



THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

December 8, 2010

Linda G. Greenberg  
Office of Consumer Information and Insurance Oversight  
Department of Health and Human Services  
Attention: OCIO-9986-NC, Room 445-G  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

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

Dear Ms. Greenberg:

On behalf of The Hospital & Healthsystem Association of Pennsylvania (HAP), which represents approximately 250 member institutions, including 125 stand-alone hospitals and another 120 hospitals that comprise 32 health systems across the Commonwealth of Pennsylvania, HAP appreciates the opportunity to respond to the request for information regarding the Patient Protection and Affordable Care Act and its provision for the establishment of an external review process. HAP believes that consistent and uniform processes for external review by independent review organizations (IROs) are important and must be established.

In 1998, Pennsylvania passed Act 68, the Pennsylvania Quality Health Care Accountability and Protection Act, which became effective on January 1, 1999. Pennsylvania's Act 68 is designed to provide managed care accountability and improve health insurance practices, and includes consumer protections around the grievance and appeals processes. The Pennsylvania Department of Health (PA DOH) established regulations that address utilization review standards, grievance and appeals processes, and provider credentialing for managed care organizations. But Act 68 and these corresponding consumer protections are limited, because they only apply to health maintenance organizations and managed care plans that use "gatekeepers." HAP believes it is important that the establishment of federal guidelines for external review govern all insurers that provide coverage to assure appropriate consumer protections. In Pennsylvania, PA DOH is working to make its external review process available to all plans and insurers, not covered by Act 68 but required by federal law to have one. Nonetheless, HAP expects that there will be plans operating in Pennsylvania that will ultimately need to use the federal external review process that is established. Therefore, HAP wants to ensure that the federal external review process meets the needs for and provides important protections for individuals served by Pennsylvania's hospitals and health systems.

HAP's comments focus on the following areas: credentialing standards for IRO medical reviewers; geographic coverage by IROs; and evaluations of IROs.

4750 Lindle Road  
PO Box 8600  
Harrisburg, PA 17105-8600  
717.564.9200 Phone  
717.561.5334 Fax  
haponline.org



### **Credentialing Standards for Independent Review Organization's Medical Reviewers**

As you are aware, according to the Uniform Health Carrier External Review Model Act established by the National Association of Insurance Commissioners (NAIC Uniform Model Act), there are minimum qualifications that must be met by all clinical reviewers assigned by an IRO to conduct external reviews, including that the physician or other appropriate health care provider "be knowledgeable about the recommended health care service or treatment through recent or current actual clinical experience treating patients with the same or similar medical condition of the covered person." This is a critical qualification that must be met by medical reviewers. There should also be a process by which an IRO has to demonstrate and verify compliance with this requirement when cases are assigned for external review. HAP believes that consumers have the right to verification of an external reviewer's recent clinical experience with treating patients with the same or similar medical condition. Unfortunately, hospitals in Pennsylvania report that there are instances in which medical reviewers have been retired for years, yet still are conducting medical case review. Medical and clinical practice is continually evolving and reviewers must be current with clinical care delivery. In addition, there have been cases reported in which pediatricians, working on behalf of insurance companies, are reviewing adult cases for medical necessity at an acute care inpatient facility or where a physician who has experience with adult patients may be reviewing a pediatric case. HAP believes that these do not meet the intent of providing for a credible review and that there should be systems established to guard against IROs assigning cases to retired physicians who do not have sufficient recent clinical practice to render relevant decisions and/or physicians who do not have clinical expertise and experience in the field of the clinical case that they are reviewing. It is essential that the medical reviewer must be from a "like specialty" and as per the NAIC Uniform Model Act "hold a non-restricted license in a State of the United States." Ideally, HAP would also recommend that the medical reviewer be required to hold a license in the state where he/she is conducting an external review, as state laws govern the scope of practice for licensed medical professionals.

### **Geographic Coverage by Independent Review Organizations**

Consistent with HAP's recommendation that medical reviewers conducting external reviews on behalf of IROs for clinical cases in Pennsylvania possess a current Pennsylvania medical license, HAP also contends that medical necessity reviews and decisions regarding health care would be best served if done at the local level where they would have intimate knowledge regarding the health care delivery system and current medical practice in that community. Local practice can be shaped by a variety of factors, including insurer medical policies, procedures and criteria, and the delivery system configuration in that region (which includes the availability and accessibility of services). HAP has been advocating for changes to the Blue Cross Blue Shield Association BlueCard program because there are problems that occur when a Blue Cross plan from one state is attempting to apply its medical necessity criteria to services being rendered to a recipient in another state where there may be a different standard of medical or clinical practice. Repeatedly hospitals, which are mandated to participate in the BlueCard program if they accept Blue Cross, are subject to medical decisions being rendered by Blue plans from another state that have no understanding of medical practice or state scope of

practice or facility licensure in the state in which the care is being delivered. HAP recommends that the federal system assures that medical reviewers will have knowledge and understanding of the region's medical practice. Therefore, HAP strongly recommends that any national IRO have the capability of deploying physicians to perform review in the location in which care is being delivered and who are knowledgeable about medical practices and the delivery systems in the location, as well as state laws governing scope of practice and facility licensure.

### **Evaluations of Independent Review Organizations**

The establishment of a performance evaluation for IROs will be an important component of the federal external review process so that the federal government can monitor the conduct of the IROs and their compliance with federal requirements. In addition, HAP believes that there must be transparency in the process so that consumers are informed about the work done by IROs. In particular, HAP would recommend that information, such as the number of cases reviewed and the percentage of decisions in favor of the consumers' appeal versus those that upheld the insurers' decision to deny coverage should be made publicly available. Consumers should have access to information regarding the types of cases that have been reviewed by the IRO, the criteria used to make external review decisions, and the ultimate decisions rendered.

Other specific areas that HAP recommends for inclusion in the performance evaluation of IROs are:

- Compliance with consumer notification of the external review process;
- Medical review decision turn-around-times for both the external review process and the expedited review process; and
- Consistency of medical necessity decisions.

Finally, HAP realizes that the Office of Consumer Information and Insurance Oversight will establish systems to ensure that IROs do not have a conflict of interest when conducting external reviews. This consumer protection may become an even greater challenge in the future as many national companies that provide independent review functions are consolidating and merging which makes the potential for conflicts of interest to arise more likely. It is essential that standards be developed to ensure that any and all conflicts of interest in the federal external review process are avoided.

HAP appreciates the opportunity to provide our comments to support the successful implementation of a federal external review process. HAP values the opportunities to comment on the various provisions of the Affordable Care Act, and we are pleased to work with you and your staff toward the successful implementation of health reform.

Linda G. Greenberg

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If you have any questions about our comments, please [contact me](#) at (717) 561-5344, or [Pamela Clarke](#), HAP's vice president of health care finance and managed care, at (215) 575-3755 or [Lynn Leighton](#), HAP's vice president of health services at (717) 561-5308.

Sincerely,

A handwritten signature in cursive script that reads "Paula A. Bussard".

PAULA A. BUSSARD

Senior Vice President, Policy & Regulatory Services