

# HOUSE BILL No. 1309

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-21.5; IC 27-13-10-11.1.

**Synopsis:** Health maintenance organization grievances. Requires the department of insurance to establish a grievance procedure for appeal to the department for resolution of grievances related to an adverse utilization review or medical necessity determination made by a health maintenance organization, or an agent of a health maintenance organization, that conflicts with the prescribing physician's plan of treatment. Requires the insurance commissioner to appoint or contract with a medical review professional for review of adverse utilization reviews and medical necessity determinations. Requires the commissioner to consider the findings of the medical review professional in the commissioner's action on the grievance. Requires that health maintenance organizations provide a copy of the external grievance procedure to enrollees.

**Effective:** July 1, 1999.

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**Crosby, Cheney, Welch, Becker**

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January 12, 1999, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE BILL No. 1309

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-21.5-2-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. This article does not  
3 apply to the following agency actions:  
4 (1) The issuance of a warrant or jeopardy warrant for the  
5 collection of taxes.  
6 (2) A determination of probable cause or no probable cause by the  
7 civil rights commission.  
8 (3) A determination in a factfinding conference of the civil rights  
9 commission.  
10 (4) A personnel action, except review of a personnel action by the  
11 state employees appeals commission under IC 4-15-2 or a  
12 personnel action that is not covered by IC 4-15-2 but may be  
13 taken only for cause.  
14 (5) A resolution, directive, or other action of any agency that  
15 relates solely to the internal policy, organization, or procedure of  
16 that agency or another agency and is not a licensing or  
17 enforcement action. Actions to which this exemption applies  
18 include the statutory obligations of an agency to approve or ratify



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- 1 an action of another agency.
- 2 (6) An agency action related to an offender within the jurisdiction
- 3 of the department of correction.
- 4 (7) A decision of the department of commerce, the department of
- 5 environmental management, the enterprise zone board, the tourist
- 6 information and grant fund review committee, the Indiana
- 7 development finance authority, the Indiana business
- 8 modernization and technology corporation, the corporation for
- 9 innovation development, the Indiana small business development
- 10 corporation, or the lieutenant governor that concerns a grant, loan,
- 11 bond, tax incentive, or financial guarantee.
- 12 (8) A decision to issue or not issue a complaint, summons, or
- 13 similar accusation.
- 14 (9) A decision to initiate or not initiate an inspection, **an**
- 15 investigation, or other similar inquiry that will be conducted by
- 16 the agency, another agency, a political subdivision, including a
- 17 prosecuting attorney, a court, or another person.
- 18 (10) A decision concerning the conduct of an inspection, **an**
- 19 investigation, or other similar inquiry by an agency.
- 20 (11) The acquisition, leasing, or disposition of property or
- 21 procurement of goods or services by contract.
- 22 (12) Determinations of the department of workforce development
- 23 under IC 22-4-18-1(g)(1), IC 22-4-40, or IC 22-4-41.
- 24 (13) A decision under IC 9-30-12 of the bureau of motor vehicles
- 25 to suspend or revoke the driver's license, a driver's permit, a
- 26 vehicle title, or a vehicle registration of an individual who
- 27 presents a dishonored check.
- 28 (14) An action of the department of financial institutions under
- 29 IC 28-1-3.1 or a decision of the department of financial
- 30 institutions to act under IC 28-1-3.1.
- 31 (15) A determination by the NVRA official under IC 3-7-11
- 32 concerning an alleged violation of the National Voter Registration
- 33 Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.
- 34 **(16) A recommendation by a medical review professional**
- 35 **under IC 27-13-10-11.1.**
- 36 SECTION 2. IC 4-21.5-3-4 IS AMENDED TO READ AS
- 37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Notice must be
- 38 given under this section concerning the following:
- 39 (1) The grant, renewal, restoration, transfer, or denial of a license
- 40 by the bureau of motor vehicles under IC 9.
- 41 (2) The grant, renewal, restoration, transfer, or denial of a
- 42 noncommercial fishing or hunting license by the department of

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1 natural resources under IC 14.

