

SENATE BILL NO. 83

INTRODUCED BY C. KAUFMANN

BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HEALTH INSURANCE LAWS; ADOPTING
6 AND REVISING PROCESSES THAT PROVIDE FOR UTILIZATION REVIEW, GRIEVANCES, AND EXTERNAL
7 REVIEW OF A HEALTH INSURANCE ISSUER'S ACTIONS; PROVIDING GUIDELINES FOR INDEPENDENT
8 REVIEW ORGANIZATIONS FOR EXTERNAL REVIEWS; LIMITING LIABILITY FOR INDEPENDENT REVIEW
9 ORGANIZATIONS FOR DECISIONS MADE IN EXTERNAL REVIEWS; REQUIRING HEALTH INSURANCE
10 ISSUERS TO PAY THE COSTS OF AN EXTERNAL REVIEW; EXTENDING RULEMAKING AUTHORITY;
11 AMENDING SECTIONS 33-32-101, 33-32-102, 33-32-103, 33-32-104, 33-32-105, AND 33-33-103, MCA;
12 REPEALING SECTIONS 33-32-201, 33-32-203, 33-32-204, 33-37-101, 33-37-102, 33-37-103, 33-37-104,
13 33-37-105, 33-37-106, AND 33-37-110, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN
14 APPLICABILITY DATE."

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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18 NEW SECTION. **Section 1. Corporate oversight of utilization review program.** A health insurance
19 issuer is responsible for:

- 20 (1) monitoring all utilization review activities carried out by or on behalf of the health insurance issuer;
21 (2) ensuring that all requirements of [sections 1 through 9] and rules adopted pursuant to [sections 1
22 through 9] are met; and
23 (3) ensuring that appropriate personnel have operational responsibility for the conduct of the health
24 insurance issuer's utilization review program.

25
26 NEW SECTION. **Section 2. Responsibility for contracted services.** Whenever a health insurance
27 issuer contracts with a utilization review organization or other entity to perform the utilization review functions
28 required by [sections 1 through 9] or rules adopted pursuant to [sections 1 through 9], the commissioner shall hold
29 the health insurance issuer responsible for monitoring the activities of the utilization review organization or the
30 entity with which the health insurance issuer has contracted and for ensuring that the requirements of [sections

1 1 through 9] are met.

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3 **NEW SECTION. Section 3. Health insurance issuer duties for utilization review.** (1) A health
4 insurance issuer that requires a request for benefits under the covered person's health plan to be subjected to
5 utilization review shall implement a utilization review program with written documentation describing all review
6 activities and procedures, both delegated and nondelegated, for:

7 (a) the filing of benefit requests;

8 (b) the notification of utilization review and benefit determinations; and

9 (c) the review of adverse determinations in accordance with [sections 10 through 31].

10 (2) The written documentation must describe the following:

11 (a) procedures to evaluate the medical necessity, appropriateness, efficacy, or efficiency of health care
12 services;

13 (b) data sources and clinical review criteria used in decisionmaking;

14 (c) mechanisms to ensure consistent application of clinical review criteria and compatible decisions;

15 (d) data collection processes and analytical methods used in assessing utilization of health care services;

16 (e) provisions for ensuring confidentiality of clinical and proprietary information;

17 (f) the organizational structure that periodically assesses utilization review activities and reports to the
18 health insurance issuer's governing body. This organizational structure may include but is not limited to the
19 utilization review committee or a quality assurance committee.

20 (g) the staff position functionally responsible for day-to-day program management.

21 (3) A health insurance issuer shall:

22 (a) file an annual summary report of its utilization review program activities with the commissioner in the
23 format specified by the commissioner;

24 (b) maintain records for a minimum of 6 years of all benefit requests, claims, and notices associated with
25 utilization review and benefit determinations made in accordance with [sections 5 and 6]; and

26 (c) make the records maintained under subsection (3)(b) available, on request, for examination by
27 covered persons, the commissioner, and appropriate federal agencies.

28

29 **NEW SECTION. Section 4. Operational requirements.** (1) A utilization review program must use
30 clinical review criteria that have been documented to be based on sound clinical evidence and are evaluated

1 periodically to ensure ongoing efficacy. A health insurance issuer may develop its own clinical review criteria or
2 may purchase or license clinical review criteria from qualified vendors.

3 (2) A health insurance issuer shall, on request, make available its clinical review criteria to authorized
4 government agencies, including the commissioner.

