

July 25, 2011

Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9993-IFC2  
P.O. Box 8010  
Baltimore, MD 21244-8010

**Re: Amendment to Interim Final Rules on Internal Claims and Appeals and External Review Processes**

Dear Sir or Madam:

The National Behavioral Consortium (NBC) is writing to offer comments in response to the amendment to the interim final rule ("IFR") for Internal Claims and Appeals and External Review Processes under the Affordable Care Act.

NBC is a not for profit trade association comprised of national and regional MBHO's and EAP companies. These companies provide an array of services related to mental health, substance use, employee assistance, disease management, and other health and wellness programs to approximately 45 million people in both the public and private sectors.

**Scope of the Federal External Review Process.**

The amendment narrows the scope of claims eligible for external review to claims that involve either medical judgment or rescission of coverage. The scope section of the amendment also defines whether or not a plan is in compliance with the Mental Health Parity Addiction Equity Act (MHPAEA) nonquantitative treatment limitation (NQTL) provision as eligible for external review by an Independent Review Organization (IRO).

NBC does not believe that IROs are the appropriate enforcement mechanism for the NQTL provisions in MHPAEA. By way of background, MHPAEA did not include any reference to NQTLs and NBC opposes its inclusion in the MHPAEA interim final regulation. However, as long as it remains in the IFR the NBC member companies will continue to comply. The amended internal claims and appeals and external review IFR limits scope for external review to claims that involve medical judgment and a rescission of coverage; parity for NQTLs is not a medical judgment or a rescission of coverage and should not be subject to the federal external review process.

The provisions in MHPAEA are intended to be interpreted and enforced by the regulating agencies, not an IRO. The parity requirements for NQTLs are complex and IROs are not set up to perform the multifaceted comparison between the medical benefit and the behavioral health benefit that is necessary to determine parity for NQTLs. To this day the regulators themselves continue to define what is meant by parity for NQTLs and when clinically appropriate standards of care may permit a difference. If consumers have a complaint regarding the application of NQTLs they are, under MHPAEA, supposed to go to the regulators for remediation. It is the federal regulators and not the IROs that maintain the requisite high level of technical expertise needed to render decisions in this area; determining whether particular plan features meet the requirements of the test is a factually intense and interpretive process and not the job of a private entity that is supposed to be looking at medical judgments and rescissions of coverage.

The National Behavioral Consortium appreciates the opportunity to provide the above comments on the amended IFR. Thank you for this opportunity and your consideration of our concerns. Please feel free to contact me at stan\_granberry@yahoo.com or (225) 892-3049 if you have any questions.

Respectfully submitted,

Stan Granberry, PhD  
Executive Director