



Report to Agency on Public Comment Period

Date: July 17, 2020

To: Department of Consumer and Business Services

From: Jesse Ellis O'Brien, Senior Policy Advisor

Subject: Oregon Division of Financial Regulation Proposed Bulletin on Guidance for Health Benefit Plan External Review Requests

Comment Period Start: December 6, 2019
Comment Period End: January 6, 2020

Second Comment Period Start: July 9, 2020
Second Comment Period End: July 16, 2020

Background

In recent years, the Division of Financial Regulation (division) has taken a series of steps to improve health insurance carrier compliance with the Oregon statutes and administrative rules relating to external review requirements. To facilitate compliance, the division supplied Oregon health insurance carriers with informal guidance on multiple occasions, and encouraged carriers to update internal policies, procedures and processes, and review all communications to consumers for compliance with the applicable external review statutes and rules.

Bulletin No. DFR 2020-15 was developed to formalize this guidance, and to clarify and reiterate the role and obligations of health insurance carriers and the division under the statutes governing the external review process in the Oregon Insurance Code.

The division requested public comment on Bulletin No. DFR 2020-15 on two occasions to receive additional feedback on revisions made following the first public comment period.

Summary and Discussion of Comments Received During First Comment Period

Kaiser Permanente submitted comment requesting clarification about whether the division expects health insurance carriers' form filings to provide consumer-facing information regarding the process for obtaining a signed waiver for the release of information, to detail the carrier's internal policies and procedures in this area, or both.

PacificSource Health Plans submitted comment recommending that the division remove the language in the sixth paragraph on page 3 of the draft bulletin that provides the carrier an option to include waiver language in the policy document, citing a potential conflict with Health Insurance Portability and Accountability Act (HIPAA) requirements. PacificSource also requested clarification regarding the means of notifying the division when an enrollee submits a signed waiver after the external review request is deemed ineligible because a waiver was not supplied but before the end of the 180-day eligibility period for external review.

The division revised the bulletin to provide clarifications in the areas requested by Kaiser and PacificSource.

Regarding the potential conflict with HIPAA cited by PacificSource, the division revised the bulletin to remove the relevant provisions. The language in the draft bulletin, which would allow a carrier to provide an enrollee with the option to sign a waiver for release of information at the point of enrollment as part of the policy document, is consistent with the division's interpretation of Oregon law. The division takes no position on the compatibility of this option with HIPAA and other federal law requirements, but removes this language out of an abundance of caution.

The division also revised the bulletin in response to internal feedback. The division simplified the "Background" section, and clarified that carriers are expected to notify the division of external review requests regardless of the availability of a signed waiver, even if the absence of a signed waiver permits carriers to refrain from following other steps in the external review timeline. The division added content to clarify the division's expectations of health insurance carriers when a request for external review is received from a health care provider or other party that is not the enrollee subject to the adverse benefit determination.

Due to delays in finalizing the bulletin caused by the COVID-19 outbreak in Oregon, the division also extended the deadline for carriers to make operational changes in response to the bulletin through September 1, 2020.

Summary and Discussion of Comments Received During Second Comment Period

Due to the volume of changes proposed following the first comment period, the division opened a second public comment period to enable stakeholders to provide further feedback. No comments were received during this second public comment period.

Modification and Adoption

Having fully considered all written submissions, I recommend the bulletin be adopted with the following modifications:

1. On pages 1 and 2, eliminate extraneous detail from the "Background" section.
2. On page 2, revise the second paragraph to clarify that health insurance carriers are expected to notify the division of receipt of a request for external review regardless of whether the carrier has received all of the documents it is required to submit to the IRO under OAR 836-053-1340(6), including the required waiver granting the release of medical records.

3. On page 3, add language to clarify the division's expectations of health insurance carriers when a request for external review is received from a third party.
4. On page 3, language to clarify that health insurance carriers are expected to provide both a consumer-facing description of the process to get a signed waiver and a document detailing the carrier's internal policies and procedures, and to establish that additional guidance will be provided in the future regarding the division's expectations for the form filing process.
5. On page 3, remove the final two paragraphs.
6. On page 4, add language clarifying that carriers are expected to provide notices to the division when an enrollee submits a signed waiver after the external review request is deemed ineligible in the same fashion as a carrier provides the division notice of a new external review request.
7. On page 4, revise the deadline for carriers to have implemented needed operational changes to September 1, 2020.

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