5 (3) Qualified health care professionals shall administer the utilization review program and oversee
6 utilization review decisions. A clinical peer shall evaluate the clinical appropriateness of adverse determinations.

7 (4) A health insurance issuer shall issue utilization review and benefit determinations in a timely manner
8 pursuant to the requirements of [sections 5 and 6].

9 (5) (a) Whenever a health insurance issuer fails to strictly adhere to the requirements of [section 5 or
10 6], as applicable, with respect to conducting a utilization review and making benefit determinations of a benefit
11 request or claim, the covered person is considered to have exhausted the provisions of [sections 1 through 9]
12 and may take action under subsection (5)(b), regardless of whether the health insurance issuer asserts that it
13 substantially complied with the requirements of [section 5 or 6], as applicable, or asserts that any error the health
14 insurance issuer committed was minor.

15 (b) A covered person may file a request for external review in accordance with the procedures outlined
16 in [sections 10 through 31]. In addition to filing a request, a covered person is entitled to pursue any available
17 remedies under state or federal law if the health insurance issuer failed to provide a reasonable internal claims
18 and appeals process designed to yield a decision on the merits of the claim.

19 (6) A health insurance issuer shall maintain a process to ensure that utilization reviewers apply clinical
20 review criteria consistently in conducting utilization review.

21 (7) A health insurance issuer shall routinely assess the effectiveness and efficiency of its utilization
22 review program.

23 (8) A health insurance issuer's data systems must be sufficient to support utilization review program
24 activities and to generate management reports to enable the health insurance issuer to monitor and manage
25 health care services effectively.

26 (9) If a health insurance issuer delegates any utilization review activities to a utilization review
27 organization, the health insurance issuer shall maintain adequate oversight, which includes:

28 (a) a written description of the utilization review organization's activities and responsibilities, including
29 reporting requirements;

30 (b) evidence of formal approval of the utilization review organization's program by the health insurance

1 issuer; and

2 (c) a process by which the health insurance issuer evaluates the performance of the utilization review
3 organization.

4 (10) A health insurance issuer shall coordinate its utilization review program with other medical
5 management activity conducted by the health insurance issuer, such as quality assurance, credentialing, health
6 care provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction,
7 and risk management.

8 (11) A health insurance issuer shall provide covered persons and participating providers with access to
9 the health insurance issuer's review staff through a toll-free number or collect-call telephone line.

10 (12) When conducting a utilization review, a health insurance issuer shall collect only the information
11 necessary, including pertinent clinical information, to conduct the utilization review or make the benefit
12 determination.

13 (13) (a) When conducting a utilization review, a health insurance issuer shall ensure that the review is
14 conducted in a manner that ensures the independence and impartiality of the individuals involved in conducting
15 the utilization review or making the benefit determination.

16 (b) In ensuring the independence and impartiality of individuals involved in the utilization review or benefit
17 determination, a health insurance issuer may not make decisions regarding hiring, compensation, termination,
18 promotion, or other similar matters based on the likelihood that the individual involved in the utilization review or
19 benefit determination will support the denial of benefits.

20

21 **NEW SECTION. Section 5. Procedures for standard utilization review and benefit determinations**

22 -- **notices.** (1) A health insurance issuer shall establish written procedures, as provided in this section, for
23 conducting standard utilization reviews and making benefit determinations on requests for benefits submitted to
24 the health insurance issuer by covered persons or their authorized representatives. The written procedures must
25 also include provisions for notifying covered persons or, if applicable, their authorized representatives of the
26 health insurance issuer's determinations with respect to these requests within the timeframes specified in this
27 section.

28 (2) (a) Subject to subsection (2)(c), for prospective review determinations, a health insurance issuer shall
29 make the determination and notify the covered person or, if applicable, the covered person's authorized
30 representative of the determination, whether the health insurance issuer certifies the provision of the benefit or

1 not, within a reasonable period of time appropriate to the covered person's medical condition. The notification
2 must be made not later than 15 days after the date the health insurance issuer receives the request.

3 (b) If the determination is an adverse determination, the health insurance issuer shall provide notification
4 of the adverse determination in accordance with subsection (8).

5 (c) The time period for making a determination and notifying the covered person or, if applicable, the
6 covered person's authorized representative of the determination pursuant to subsection (2)(a) may be extended
7 one time by the health insurance issuer for up to 15 days if the health insurance issuer:

8 (i) determines that an extension is necessary due to matters beyond the health insurance issuer's
9 control; and

10 (ii) notifies the covered person or, if applicable, the covered person's authorized representative, prior to
11 the expiration of the initial 15-day period, of the circumstances requiring the extension of time and of the date by
12 which the health insurance issuer expects to make a determination.

