

## **IC 27-13-10.1**

### Chapter 10.1. External Review of Grievances

#### **IC 27-13-10.1-0.1**

##### **Application of chapter**

Sec. 0.1. The addition of this chapter by P.L.133-1999 applies to grievances filed under IC 27-13-10-5 after January 1, 2000.

*As added by P.L.220-2011, SEC.459.*

#### **IC 27-13-10.1-1**

##### **External grievance procedure established**

Sec. 1. A health maintenance organization shall establish and maintain an external grievance procedure for the resolution of grievances regarding the following:

(1) The following determinations made by the health maintenance organization or an agent of the health maintenance organization regarding a service proposed by the treating physician:

(A) An adverse utilization review determination (as defined in IC 27-8-17-8).

(B) An adverse determination of medical necessity.

(C) A determination that a proposed service is experimental or investigational.

(2) The health maintenance organization's decision to rescind an individual contract or a group contract.

*As added by P.L.133-1999, SEC.7. Amended by P.L.160-2011, SEC.28.*

#### **IC 27-13-10.1-2**

##### **Requirements of procedure**

Sec. 2. (a) An external grievance procedure established under section 1 of this chapter must:

(1) allow an enrollee or the enrollee's representative to file a written request with the health maintenance organization for an appeal of the health maintenance organization's grievance resolution under IC 27-13-10-8 not later than one hundred twenty (120) days after the enrollee is notified of the resolution under IC 27-13-10-8; and

(2) provide for:

(A) an expedited appeal for a grievance related to an illness, a disease, a condition, an injury, or a disability that would seriously jeopardize the enrollee's:

(i) life or health; or

(ii) ability to reach and maintain maximum function; or

(B) a standard appeal for a grievance not described in clause

(A).

An enrollee may file not more than one (1) appeal of a health maintenance organization's grievance resolution under this chapter.

(b) Subject to the requirements of subsection (d), when a request is filed under subsection (a), the health maintenance organization

shall:

(1) select a different independent review organization for each appeal filed under this chapter from the list of independent review organizations that are certified by the department under section 8 of this chapter; and

(2) rotate the choice of an independent review organization among all certified independent review organizations before repeating a selection.

(c) The independent review organizations shall assign a medical review professional who is board certified in the applicable specialty for resolution of an appeal.

(d) The independent review organization and the medical review professional conducting the external review under this chapter may not have a material professional, familial, financial, or other affiliation with any of the following:

(1) The health maintenance organization.

(2) Any officer, director, or management employee of the health maintenance organization.

(3) The physician or the physician's medical group that is proposing the service.

(4) The facility at which the service would be provided.

(5) The development or manufacture of the principal drug, device, procedure, or other therapy that is proposed by the treating physician.

However, the medical review professional may have an affiliation under which the medical review professional provides health care services to enrollees of the health maintenance organization and may have an affiliation that is limited to staff privileges at the health facility if the affiliation is disclosed to the enrollee and the health maintenance organization before commencing the review and neither the enrollee nor the health maintenance organization objects.

(e) The enrollee may be required to pay not more than twenty-five dollars (\$25) of the costs associated with the services of an independent review organization under this chapter. All additional costs must be paid by the health maintenance organization.

*As added by P.L.133-1999, SEC.7. Amended by P.L.160-2011, SEC.29.*

### **IC 27-13-10.1-3**

#### **Cooperation with review organization; requirements of enrollee**

Sec. 3. (a) An enrollee who files an appeal under this chapter shall:

(1) not be subject to retaliation for exercising the enrollee's right to an appeal under this chapter;

(2) be permitted to utilize the assistance of other individuals, including physicians, attorneys, friends, and family members throughout the review process;

(3) be permitted to submit additional information relating to the proposed service throughout the review process; and

(4) cooperate with the independent review organization by:

- (A) providing any requested medical information; or
- (B) authorizing the release of necessary medical information.

(b) A health maintenance organization shall cooperate with an independent review organization selected under section 2 of this chapter by promptly providing any information requested by the independent review organization.

*As added by P.L.133-1999, SEC.7.*

#### **IC 27-13-10.1-4**

##### **Requirements of independent review organization**

Sec. 4. (a) An independent review organization shall:

- (1) for an expedited appeal filed under section 2(a)(2)(A) of this chapter, within seventy-two (72) hours after the appeal is filed;
- or
- (2) for a standard appeal filed under section 2(a)(2)(B) of this chapter, within fifteen (15) business days after the appeal is filed;

make a determination to uphold or reverse the health maintenance organization's grievance resolution under IC 27-13-10-8 based on information gathered from the enrollee or the enrollee's designee, the health maintenance organization, and the treating physician, and any additional information that the independent review organization considers necessary and appropriate.

(b) When making the determination under this section, the independent review organization shall apply:

- (1) standards of decision making that are based on objective clinical evidence; and
- (2) the terms of the enrollee's benefit contract.

(c) The independent review organization shall notify the health maintenance organization and the enrollee of the determination made under this section:

- (1) for an expedited appeal filed under section 2(a)(2)(A) of this chapter, within twenty-four (24) hours after making the determination; or
- (2) for a standard appeal filed under section 2(a)(2)(B) of this chapter, within seventy-two (72) hours after making the determination.

*As added by P.L.133-1999, SEC.7.*

#### **IC 27-13-10.1-4.5**

##### **Information from independent review organization**

Sec. 4.5. Upon the request of an enrollee who is notified under section 4(c) of this chapter that the independent review organization has made a determination, the independent review organization shall provide to the enrollee all information reasonably necessary to enable the enrollee to understand the:

- (1) effect of the determination on the enrollee; and
- (2) manner in which the health maintenance organization may be expected to respond to the determination.

