Sen. Jacqueline Y. Collins

Filed: 3/25/2009

AMENDMENT TO SENATE BILL 1506

AMENDMENT NO. _____. Amend Senate Bill 1506, AS AMENDED, by replacing everything after the enacting clause with the following:

"Section 1. Short title. This Act may be cited as the Health Carrier External Review Act.

Section 5. Purpose and intent. The purpose of this Act is to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination, as defined in this Act.

Section 10. Definitions. For the purposes of this Act:

"Adverse determination" means a determination by a health carrier or its designee utilization review organization that an

admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness, and the requested service or payment for the service is therefore denied, reduced, or terminated.

"Authorized representative" means:

(1) a person to whom a covered person has given express written consent to represent the covered person in an external review;

(2) a person authorized by law to provide substituted consent for a covered person; or

(3) a family member of the covered person or the covered person's health care provider only when the covered person is unable to provide consent.

"Best evidence " means evidence based on:

(1) randomized clinical trials;

(2) if randomized clinical trials are not available, then cohort studies or case-control studies;

(3) if items (1) and (2) are not available, then case-series; or

(4) if items (1), (2), and (3) are not available, then expert opinion.

"Case-series " means an evaluation of a series of patients with a particular outcome, without the use of a control group.

"Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a health carrier to determine the necessity and appropriateness of health care services.

"Cohort study" means a prospective evaluation of 2 groups of patients with only one group of patients receiving specific intervention.

"Covered benefits" or "benefits" means those health care services to which a covered person is entitled under the terms of a health benefit plan.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan.

"Director" means the Director of the Division of Insurance within the Illinois Department of Financial and Professional Regulation.

"Emergency medical condition" means the sudden onset of a health condition or illness that requires immediate medical attention, where failure to provide medical attention would result in a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

"Emergency services" means health care items and services furnished or required to evaluate and treat an emergency medical condition.

"Evidence-based standard" means the conscientious,

explicit, and judicious use of the current best evidence based on an overall systematic review of the research in making decisions about the care of individual patients.

"Expert opinion" means a belief or an interpretation by specialists with experience in a specific area about the scientific evidence pertaining to a particular service, intervention, or therapy.

"Facility" means an institution providing health care services or a health care setting.

"Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review organization, at the completion of the health carrier's internal grievance process procedures as set forth by the American Accreditation Health Care Commission.

"Health benefit plan" means a policy, contract, certificate, plan, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

"Health care provider" or "provider" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with State law, responsible for recommending health care services on behalf of a covered person.

"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a health condition,

illness, injury, or disease.

"Health carrier" means an entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Director, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits, or health care services. "Health carrier" also means Limited Health Service Organizations (LHSO) and Voluntary Health Service Plans.

"Health carrier" does not include a managed care plan as defined in the Managed Care Reform and Patient Rights Act.

"Health information" means information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relate to:

(1) the past, present, or future physical, mental, or behavioral health or condition of an individual or a member of the individual's family;

(2) the provision of health care services to an individual; or

(3) payment for the provision of health care services to an individual.

"Independent review organization" means an entity that conducts independent external reviews of adverse

determinations and final adverse determinations.

"Medical or scientific evidence" means evidence found in the following sources:

(1) peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(2) peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the National Institutes of Health's Library of Medicine for indexing in Index Medicus (Medline) and Elsevier Science Ltd. for indexing in Excerpta Medicus (EMBASE);

(3) medical journals recognized by the Secretary of Health and Human Services under Section 1861(t)(2) of the federal Social Security Act;

(4) the following standard reference compendia:

(a) The American Hospital Formulary Service-Drug Information;

(b) Drug Facts and Comparisons;

(c) The American Dental Association Accepted Dental Therapeutics; and

(d) The United States Pharmacopoeia-Drug Information;

(5) findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes, including:

(a) the federal Agency for Healthcare Research and Quality;

(b) the National Institutes of Health;

(c) the National Cancer Institute;

(d) the National Academy of Sciences;

(e) the Centers for Medicare & Medicaid Services;

(f) the federal Food and Drug Administration; and

(g) any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services; or

(6) any other medical or scientific evidence that is comparable to the sources listed in items (1) through (5).

