

July 25, 2011

VIA RULEMAKING PORTAL

Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-9993-IFC2

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
U.S. Department of Labor
Attention: RIN 1210-AB45

Internal Revenue Service
United States Treasury
Attention: REG-125592-10

Dear Sirs/Madams:

We the undersigned mental health professionals agree with and support the comments submitted by the Advocacy for Patients with Chronic Illness (with other national organizations) regarding the amendment to interim final rules for internal and external reviews. As mental health professionals, our experience pertains especially to the issues related to the External Reviews. Since mental health treatments typically involve very personal and complex matters, it is of vital importance that impartial, confidential, independent reviews, conducted by professional, clinical peers, with comparable training, licensure and/or certification and who are subject to the same professional and ethical standards as the therapist whose work is being reviewed, be available when patients need to appeal denials of claims by their insurance companies.

However, we are very concerned about the weakening of protections for patients in the amendments under consideration. We are particularly alarmed by the idea that insurance companies might be permitted to contract directly with independent review organizations. For one thing, such an

arrangement would by-pass the government run system of assigning independent review organizations that was created specifically to avoid bias in the external review process.

We understand that the insurance companies would need to contract with two, and later three IRO's and that the IRO's are already accredited by URAC. Nevertheless, there seems to be no justification for permitting direct contracting between insurers and independent review organizations.

The whole point of having independent review organizations doing external reviews is to keep the review process independent. Direct contracting between insurers and independent review organizations unnecessarily risks that insurers may come to have undue influence, since the IRO's they hire are likely to want to stay in the good graces of the companies that hire them. Conflicts of interest would thus be embedded in the system that was designed to avoid such conflicts. There would ultimately be the risk that the external review system could become corrupted.

Therefore, we strongly recommend that direct contracting between insurers and independent review organizations not be permitted.

One additional point: As mentioned above, mental health treatments typically involve highly personal, sensitive material. This point was recognized by the United States Supreme Court in its 1996 Jaffee-Redmond decision, which created an absolute psychotherapist-patient privilege in federal courts.

Accordingly, the confidentiality of external appeals is of crucial importance. Without the opportunity for a truly confidential appeals process, patients would likely forgo treatment rather than engage in an appeals process that they might fear could lead embarrassing and humiliating disclosures outside the safe professional context.

Thus, it is essential that external appeals be conducted at the same level of confidentiality as is needed for the treatment that is being reviewed. It is of utmost importance that this concept be included in the federal regulations governing external reviews.

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