IC 27-8-29

Chapter 29. External Review of Grievances

IC 27-8-29-1

"Accident and sickness insurance policy" defined

Sec. 1. As used in this chapter, "accident and sickness insurance policy" has the meaning set forth in IC 27-8-28-1.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-2

"Appeal" defined

Sec. 2. As used in this chapter, "appeal" means the procedure described in IC 27-8-28-17.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-3

"Commissioner" defined

Sec. 3. As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.1-2002, SEC.117.

IC 27-8-29-4

"Covered individual" defined

Sec. 4. As used in this chapter, "covered individual" has the meaning set forth in IC 27-8-28-3.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-5

"Department" defined

Sec. 5. As used in this chapter, "department" refers to the department of insurance.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-6

"External grievance" defined

Sec. 6. As used in this chapter, "external grievance" means the independent review under this chapter of a:

(1) grievance filed under IC 27-8-28; or

(2) denial of coverage based on a waiver described in IC 27-8-5-2.5(e) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.211-2003, SEC.6; P.L.3-2008, SEC.215.

IC 27-8-29-7

"Grievance" defined

Sec. 7. As used in this chapter, "grievance" has the meaning set

forth in IC 27-8-28-6.
As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-8
"Grievance procedure" defined

Sec. 8. As used in this chapter, "grievance procedure" has the meaning set forth in IC 27-8-28-7.
As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-9
"Health care provider" defined

Sec. 9. As used in this chapter, "health care provider" means a person:

(1) that provides physician services (as defined in IC 12-15-11-1(a)); or

(2) who is licensed under IC 25-33.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-10
"Insured" defined

Sec. 10. As used in this chapter, "insured" has the meaning set forth in IC 27-8-28-8.
As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-11
"Insurer" defined

Sec. 11. As used in this chapter, "insurer" has the meaning set forth in IC 27-8-28-9.
As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-12
Insurer to establish external grievance procedures

Sec. 12. An insurer shall establish and maintain an external grievance procedure for the resolution of external grievances regarding the following:

(1) The following determinations made by the insurer or an agent of the insurer regarding a service proposed by the treating health care provider:

(A) An adverse determination of appropriateness.

(B) An adverse determination of medical necessity.

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

(D) A denial of coverage based on a waiver described in IC 27-8-5-2.5(e) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

(2) The insurer's decision to rescind an accident and sickness insurance policy.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

Amended by P.L.211-2003, SEC.7; P.L.3-2008, SEC.216; P.L.160-2011, SEC.23.

IC 27-8-29-13

Requirements for external grievance procedure; independent review organizations

Sec. 13. (a) An external grievance procedure established under section 12 of this chapter must:

(1) allow a covered individual, or a covered individual's representative, to file a written request with the insurer for an external grievance review of the insurer's

(A) appeal resolution under IC 27-8-28-17 or

(B) denial of coverage based on a waiver described in IC 27-8-5-2.5(e) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed);

not more than one hundred twenty (120) days after the covered individual is notified of the resolution; and

(2) provide for:

(A) an expedited external grievance review for a grievance related to an illness, a disease, a condition, an injury, or a disability if the time frame for a standard review would seriously jeopardize the covered individual's:

(i) life or health; or

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

(B) a standard external grievance review for a grievance not described in clause (A).

A covered individual may file not more than one (1) external grievance of an insurer's appeal resolution under this chapter.

(b) Subject to the requirements of subsection (d), when a request is filed under subsection (a), the insurer shall:

(1) select a different independent review organization for each external grievance filed under this chapter from the list of independent review organizations that are certified by the department under section 19 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 organization chosen under subsection (b) shall assign a medical review professional who is board certified in the applicable specialty for resolution of an external grievance.

(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 insurer.

(2) Any officer, director, or management employee of the insurer.

(3) The health care provider or the health care provider'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 for use by the treating health care provider.

(6) The covered individual requesting the external grievance review.

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

(e) A covered individual shall not pay any of the costs associated with the services of an independent review organization under this chapter. All costs must be paid by the insurer.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.1-2002, SEC.118; P.L.211-2003, SEC.8; P.L.3-2008, SEC.217; P.L.160-2011, SEC.24.

IC 27-8-29-14

Rights of individuals who file grievances

Sec. 14. (a) A covered individual who files an external grievance under this chapter:

(1) shall not be subject to retaliation for exercising the covered individual's right to an external grievance under this chapter;

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

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

(4) shall cooperate with the independent review organization by:

(A) providing any requested medical information; or

(B) authorizing the release of necessary medical information.

(b) An insurer shall cooperate with an independent review organization selected under section 13(b) of this chapter by promptly providing any information requested by the independent review organization.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.1-2002, SEC.119.

IC 27-8-29-15

Independent review organizations; determinations

Sec. 15. (a) An independent review organization shall:

(1) for an expedited external grievance filed under section 13(a)(2)(A) of this chapter, within seventy-two (72) hours after

the external grievance is filed; or

(2) for a standard external grievance filed under section 13(a)(2)(B) of this chapter, within fifteen (15) business days after the external grievance is filed;

make a determination to uphold or reverse the insurer's appeal resolution under IC 27-8-28-17 based on information gathered from the covered individual or the covered individual's designee, the insurer, and the treating health care provider, 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 covered individual's accident and sickness insurance policy.

