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The Next Generation of Appeal Procedures

On Monday, the DOL released additional rules with respect to the Federal external appeal procedures. These procedures apply to non-grandfathered self-insured health plans. The procedures include a number of issues for plans and plan sponsors, and unfortunately there is little time to manage them. Calendar year plans will have until January 1, 2011 to accomplish the following –

- The rules require the plan to process external appeals, send notices to participants and send the appeal to an appropriate IRO. Presumably, a plan can contract with their existing TPAs to perform these actions, but TPAs will need to be contacted, procedures will need to be developed and TPA contracts will need to be updated.
- Rather than an IRO being a subcontractor of a TPA, plans are required to independently contract with at least three IROs. Presumably, TPAs can assist in finding appropriate IROs, but the independent contracting requirement for plans is significant not only because separate contracts must be negotiated and signed with each IRO, but also because each IRO will also need to execute a HIPAA business associate agreement.
- In order bind participants to the external review process, a description of the procedures will need to be added to the plan's SPD or an applicable SMM.
- Each TPA's form of EOB will need to be updated based on the new model notices for EOBs.

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