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# PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILING CAPTION: External review update, removing state HIPAA waiver requirement established by 2021 Or. Laws ch. 205

EFFECTIVE DATE: 01/01/2022

AGENCY APPROVED DATE: 12/13/2021

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AMEND: 836-053-1340

NOTICE FILED DATE: 10/28/2021

RULE SUMMARY: Removes the state HIPAA waiver requirement for external review requests to prevent unnecessary procedural cancellations of external review requests of health insurers by their enrollees. Insurers are still required to follow federal HIPAA law requirements for release of confidential information to independent review organizations.

CHANGES TO RULE:

836-053-1340
Timelines and Notice for Dispute That is Not Expedited ¶

(1) An insurer shall give the ~~D~~director of the Department of Consumer and Business Services notice of an enrollee's request for independent review by delivering a copy of the request to the director not later than the second business day of the insurer after the insurer receives the request for the independent review. In the event the enrollee applies to the director rather than to the insurer for independent review, the director shall provide the insurer notice of the enrollee's request for independent review by delivering a copy of the request to the insurer not later than the next business day of the department after the director receives the request for independent review.¶
(2) If an insurer reverses its final adverse determination before expiration of the deadline for sending the notice to the director under section ~~(1)~~1 of this rule, the insurer must notify the enrollee not later than the next business day of the insurer after the insurer's reversal. The notice to the enrollee may be given by electronic mail, facsimile or by telephone, followed by a written confirmation within two business days of the insurer.¶
(3) Not later than the next business day of the department after the director has received a request for independent review from an insurer or an enrollee, the director shall assign the review to one of the independent review organizations with whom the director has contracted. The director shall notify the insurer in writing of the name and address of the independent review organization to which the request for the independent review should be sent. If sending written notice will unduly delay notification, the director shall give the notice by electronic mail, facsimile or by telephone, followed by a written confirmation within two business days of the department.¶
(4) The director shall notify the enrollee of the assignment of the request, not later than the second business day of the department after the director gave notice under section ~~(3)~~3 of this rule. The notice must include a written

description of the independent review organization selected to conduct the independent review and information explaining how the enrollee may provide the director with documentation regarding any potential conflict of interest of the independent review organization as described in OAR 836-053-1320.¶
(5) Not later than the third calendar day following receipt of notice from the director under section ~~(4)~~4 of this rule, or the subsequent business day of the department if any of the days is not a normal business day of the department, the enrollee may provide the director with documentation in writing regarding a potential conflict of interest of the independent review organization. If sending written documentation will unduly delay the process, the enrollee shall give the notice by electronic mail, facsimile or by telephone, followed by a written confirmation within two business days of the department. If the director determines that the independent review organization presents a conflict of interest as described in OAR 836-053-1320, the director shall assign another independent review organization not later than the next business day of the department. The director shall notify the insurer of the new independent review organization to which the request for the independent review should be sent. The director shall also notify the enrollee of the director's determination regarding the potential conflict of interest and the name and address of the new independent review organization.¶
(6) Not later than the fifth business day of the insurer after the date on which the insurer received notice from the director under section ~~(3)~~3 of this rule, the insurer shall deliver to the assigned independent review organization the following documents and information considered in making the insurer's final adverse decision, including the following:¶
(a) Information submitted to the insurer by a provider or the enrollee in support of the request for coverage under the health benefit plan's procedures.¶
(b) Information used by the health benefit plan during the internal appeal process to determine whether the course or plan of treatment is:¶
(A) Medically necessary;¶
(B) Experimental or investigational; or¶
(C) An active course of treatment for purposes of continuity of care.¶
(c) A copy of all denial letters issued by the plan concerning the case under review.¶
(d) ~~A copy of the signed waiver form, or a waiver, authorization or consent that is otherwise permitted under the federal Health Insurance Portability and Accountability Act or other state or federal law, authorizing the insurer to disclose protected health information, including medical records, concerning the enrollee that is pertinent to the independent review.¶~~
~~(e)~~ An index of all submitted documents.¶
(7) Not later than the second business day of the independent review organization after receiving the material specified in section ~~(6)~~6 of this rule, the independent review organization shall deliver to the enrollee the index of all materials that the insurer has submitted to the independent review organization. Upon request of the enrollee, the independent review organization shall provide to the enrollee all relevant information supplied to the independent review organization that is not confidential or privileged under state or federal law concerning the case under review.¶
(8) After receipt of the notice from the director under section ~~(4)~~4 of this rule, the enrollee, the insurer or a provider acting on behalf of the enrollee or at the enrollee's request may submit additional information to the independent review organization. In accordance with OAR 836-053-1325(4)(b) the independent review organization must consider this additional information if the information is related to the case and relevant to the statutory criteria for external review contained in ORS 743~~.857~~B.252. The independent review organization is not required to consider this information if the information is submitted after the fifth business day of the independent review organization following the enrollee's receipt of notice from the director under section ~~(4)~~4 of this rule. Upon receiving information under this section the independent review organization must:¶
(a) Forward any information provided by the insurer to the enrollee within one business day after the independent review organization receives the information; and¶
(b) Forward any information provided by the enrollee or a provider acting on behalf of the enrollee or at the enrollee's request to the insurer within one business day after the independent review organization receives the information.¶
(9) The independent review organization shall notify the enrollee, the provider of the enrollee and the insurer of any additional medical information required to conduct the review after receipt of the documentation under section ~~(7)~~7 of this rule. Not later than the fifth business day after such a request, the enrollee or the provider of the enrollee shall submit to the independent review organization the additional information or an explanation of why the additional information is not being submitted. If the enrollee or the provider of the enrollee fails to provide the additional information or the explanation of why additional information is not being submitted within the timeline specified in this subsection, the assigned independent review organization shall make a decision based on the information submitted by the insurer as required by section ~~(6)~~6 of this rule. Except as provided in this section, failure by the insurer to provide the documents and information within the time specified in section

~~(6)~~6 of this rule shall not delay the external review.¶
(10) An independent review organization must provide notice to enrollees and the insurer of the result and basis for the decision as provided in OAR 836-053-1325 not later than the fifth day after the independent review organization makes a decision in a non-expedited case.
Statutory/Other Authority: Or Laws 2021, ch 205, ORS 731.244, ORS 743.858, ORS 743.862
Statutes/Other Implemented: Or Laws 2021, ch 205, ORS 743.857, ORS 743.858, ORS 743.862