2 (3) The grant, renewal, restoration, transfer, or denial of a license  
3 by a board described in IC 25-1-8-1.

4 (4) A personnel decision by an agency.

5 (5) The grant, renewal, restoration, transfer, or denial of a license  
6 by the department of environmental management or the  
7 commissioner of the department under the following:

8 (A) Environmental management laws (as defined in  
9 IC 13-11-2-71) for the construction, installation, or  
10 modification of:

11 (i) sewers and appurtenant facilities, devices, or structures  
12 for the collection and transport of sewage (as defined in  
13 IC 13-11-2-200) or storm water to a storage or treatment  
14 facility or to a point of discharge into the environment; or

15 (ii) pipes, pumps, and appurtenant facilities, devices, or  
16 structures that are part of a public water supply (as defined  
17 in IC 13-11-2-177) and that are used to transport water to a  
18 storage or treatment facility or to distribute water to the  
19 users of the public water supply;

20 where a federal, state, or local governmental body has given or  
21 will give public notice and has provided or will provide an  
22 opportunity for public participation concerning the activity  
23 that is the subject of the license.

24 (B) Environmental management laws (as defined in  
25 IC 13-11-2-71) for the registration of a device or a piece of  
26 equipment.

27 (C) IC 13-17-6-1 for a person to engage in the inspection,  
28 management, and abatement of asbestos containing material.

29 (D) IC 13-18-11 for a person to operate a wastewater treatment  
30 plant.

31 (E) IC 13-15-10 for a person to operate the following:

32 (i) A solid waste incinerator or a waste to energy facility.

33 (ii) A land disposal site.

34 (iii) A facility described under IC 13-15-1-3 whose  
35 operation could have an adverse impact on the environment  
36 if not operated properly.

37 (F) IC 13-20-4 for a person to operate a municipal waste  
38 collection and transportation vehicle.

39 **(G) An order issued under IC 27-13-10-11.1(e)(2).**

40 (b) When an agency issues an order described by subsection (a), the  
41 agency shall give a written notice of the order to the following persons:

42 (1) Each person to whom the order is specifically directed.

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1 (2) Each person to whom a law requires notice to be given.  
 2 A person who is entitled to notice under this subsection is not a party  
 3 to any proceeding resulting from the grant of a petition for review  
 4 under section 7 of this chapter unless the person is designated as a  
 5 party on the record of the proceeding.

6 (c) The notice must include the following:

7 (1) A brief description of the order.

8 (2) A brief explanation of the available procedures and the time  
 9 limit for seeking administrative review of the order under section  
 10 7 of this chapter.

11 (3) Any information required by law.

12 (d) An order under this section is effective when it is served.  
 13 However, if a timely and sufficient application has been made for  
 14 renewal of a license described by subsection (a)(3) and review is  
 15 granted under section 7 of this chapter, the existing license does not  
 16 expire until the agency has disposed of the proceeding under this  
 17 chapter concerning the renewal, unless a statute other than this article  
 18 provides otherwise. This subsection does not preclude an agency from  
 19 issuing under IC 4-21.5-4 an emergency or other temporary order with  
 20 respect to the license.

21 (e) If a petition for review of an order described in subsection (a) is  
 22 filed within the period set by section 7 of this chapter and a petition for  
 23 stay of effectiveness of the order is filed by a party or another person  
 24 who has a pending petition for intervention in the proceeding, an  
 25 administrative law judge shall, as soon as practicable, conduct a  
 26 preliminary hearing to determine whether the order should be stayed in  
 27 whole or in part. The burden of proof in the preliminary hearing is on  
 28 the person seeking the stay. The administrative law judge may stay the  
 29 order in whole or in part. The order concerning the stay may be issued  
 30 after an order described in subsection (a) becomes effective. The  
 31 resulting order concerning the stay shall be served on the parties and  
 32 any person who has a pending petition for intervention in the  
 33 proceeding. It must include a statement of the facts and law on which  
 34 it is based.