"Protected health information" means health information (i) that identifies an individual who is the subject of the information; or (ii) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

"Retrospective review" means a review of medical necessity conducted after services have been provided to a patient, but does not include the review of a claim that is limited to an

evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

"Utilization review" has the meaning provided by the American Accreditation Health Care Commission.

"Utilization review organization" means a utilization review program as defined by the American Accreditation Health Care Commission.

Section 15. Applicability and scope.

(a) Except as provided in subsection (b) of this Section, this Act shall apply to all health carriers.

(b) The provisions of this Act shall not apply to a policy or certificate that provides coverage only for a specified disease, specified accident or accident-only coverage, credit, dental, disability income, hospital indemnity, long-term care insurance as defined by Article XIXA of the Illinois Insurance Code, vision care, or any other limited supplemental benefit; a Medicare supplement policy of insurance as defined by the Director by regulation; coverage under a plan through Medicare, Medicaid, or the federal employees health benefits program; any coverage issued under Chapter 55 of Title 10, U.S. Code and any coverage issued as supplement to that coverage; any coverage issued as supplemental to liability insurance, workers' compensation, or similar insurance; automobile medical-payment insurance or any insurance under which benefits are payable with or without regard to fault, whether written on a group

blanket or individual basis; or any managed care plan as defined in the Managed Care Reform and Patient Rights Act.

Section 20. Notice of right to external review.

(a) At the same time the health carrier sends written notice of an adverse determination upon completion of the health carrier's utilization review process as provided by the American Accreditation Health Care Commission and a final adverse determination, a health carrier shall notify a covered person and a covered person's health care provider in writing of the covered person's right to request an external review as provided by this Act.

(1) The written notice required shall include the following, or substantially equivalent, language: "We have denied your request for the provision of or payment for a health care service or course of treatment. You have the right to have our decision reviewed by an independent review organization not associated with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a written request for an external review to us. Upon receipt of your request an independent review organization registered with the Department of Financial and Professional Regulation, Division of Insurance will be assigned to review our decision.".

(2) The notice shall also include the appropriate statements and information set forth in subsections (b) and (c) of this Section.

(b) The health carrier shall include in the notice required under subsection (a) of this Section for a notice related to an adverse determination, a statement informing the covered person that:

(1) if the covered person has a medical condition where the timeframe for completion of an expedited internal review of a grievance involving an adverse determination would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function or if the adverse determination involves a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational and the covered person's treating physician certifies in writing that the recommended or requested health care service or treatment that is the subject of the adverse determination would be significantly less effective if not promptly initiated, then the covered person or the covered person's authorized representative may file a request for an expedited external review at the same time the covered person or the covered person's authorized representative files a request for an expedited internal appeal involving an adverse

determination as set forth by the American Accreditation Health Care Commission. The independent review organization assigned to conduct the expedited external review will determine whether the covered person shall be required to complete the expedited review of the grievance prior to conducting the expedited external review; and

(2) the covered person or the covered person's authorized representative may file a grievance under the health carrier's internal grievance process as set forth by the American Accreditation Health Care Commission, but if the health carrier has not issued a written decision to the covered person or the covered person's authorized representative within 30 days following the date the covered person or the covered person's authorized representative files the grievance with the health carrier and the covered person or the covered person's authorized representative has not requested or agreed to a delay, then the covered person or the covered person's authorized representative may file a request for external review and shall be considered to have exhausted the health carrier's internal grievance process.