(c) In an external grievance described in section 12(1)(D) of this chapter, the insurer bears the burden of proving that the insurer properly denied coverage for a condition, complication, service, or treatment because the condition, complication, service, or treatment is directly related to a condition for which coverage has been waived under IC 27-8-5-2.5(e) (expired July 1, 2007, and removed) or IC 27-8-5-19.2 (expired July 1, 2007, and repealed).

(d) The independent review organization shall notify the insurer and the covered individual of the determination made under this section:

(1) for an expedited external grievance filed under section 13(a)(2)(A) of this chapter, within seventy-two (72) hours after the external grievance is filed; and

(2) for a standard external grievance filed under section 13(a)(2)(B) of this chapter, within seventy-two (72) hours after making the determination.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.211-2003, SEC.9; P.L.3-2008, SEC.218; P.L.81-2012, SEC.37; P.L.72-2016, SEC.21.

IC 27-8-29-15.5

Information from independent review organization

Sec. 15.5. Upon the request of a covered individual who is notified under section 15(d) of this chapter that the independent review organization has made a determination, the independent review organization shall provide to the covered individual all information reasonably necessary to enable the covered individual to understand the:

(1) effect of the determination on the covered individual; and

(2) manner in which the insurer may be expected to respond to the determination.

As added by P.L.173-2007, SEC.42.

IC 27-8-29-16
Binding determinations

Sec. 16. A determination made under section 15 of this chapter is binding on the insurer.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-17
Reconsideration of resolution by insurer

Sec. 17. (a) If, at any time during an external review performed under this chapter, the covered individual submits information to the insurer that is relevant to the insurer's resolution of the covered individual's appeal of a grievance decision under IC 27-8-28-17 and that was not considered by the insurer under IC 27-8-28:

(1) the insurer may reconsider the resolution under IC 27-8-28-17; and

(2) if the insurer chooses to reconsider, the independent review organization shall cease the external review process until the reconsideration under subsection (b) is completed.

(b) An insurer reconsidering the resolution of an appeal of a grievance decision due to the submission of information under subsection (a) shall reconsider the resolution under IC 27-8-28-17 based on the information and notify the covered individual of the insurer'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 covered individual'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 covered individual, the covered individual may request that the independent review organization resume the external review under this chapter.

(d) If an insurer to which information is submitted under subsection (a) chooses not to reconsider the insurer's resolution under IC 27-8-28-17, the insurer shall forward the submitted information to the independent review organization not more than two (2) business days after the insurer's receipt of the information.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.1-2002, SEC.120.

IC 27-8-29-18
Applicability of chapter

Sec. 18. This chapter does not add to or otherwise change the terms of coverage included in a policy, certificate, or contract under which a covered individual receives health care benefits under

IC 27-8.
As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-19
Annual certifications of independent review organizations

Sec. 19. (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 must 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 a covered individual'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 not have any 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:

(A) the timeliness and quality of reviews;

(B) the qualifications and independence of medical review professionals;

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

(D) the satisfaction of covered individuals with the procedures utilized by the independent review organization, including the use of covered individual satisfaction surveys.

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

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

(B) The number and percentage of determinations made in favor of insurers.

(C) The average time to process a determination.

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

(E) Any other information required by the department.

The information required under this subdivision must be specified for each insurer 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 15 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) An insurer, a health maintenance organization, or a health plan association, or a subsidiary or an affiliate of an 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 insurers 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 covered individuals.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.1-2002, SEC.121; P.L.160-2011, SEC.25.

IC 27-8-29-20

Documents of review organizations

Sec. 20. Except as provided in section 19(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 grievance 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.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-21

Filing description of grievance procedure

Sec. 21. (a) An insurer shall each year file with the commissioner a description of the grievance procedure established by the insurer under this chapter, including:

(1) the total number of external grievances handled through the procedure during the preceding calendar year;

(2) a compilation of the causes underlying those grievances; and

(3) a summary of the final disposition of those grievances;

for each independent review organization used by the insurer during the reporting year.

(b) The information required by subsection (a) must be filed with the commissioner on or before March 1 of each year. The commissioner shall:

(1) make the information required to be filed under this section available to the public; and

(2) prepare an annual compilation of the data required under subsection (a) that allows for comparative analysis.

(c) The commissioner may require any additional reports that are necessary and appropriate for the commissioner to carry out the commissioner's duties under this article.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14. Amended by P.L.1-2002, SEC.122.

IC 27-8-29-22

Immunity from civil liability; work product or determination

Sec. 22. (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 a party's burden of proof or persuasion concerning any material issue of fact or law.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-23

Medicare

Sec. 23. If a covered individual has the right to an external review of a grievance under Medicare, the covered individual may not request an external review of the same grievance under this chapter.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.

IC 27-8-29-24

Rules

Sec. 24. The department may adopt rules under IC 4-22-2 to implement this chapter.

As added by P.L.66-2001, SEC.3 and P.L.203-2001, SEC.14.