*As added by P.L.173-2007, SEC.43.*

#### **IC 27-13-10.1-5**

##### **Determination binding on health maintenance organization**

Sec. 5. A determination made under section 4 of this chapter is binding on the health maintenance organization.

*As added by P.L.133-1999, SEC.7.*

#### **IC 27-13-10.1-6**

##### **Reconsideration of resolution**

Sec. 6. (a) If at any time during an external review performed under this chapter, the enrollee submits information to the health maintenance organization that is relevant to the health maintenance organization's resolution under IC 27-13-10-8 and was not considered by the health maintenance organization under IC 27-13-10:

(1) the health maintenance organization shall reconsider the health maintenance organization's resolution under IC 27-13-10-8; and

(2) the independent review organization shall cease the external review process until the reconsideration under subsection (b) is completed.

(b) A health maintenance organization to which information is submitted under subsection (a) shall reconsider the resolution under IC 27-13-10-8 based on the information and notify the enrollee of the health maintenance organization's decision:

(1) within seventy-two (72) hours after the information is submitted for a reconsideration related to an illness, a disease, a condition, an injury, or a disability that would seriously jeopardize the enrollee's:

(A) life or health; or

(B) ability to reach and maintain maximum function; or

(2) within fifteen (15) days after the information is submitted for a reconsideration not described in subdivision (1).

(c) If the decision reached under subsection (b) is adverse to the enrollee, the enrollee may request that the independent review organization resume the external review under this chapter.

*As added by P.L.133-1999, SEC.7.*

#### **IC 27-13-10.1-7**

##### **Terms of coverage unchanged**

Sec. 7. This chapter does not add to or otherwise change the terms of coverage included in a contract under which an enrollee receives health care benefits under IC 27-13.

*As added by P.L.133-1999, SEC.7.*

#### **IC 27-13-10.1-8**

##### **Certification of independent review organizations**

Sec. 8. (a) The department shall establish and maintain a process for annual certification of independent review organizations.

(b) The department shall certify a number of independent review organizations determined by the department to be sufficient to fulfill the purposes of this chapter.

(c) An independent review organization shall meet the following minimum requirements for certification by the department:

(1) Medical review professionals assigned by the independent review organization to perform external grievance reviews under this chapter:

(A) must be board certified in the specialty in which an enrollee's proposed service would be provided;

(B) must be knowledgeable about a proposed service through actual clinical experience;

(C) must hold an unlimited license to practice in a state of the United States; and

(D) must have no history of disciplinary actions or sanctions including:

(i) loss of staff privileges; or

(ii) restriction on participation;

taken or pending by any hospital, government, or regulatory body.

(2) The independent review organization must have a quality assurance mechanism to ensure the:

(A) timeliness and quality of reviews;

(B) qualifications and independence of medical review professionals;

(C) confidentiality of medical records and other review materials; and

(D) satisfaction of enrollees with the procedures utilized by the independent review organization, including the use of enrollee satisfaction surveys.

(3) The independent review organization must file with the department the following information before March 1 of each year:

(A) The number and percentage of determinations made in favor of enrollees.

(B) The number and percentage of determinations made in favor of health maintenance organizations.

(C) The average time to process a determination.

(D) The number of external grievance reviews terminated due to reconsideration of the health maintenance organization before a determination was made.

(E) Any other information required by the department.

The information required under this subdivision must be specified for each health maintenance organization for which the independent review organization performed reviews during the reporting year.

(4) The independent review organization must retain all records related to an external grievance review for at least three (3) years after a determination is made under section 4 of this chapter.

(5) Any additional requirements established by the department.

(d) The department may not certify an independent review organization that is one (1) of the following:

(1) A professional or trade association of health care providers or a subsidiary or an affiliate of a professional or trade association of health care providers.

(2) A health insurer, health maintenance organization, or health plan association or a subsidiary or an affiliate of a health insurer, health maintenance organization, or health plan association.

(e) The department may suspend or revoke an independent review organization's certification if the department finds that the independent review organization is not in substantial compliance with the certification requirements under this section.

(f) The department shall make available to health maintenance organizations a list of all certified independent review organizations.

(g) The department shall make the information provided to the department under subsection (c)(3) available to the public in a format that does not identify individual enrollees.

*As added by P.L.133-1999, SEC.7. Amended by P.L.14-2000, SEC.60; P.L.160-2011, SEC.30.*

#### **IC 27-13-10.1-9**

##### **Confidentiality**

Sec. 9. Except as provided in section 8(g) of this chapter, documents and other information created or received by the independent review organization or the medical review professional in connection with an external review under this chapter:

- (1) are not public records;
- (2) may not be disclosed under IC 5-14-3; and
- (3) must be treated in accordance with confidentiality requirements of state and federal law.

*As added by P.L.133-1999, SEC.7.*

#### **IC 27-13-10.1-10**

##### **Immunity from civil liability**

Sec. 10. (a) An independent review organization is immune from civil liability for actions taken in good faith in connection with an external review under this chapter.

(b) The work product or determination, or both, of an independent review organization under this chapter are admissible in a judicial or administrative proceeding. However, the work product or determination, or both, do not, without other supporting evidence, satisfy any party's burden of proof or persuasion concerning any material issue of fact or law.

*As added by P.L.133-1999, SEC.7.*

#### **IC 27-13-10.1-11**

##### **Medicare review**

Sec. 11. If an enrollee has the right to an external review under Medicare (42 U.S.C. 1395 et seq.) the enrollee may not request an external review under this chapter.

*As added by P.L.133-1999, SEC.7.*

**IC 27-13-10.1-12**

**Adoption of rules**

Sec. 12. The department may adopt rules under IC 4-22-2 to implement this chapter.

*As added by P.L.133-1999, SEC.7.*