(c) The health carrier shall include in the notice required under subsection (a) of this Section for a notice related to a final adverse determination, a statement informing the covered person that:

(1) if the covered person has a medical condition where

the timeframe for completion of a standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, then the covered person or the covered person's authorized representative may file a request for an expedited external review; or

(2) if a final adverse determination concerns:

(i) an admission, availability of care, continued stay, or health care service for which the covered person received emergency services, but has not been discharged from a facility, then the covered person, or the covered person's authorized representative, may request an expedited external review; or

(ii) a denial of coverage based on a determination that the recommended or requested health care service or treatment is experimental or investigational, and the covered person's health care provider certifies in writing that the recommended or requested health care service or treatment that is the subject of the request would be significantly less effective if not promptly initiated, then the covered person or the covered person's authorized representative may request an expedited external review.

(d) In addition to the information to be provided pursuant to subsections (a), (b), and (c) of this Section, the health carrier shall include a copy of the description of both the

required standard and expedited external review procedures. The description shall highlight the external review procedures that give the covered person or the covered person's authorized representative the opportunity to submit additional information, including any forms used to process an external review.

Section 25. Request for external review. A covered person or the covered person's authorized representative may make a request for a standard external or expedited external review of an adverse determination or final adverse determination. Requests under this Section shall be made directly to the health carrier that made the adverse or final adverse determination. All requests for external review shall be in writing except for requests for expedited external reviews which may me made orally. Health carriers must provide covered persons with forms to request external reviews.

Section 30. Exhaustion of internal grievance process.

(a) Except as provided in item (1) of subsection (b) of Section 20 of this Act, a request for an external review shall not be made until the covered person has exhausted the health carrier's internal grievance process as set forth by the American Accreditation Health Care Commission.

(b) A covered person shall be considered to have exhausted the health carrier's internal grievance process for purposes of

this Section if the covered person or the covered person's authorized representative filed a request for an internal review of an adverse determination pursuant to the American Accreditation Health Care Commission and has not received a written decision on the request from the health carrier within 30 days after the request is filed, except to the extent the covered person or the covered person's authorized representative requested or agreed to a delay.

(c) Notwithstanding subsection (b) of this Section, a covered person or the covered person's authorized representative may not make a request for an external review of an adverse determination involving a retrospective review determination until the covered person has exhausted the health carrier's internal grievance process.

(d) Upon request for an expedited external review pursuant to item (1) of subsection (b) of Section 20 of this Act, the independent review organization conducting the external review shall determine whether the covered person shall be required to complete the expedited review process set forth by the American Accreditation Health Care Commission before it conducts the expedited external review. Upon determination that the covered person must first complete the expedited grievance review process, the independent review organization immediately shall notify the covered person and, if applicable, the covered person's authorized representative of this determination and that it will not proceed with the expedited external review

until completion of the expedited grievance review process and that covered person's grievance at the completion of the expedited grievance review process remains unresolved.

(e) A covered person need not exhaust a heath carrier's internal grievance procedures as set forth by the American Accreditation Health Care Commission, if the health carrier agrees to waive the exhaustion requirement.

Section 35. Standard external review.

(a) Within 4 months after the date of receipt of a notice of an adverse determination or final adverse determination, a covered person or the covered person's authorized representative may file a request for an external review with the health carrier.

(b) Within 5 business days following the date of receipt of the external review request, the health carrier shall complete a preliminary review of the request to determine whether:

(1) the individual is or was a covered person in the health benefit plan at the time the health care service was requested or at the time the health care service was provided;

(2) either of the following situations is applicable:

(A) the health care service that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health benefit plan, but the health carrier

has determined that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness; or

(B) the recommended or requested health care service or treatment that is the subject of the adverse determination or final adverse determination is a covered benefit under the covered person's health benefit plan except for the health carrier's determination that the service or treatment is experimental or investigational for a particular medical condition and is not explicitly listed as an excluded benefit under the covered person's health benefit plan with the health carrier;

(3) the covered person's treating physician has certified that one of the following situations is applicable:

