compliant state process, and we concur that the state process should follow NAIC, and the federal process should in turn mirror the state process. The proposed provisions would effectively permit external review for any decision made by a plan, which we do not believe is the intent of the Department. Such an expansion of external review would substantially increase the administrative costs and resources required, while directing some of those additional resources toward review of inappropriate issues (e.g., denial of enrollment for an individual residing outside of a plan's service area).

Thus, we request that the Department clarify that their intention was not to significantly broaden the scope of the state and federal external review processes. Rather, those processes are to follow the NAIC guidelines.

Accreditation of IROs and Credentialing Standards for IRO Professionals

Applying a consistent accreditation standard to IROs is critical to ensure that these organizations are reputable, free of conflicts of interest, and meet rigorous qualification requirements. As such, WellPoint recommends that the Department require IROs selected for the federal external review process to be accredited by a nationally-recognized accreditation organization, such as URAC. Conflict of interest standards must apply not only to the IRO but to the independent reviewers working on the external review cases as well. In addition, WellPoint encourages the Department to establish performance metrics for IROs based upon quality metrics rather than upon review volume or outcome related measures.

Credentialing of clinical and medical reviewers at IROs is one of the metrics of URAC accreditation. However, IROs must newly employ legal reviewers to handle coverage determination reviews. Given the potential for significant legal complexity surrounding such reviews, it will be important that these legal reviewers are appropriately qualified. WellPoint believes that the personnel conducting these coverage determination reviews should be attorneys who have passed at least one state bar exam. Additionally, to prevent conflicts of interest, an attorney conducting coverage determination reviews on behalf of an IRO should be prohibited from representing any plaintiff against any employer or health plan for which they render reviews for at least 5 years following such a review.

Existing IROs' Areas of Expertise and Current Review Capacity

The RFI asks whether there are special considerations the Department should be aware of in considering a specialized contract for urgent care appeals or for experimental and investigational treatment appeals.

As an insurance company with a national footprint, WellPoint has experience contracting with IROs that operate in a variety of locations across the country. It has been our experience that some IROs have trouble meeting the demand for medical reviews that involve specialized treatment, experimental or

investigational treatment, or urgent care. WellPoint is not aware of specialized IRO offerings today, and foresees issues related to coordination and conflict-mitigation. For example, if an external appeal involving multiple issues is sent to two different IROs, the IROs could have conflicting decisions that would cause confusion about how to proceed. Similarly, the use of multiple IROs for the same claim would increase costs for employers and consumers. Further, if all specialized reviews were sent to a single IRO, it could raise issues of objectivity, if that same IRO, utilizing the same independent review staff, had been involved in earlier decisions for the claim. There may not be sufficient staff with expertise in the specialized area to ensure independence of the external review decision.

Geographic Footprint of IROs

The RFI asks whether IROs currently operate nationally or in limited geographic areas, and whether IROs that currently serve local areas are able to expand their service areas to include other geographic areas such as other states. WellPoint is concerned about the scarcity of national IROs that are adequate in size and are able to handle the volume of external reviews in all states, particularly among URAC-accredited IROs. We therefore urge the Department to contract with multiple URAC-accredited IROs to serve particular regions of the country, similar to Medicare's MAC system, rather than awarding a single national contract.

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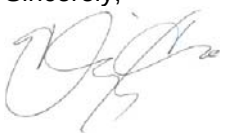
WellPoint appreciates this opportunity to offer our suggestions related to the development of the Federal external review process. Should you have any questions or wish to discuss our comments further, please contact Judith Langer at or Judith.A.Langer@WellPoint.com.

Sincerely,



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