35 SECTION 3. IC 4-21.5-4-5 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) Except as  
 37 provided in subsection (c), an order issued under this chapter expires  
 38 on the earliest of the following:

39 (1) The date set in the order.

40 (2) The date set by a statute other than this article.

41 (3) The elapse of ninety (90) days.

42 (b) During the pendency of any related proceedings under

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1 IC 4-21.5-3, the agency responsible for the proceeding may renew the  
 2 order for successive ninety (90) day periods unless a statute other than  
 3 this article prohibits the renewal of the order.

4 (c) An order issued under this chapter, ~~and~~ IC 15-2.1-6, ~~and~~  
 5 **27-13-10-11.1(e)(1)** does not expire.

6 SECTION 4. IC 27-13-10-11.1 IS ADDED TO THE INDIANA  
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 8 [EFFECTIVE JULY 1, 1999]: **Sec. 11.1. (a) The department shall**  
 9 **establish and maintain an external grievance procedure for the**  
 10 **resolution of grievances regarding an adverse:**

11 (1) **utilization review determination (as defined in**  
 12 **IC 27-8-17-8); or**

13 (2) **determination of medical necessity;**  
 14 **made by a health maintenance organization or an agent of a health**  
 15 **maintenance organization that conflicts with the prescribing**  
 16 **physician's plan of treatment.**

17 (b) **An external grievance procedure established under**  
 18 **subsection (a) must:**

19 (1) **allow an enrollee or the enrollee's representative to file**  
 20 **with the department an appeal of a health maintenance**  
 21 **organization's grievance resolution under section 7 or 8 of this**  
 22 **chapter; and**

23 (2) **provide for:**

24 (A) **an expedited appeal for a grievance related to a life**  
 25 **threatening condition or a condition for which a delay in**  
 26 **treatment would cause an increase in the severity of the**  
 27 **enrollee's condition; or**

28 (B) **a standard appeal for a grievance related to a condition**  
 29 **not described in clause (A).**

30 (c) **The commissioner shall appoint or enter into a contract with**  
 31 **a medical review professional who is a physician licensed under**  
 32 **IC 25-22.5 for resolution of appeals filed under subsection (b).**

33 (d) **The medical review professional shall:**

34 (1) **for an expedited appeal filed under subsection (b)(2)(A),**  
 35 **within twenty four (24) hours of the time the appeal is filed;**  
 36 **or**

37 (2) **for a standard appeal filed under subsection (b)(2)(B),**  
 38 **within five (5) business days of the time the appeal is filed;**

39 **make a determination of appropriateness of the utilization review**  
 40 **determination or determination of medical necessity based on**  
 41 **information gathered from the complaining party, the health**  
 42 **maintenance organization, and the prescribing physician, and**



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1 based on any additional information that the medical review  
2 professional considers necessary and appropriate. The medical  
3 review professional shall submit the findings under this subsection  
4 to the commissioner.

5 (e) The commissioner shall consider the medical review  
6 professional's findings and may:

7 (1) for an expedited appeal filed under subsection (b)(2)(A)  
8 and under rules adopted under this section, issue an  
9 emergency order under IC 4-21.5-4 within twenty four (24)  
10 hours of receiving the medical review professional's findings;  
11 or

12 (2) for a standard appeal filed under subsection (b)(2)(B) and  
13 after a hearing under IC 4-21.5-3, issue an order;

14 to require the health maintenance organization to reverse its  
15 adverse utilization review determination or determination of  
16 medical necessity.

17 (f) An appeal is considered to be filed on the first date it is  
18 received, either by telephone or in writing.

19 (g) Notice required under IC 4-21.5-3-4 for an order issued  
20 under subsection (e)(2) must be given to the health maintenance  
21 organization, the prescribing physician, and the enrollee.

22 (h) A health maintenance organization shall provide to each  
23 enrollee a copy of the external grievance procedure established  
24 under subsection (a).

25 (i) The department shall, not later than June 30, 2000, adopt  
26 rules under IC 4-22-2 to implement this section.

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