(A) standard health care services or treatments have not been effective in improving the condition of the covered person;

(B) standard health care services or treatments are not medically appropriate for the covered person; or

(C) there is no available standard health care service or treatment covered by the health carrier that

is more beneficial than the recommended or requested health care service or treatment described in item (4) of this subsection (b);

(4) the covered person's treating physician:

(A) has recommended a health care service or treatment that the physician certifies, in writing, is likely to be more beneficial to the covered person, in the physician's opinion, than any available standard health care service or treatment; or

(B) who is a licensed, board certified, or board eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition, has certified in writing that scientifically valid studies using accepted protocols demonstrate that the health care service or treatment requested by the covered person that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person than any available standard health care services or treatments;

(5) the covered person has exhausted the health carrier's internal grievance process as set forth in Section 30 of this Act; and

(6) the covered person has provided all the information and forms required to process an external review as specified in this Act.

(c) Within one business day after completion of the preliminary review, the health carrier shall notify the covered person and, if applicable, the covered person's authorized representative in writing whether the request is complete and eligible for external review. If the request:

(1) is not complete, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative in writing and include in the notice what information or materials are required by this Act to make the request complete; or

(2) is not eligible for external review, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative in writing and include in the notice the reasons for its ineligibility.

The notice of initial determination of ineligibility shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the Director by filing a complaint with the Director.

Notwithstanding a health carrier's initial determination that the request is ineligible for external review, the Director may determine that a request is eligible for external review and require that it be referred for external review. In making such determination, the Director's decision shall be in

accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this Act.

(d) Whenever a request is eligible for external review the health carrier shall, within 5 business days:

(1) assign an independent review organization from the list of approved independent review organizations compiled and maintained by the Director; and

(2) notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review and the name of the independent review organization.

The health carrier shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or the covered person's authorized representative may, within 5 business days following the date of receipt of the notice provided pursuant to item (2) of this subsection (d), submit in writing to the assigned independent review organization additional information that the independent review organization shall consider when conducting the external review. The independent review organization is not required to, but may, accept and consider additional information submitted after 5 business days.

(e) The assignment of an approved independent review organization to conduct an external review in accordance with

this Section shall be done on a random basis among those approved independent review organizations qualified to conduct external review except for instances of conflict of interest concerns pursuant to this Act.

(f) Upon assignment of an independent review organization, the health carrier or its designee utilization review organization shall, within 5 business days, provide to the assigned independent review organization the documents and any information considered in making the adverse determination or final adverse determination; in such cases, the following provisions shall apply:

(1) Except as provided in item (2) of this subsection (f), failure by the health carrier or its utilization review organization to provide the documents and information within the specified time frame shall not delay the conduct of the external review.

(2) If the health carrier or its utilization review organization fails to provide the documents and information within the specified time frame, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(3) Within one business day after making the decision to terminate the external review and make a decision to reverse the adverse determination or final adverse determination under item (2) of this subsection (f), the

independent review organization shall notify the health carrier, the covered person and, if applicable, the covered person's authorized representative, of its decision to reverse the adverse determination.

(g) Upon receipt of the information from the health carrier or its utilization review organization, the assigned independent review organization shall review all of the information and documents and any other information submitted in writing to the independent review organization by the covered person and the covered person's authorized representative.

(h) Upon receipt of any information submitted by the covered person or the covered person's authorized representative, the independent review organization shall forward the information to the health carrier within 1 business day.

(1) Upon receipt of the information, if any, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(2) Reconsideration by the health carrier of its adverse determination or final adverse determination shall not delay or terminate the external review.

(3) The external review may only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or

final adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination. In such cases, the following provisions shall apply:

(A) Within one business day after making the decision to reverse its adverse determination or final adverse determination, the health carrier shall notify the covered person, if applicable, the covered person's authorized representative, and the assigned independent review organization in writing of its decision.

(B) Upon notice from the health carrier that the health carrier has made a decision to reverse its adverse determination or final adverse determination, the assigned independent review organization shall terminate the external review.

(i) In addition to the documents and information provided by the health carrier or its utilization review organization and the covered person and the covered person's authorized representative, if any, the independent review organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(1) for an adverse determination or final adverse determination:

(A) the covered person's pertinent medical records;

(B) the covered person's health care provider's recommendation;

(C) consulting reports from appropriate health care providers and other documents submitted by the health carrier, the covered person, the covered person's authorized representative, or the covered person's treating provider;

(D) the terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(E) the most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, and associations;

(F) any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization; and

(G) the opinion of the independent review organization's clinical reviewer or reviewers after

considering paragraphs (A) through (G) of this item (1) of this subsection (i) to the extent the information or documents are available and the clinical reviewer or reviewers considers the information or documents appropriate;

(2) for an adverse determination or final adverse determination that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational:

(A) the covered person's pertinent medical records;

(B) the covered person's health care provider's recommendation;

(C) consulting reports from appropriate health care providers and other documents submitted by the health carrier, the covered person, the covered person's authorized representative, or the covered person's treating physician or health care professional;

(D) the terms of coverage under the covered person's health benefit plan with the health carrier to ensure that, but for the health carrier's determination that the recommended or requested health care service or treatment that is the subject of the opinion is experimental or investigational, the

independent review organization's opinion is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier; and

(E) whether and to what extent:

(i) the recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or

(ii) medical or scientific evidence or evidence-based standards demonstrate that the expected benefits of the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care service or treatment and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments; or

(3) except for an expedited external review, for an adverse determination or final adverse determination that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, each clinical reviewer selected by the independent review

organization shall provide its opinion to the independent review organization in writing and include the following information:

(A) a description of the covered person's medical condition;

(B) a description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is more likely than not to be beneficial to the covered person than any available standard health care services or treatments and the adverse risks of the recommended or requested health care service or treatment would not be substantially increased over those of available standard health care services or treatments;

(C) a description and analysis of any medical or scientific evidence considered in reaching the opinion;

(D) a description and analysis of any evidence-based standard; and

(E) information on whether the reviewer's rationale for the opinion is based on paragraphs (i) or (ii) of subitem (E) of item (2) of this subsection (i).

(j) Within 5 days after the date of receipt of all necessary information, the assigned independent review organization shall provide written notice of its decision to

uphold or reverse the adverse determination or the final adverse determination to the health carrier, the covered person and, if applicable, the covered person's authorized representative. In reaching a decision, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth by the American Accreditation Health Care Commission. In such cases, the following provisions shall apply:

(1) The independent review organization shall include in the notice:

(A) a general description of the reason for the request for external review;

(B) the date the independent review organization received the assignment from the health carrier to conduct the external review;

(C) the time period during which the external review was conducted;

(D) references to the evidence or documentation, including the evidence-based standards, considered in reaching its decision.

(E) the date of its decision; and

(F) the principal reason or reasons for its decision, including what applicable, if any, evidence-based standards that were a basis for its decision.

(2) For reviews of experimental or investigational treatments, the notice shall include the following information:

(A) a general description of the reason for the request for external review;

(B) the written opinion of each clinical reviewer, including the recommendation of each clinical reviewer as to whether the recommended or requested health care service or treatment should be covered and the rationale for the reviewer's recommendation;

(C) the date that the independent review organization received assignment from the health carrier to conduct the external review;

(D) the time period during which the external review was conducted; and

(E) the principal reason or reasons for its decision.

(3) Upon receipt of a notice of a decision reversing the adverse determination or final adverse determination, the health carrier immediately shall approve the coverage that was the subject of the adverse determination or final adverse determination.

Section 40. Expedited external review.

(a) A covered person or a covered person's authorized representative may file a request for an expedited external

review with the health carrier either orally or in writing at the time the covered person receives:

(1) an adverse determination, if:

(A) the adverse determination involves a medical condition of the covered person for which the timeframe for completion of an expedited internal review of a grievance involving an adverse determination as set forth by the American Accreditation Health Care Commission would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; and

(B) the covered person or the covered person's authorized representative has filed a request for an expedited review of a grievance involving an adverse determination as set forth by the American Accreditation Health Care Commission; or

(2) a final adverse determination, if:

(A) the covered person has a medical condition where the timeframe for completion of a standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function; or

(B) the final adverse determination concerns an admission, availability of care, continued stay, or

health care service for which the covered person received emergency services but has not been discharged from a facility.

(b) Upon receipt of a request for an expedited external review as provided in Section 20 of this Act, the health carrier shall determine whether the request meets the reviewability requirements set forth in subsection (b) of Section 35 of this Act. The health carrier shall immediately notify the covered person and, if applicable, the covered person's authorized representative of its eligibility determination. The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that an external review request is ineligible for review may be appealed to the Director.

(c) The Director may determine that a request is eligible for external review under subsection (b) of Section 35 of this Act, notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review. In making a determination, the Director's decision shall be made in accordance with the terms of the covered person's health benefit plan and shall be subject to all applicable provisions of this Act.

(d) Whenever a request is eligible for external review, the health carrier shall immediately assign an independent review

organization from the list of approved independent review organizations compiled and maintained by the Director to conduct the expedited review. In such cases, the following provisions shall apply:

(1) The assignment by the health carrier of an approved independent review organization to conduct an external review in accordance with this Section shall be done on a random basis among those approved independent review organizations except as may be prohibited by conflict of interest concerns pursuant to Section 60 of this Act.

(2) Immediately upon assigning an independent review organization to perform an expedited external review, but in no case less than 24 hours after assigning the independent review organization, the health carrier or its designee utilization review organization shall provide or transmit all necessary documents and information considered in making the final adverse determination to the assigned independent review organization electronically or by telephone or facsimile or any other available expeditious method.

(3) If the health carrier or its utilization review organization fails to provide the documents and information within the specified time frame, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(4) Within one business day after making the decision to terminate the external review and make a decision to reverse the adverse determination or final adverse determination under item (2) of this subsection (d), the independent review organization shall notify the health carrier, the covered person and, if applicable, the covered person's authorized representative of its decision to reverse the adverse determination.

(e) In addition to the documents and information provided by the health carrier or its utilization review organization and any documents and information provided by the covered person and the covered person's authorized representative, the independent review organization shall consider the following in reaching a decision:

(1) for an adverse determination or final adverse determination, the provisions included in subitems (A) through (G) of item (1) of subsection (i) of Section 35 of this Act; or

(2) for an adverse determination or final adverse determination that involves a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational, the provisions included in subitems (A) through (E) of item (2) of subsection (i) of Section 35 of this Act.

(f) As expeditiously as the covered person's medical

condition or circumstances requires, but in no event more than 72 hours after the receipt of all pertinent information, the assigned independent review organization shall:

(1) make a decision to uphold or reverse the final adverse determination; and

(2) notify the health carrier, the covered person, the covered person's health care provider, and if applicable, the covered person's authorized representative, of the decision.

(g) In reaching a decision, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process or the health carrier's internal grievance process as set forth by the American Accreditation Health Care Commission.

(h) Upon receipt of notice of a decision reversing the final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the final adverse determination. Within 48 hours after the date of providing the notice required in this subsection (h), the assigned independent review organization shall provide written confirmation of the decision to the health carrier, the covered person, and if applicable, the covered person's authorized representative including the information set forth in subsection (j) of Section 35 of this Act as applicable.

(i) An expedited external review may not be provided for retrospective adverse or final adverse determinations.

Section 45. Binding nature of external review decision. An external review decision is binding on the health carrier. An external review decision is binding on the covered person except to the extent the covered person has other remedies available under applicable federal or State law. A covered person or the covered person's authorized representative may not file a subsequent request for external review involving the same adverse determination or final adverse determination for which the covered person has already received an external review decision pursuant to this Act.

Section 50. Approval of independent review organizations.

(a) The Director shall approve independent review organizations eligible to be assigned to conduct external reviews under this Act.

(b) In order to be eligible for approval by the Director under this Section to conduct external reviews under this Act an independent review organization:

(1) except as otherwise provided in this Section, shall be accredited by a nationally recognized private accrediting entity that the Director has determined has independent review organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent review; and

(2) shall submit an application for approval in

accordance with subsection (d) of this Section.

(c) The Director shall develop an application form for initially approving and for reapproving independent review organizations to conduct external reviews.

(d) Any independent review organization wishing to be approved to conduct external reviews under this Act shall submit the application form and include with the form all documentation and information necessary for the Director to determine if the independent review organization satisfies the minimum qualifications established under this Act. The Director may:

(1) approve independent review organizations that are not accredited by a nationally recognized private accrediting entity if there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation; and

(2) by rule establish an application fee that independent review organizations shall submit to the Director with an application for approval and renewing.

(e) An approval is effective for 2 years, unless the Director determines before its expiration that the independent review organization is not satisfying the minimum qualifications established under this Act.

(f) Whenever the Director determines that an independent review organization has lost its accreditation or no longer satisfies the minimum requirements established under this Act,

the Director shall terminate the approval of the independent review organization and remove the independent review organization from the list of independent review organizations approved to conduct external reviews under this Act that is maintained by the Director.

(g) The Director shall maintain and periodically update a list of approved independent review organizations.

(h) The Director may promulgate regulations to carry out the provisions of this Section.

Section 55. Minimum qualifications for independent review organizations.

(a) To be approved to conduct external reviews, an independent review organization shall have and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in this Act that include, at a minimum:

(1) a quality assurance mechanism that ensures that:

(A) external reviews are conducted within the specified time frames and required notices are provided in a timely manner;

(B) selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases and that the independent

review organization employs or contracts with an adequate number of clinical reviewers to meet this objective;

(C) the health carrier, the covered person, and the covered person's authorized representative shall not choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review;

(D) confidentiality of medical and treatment records and clinical review criteria; and

(E) any person employed by or under contract with the independent review organization adheres to the requirements of this Act;

(2) a toll-free telephone service operating on a 24-hour-day, 7-day-a-week basis that accepts, receives, and records information related to external reviews and provides appropriate instructions; and

(3) an agreement to maintain and provide to the Director the information set out in Section 70 of this Act.

(b) All clinical reviewers assigned by an independent review organization to conduct external reviews shall be physicians or other appropriate health care providers who meet the following minimum qualifications:

(1) be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

(2) 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;

(3) hold a non-restricted license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review;

(4) have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical reviewer's physical, mental, or professional competence or moral character; and

(5) for purposes of conducting an external review of experimental or investigational treatment adverse determinations, through clinical experience in the past 3 years, be an expert in the treatment of the covered person's condition and knowledgeable about the recommended or requested health care service or treatment; neither the covered person, the covered person's authorized representative, if applicable, nor the health carrier shall choose or control the choice of the physicians or other health care professionals selected to conduct the

external review.

(c) In addition to the requirements set forth in subsection (a), an independent review organization may not own or control, be a subsidiary of, or in any way be owned, or controlled by, or exercise control with a health benefit plan, a national, State, or local trade association of health benefit plans, or a national, State, or local trade association of health care providers.

(d) Conflicts of interest prohibited. In addition to the requirements set forth in subsections (a), (b), and (c) of this Section, to be approved pursuant to this Act to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor any clinical reviewer assigned by the independent organization to conduct the external review may have a material professional, familial or financial conflict of interest with any of the following:

(1) the health carrier that is the subject of the external review;

(2) the covered person whose treatment is the subject of the external review or the covered person's authorized representative;

(3) any officer, director or management employee of the health carrier that is the subject of the external review;

(4) the health care provider, the health care provider's medical group or independent practice

association recommending the health care service or treatment that is the subject of the external review;

(5) the facility at which the recommended health care service or treatment would be provided; or

(6) the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

(e) An independent review organization that is accredited by a nationally recognized private accrediting entity that has independent review accreditation standards that the Director has determined are equivalent to or exceed the minimum qualifications of this Section shall be presumed to be in compliance with this Section and shall be eligible for approval under this Section.

(f) An independent review organization shall be unbiased. An independent review organization shall establish and maintain written procedures to ensure that it is unbiased in addition to any other procedures required under this Section.

Section 60. Hold harmless for independent review organizations. No independent review organization or clinical reviewer working on behalf of an independent review organization or an employee, agent or contractor of an independent review organization shall be liable for damages to any person for any opinions rendered or acts or omissions

performed within the scope of the organization's or person's duties under the law during or upon completion of an external review conducted pursuant to this Act, unless the opinion was rendered or act or omission performed in bad faith or involved gross negligence.

Section 65. External review reporting requirements.

(a) Each health carrier shall maintain written records in the aggregate on all requests for external review for each calendar year and submit a report to the Director in the format specified by the Director by March 1 of each year.

(b) The report shall include in the aggregate:

(1) the total number of requests for external review;

(2) the total number of requests for expedited external review;

(3) the total number of requests for external review denied;

(4) the number of requests for external review resolved, including:

(A) the number of requests for external review resolved upholding the adverse determination or final adverse determination;

(B) the number of requests for external review resolved reversing the adverse determination or final adverse determination;

(C) the number of requests for expedited external

review resolved upholding the adverse determination or final adverse determination; and

(D) the number of requests for expedited external review resolved reversing the adverse determination or final adverse determination;

(5) the average length of time for resolution for an external review;

(6) the average length of time for resolution for an expedited external review;

(7) a summary of the types of coverages or cases for which an external review was sought, as specified below:

(A) denial of care or treatment (dissatisfaction regarding prospective non-authorization of a request for care or treatment recommended by a provider excluding diagnostic procedures and referral requests; partial approvals and care terminations are also considered to be denials);

(B) denial of diagnostic procedure (dissatisfaction regarding prospective non-authorization of a request for a diagnostic procedure recommended by a provider; partial approvals are also considered to be denials);

(C) denial of referral request (dissatisfaction regarding non-authorization of a request for a referral to another provider recommended by a PCP);

(D) claims and utilization review (dissatisfaction

regarding the concurrent or retrospective evaluation of the coverage, medical necessity, efficiency or appropriateness of health care services or treatment plans; prospective "Denials of care or treatment," "Denials of diagnostic procedures" and "Denials of referral requests" should not be classified in this category, but the appropriate one above);

(8) the number of external reviews that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative; and

(9) any other information the Director may request or require.

Section 70. Funding of external review. The health carrier shall be solely responsible for paying the cost of external reviews conducted by independent review organizations.

Section 75. Disclosure requirements.

(a) Each health carrier shall include a description of the external review procedures in, or attached to, the policy, certificate, membership booklet, and outline of coverage or other evidence of coverage it provides to covered persons.

(b) The description required under subsection (a) of this

Section shall include a statement that informs the covered person of the right of the covered person to file a request for an external review of an adverse determination or final adverse determination with the health carrier. The statement shall explain that external review is available when the adverse determination or final adverse determination involves an issue of medical necessity, appropriateness, health care setting, level of care, or effectiveness. The statement shall include the toll-free telephone number and address of the Office of Consumer Health Insurance within the Division of Insurance.

Section 97. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 99. Effective date. This Act takes effect January 1, 2010.".