13 (d) If the extension under subsection (2)(c) is necessary because of the failure of the covered person
14 or, if applicable, the covered person's authorized representative to submit information necessary to reach a
15 determination on the request, the notice of extension must:

16 (i) describe specifically the required information necessary to complete the request; and

17 (ii) give the covered person or, if applicable, the covered person's authorized representative at least 45
18 days after the date of receipt of the notice to provide the specified information.

19 (3) (a) If the health insurance issuer receives from a covered person or, if applicable, the covered
20 person's authorized representative a prospective review request that fails to meet the health insurance issuer's
21 filing procedures, the health insurance issuer shall notify the covered person or, if applicable, the covered
22 person's authorized representative of this failure and provide in the notice any information regarding the proper
23 procedures to be followed for filing a request.

24 (b) The notice required under subsection (3)(a) must be provided as soon as possible but not later than
25 5 days after the date of the failure. The health insurance issuer may provide the notice orally or, if requested by
26 the covered person or the covered person's authorized representative, in writing or electronically.

27 (c) To qualify for the provisions of this subsection (3) related to a failed filing procedure, the
28 communication must:

29 (i) have been sent by a covered person or, if applicable, the covered person's authorized representative
30 and received by a person or an organizational unit of the health insurance issuer responsible for handling benefit

1 matters; and

2 (ii) refer to a specific covered person, a specific medical condition or symptom, and a specific health care
3 service, treatment, or health care provider for which certification is being requested.

4 (4) For concurrent review determinations, if a health insurance issuer has certified an ongoing course
5 of treatment to be provided over a period of time or a specified number of treatments:

6 (a) any reduction or termination by the health insurance issuer during the course of treatment before the
7 end of the period or the specified number of treatments, other than by health plan amendment or termination of
8 the health plan, constitutes an adverse determination; and

9 (b) the health insurance issuer shall notify the covered person or, if applicable, the covered person's
10 authorized representative of the adverse determination in accordance with subsection (8) at a time sufficiently
11 in advance of the reduction or termination to allow the covered person or, if applicable, the covered person's
12 authorized representative to:

13 (i) file a grievance;

14 (ii) request a review of the adverse determination pursuant to [sections 10 through 31]; and

15 (iii) obtain a determination with respect to the review of the adverse determination before the benefit is
16 reduced or terminated.

17 (5) The health care service or treatment that is the subject of the adverse determination must be
18 continued without liability to the covered person pending a determination under the internal review request made
19 pursuant to [sections 10 through 31].

20 (6) (a) For retrospective review determinations, a health insurance issuer shall make the determination
21 no later than 30 days after the date of receiving the benefit request.

22 (b) If the determination is an adverse determination, the health insurance issuer shall provide notice of
23 the adverse determination to the covered person or, if applicable, the covered person's authorized representative
24 in accordance with subsection (8).

25 (c) The time period for making a determination and notifying the covered person or, if applicable, the
26 covered person's authorized representative of the determination pursuant to subsection (6)(a) may be extended
27 one time by the health insurance issuer for up to 15 days if the health insurance issuer:

28 (i) determines that an extension is necessary due to matters beyond the health insurance issuer's
29 control; and

30 (ii) notifies the covered person or, if applicable, the covered person's authorized representative, prior to

1 the expiration of the initial 30-day period, of the circumstances requiring the extension of time and of the date by
2 which the health insurance issuer expects to make a determination.

3 (d) If the extension under subsection (6)(c) is necessary because of the failure of the covered person
4 or, if applicable, the covered person's authorized representative to submit information necessary to reach a
5 determination on the request, the notice of extension must:

6 (i) describe specifically the information required to complete the request; and

7 (ii) give the covered person or, if applicable, the covered person's authorized representative at least 45
8 days after the date of receipt of the notice to provide the specified information.

9 (7) (a) For purposes of this section, the period within which a determination must be made begins on
10 the date the request is received by the health insurance issuer in accordance with the health insurance issuer's
11 procedures, established pursuant to [section 3], for filing a request. The date of the original request must be
12 counted, without regard to whether all of the information necessary to make the determination accompanies the
13 filing of the request.

14 (b) If the period for making the determination under this section is extended due to the failure of the
15 covered person or, if applicable, the covered person's authorized representative to submit the information
16 necessary to make the determination, the period for making the determination is counted from the date on which
17 the health insurance issuer sends the notification of the extension to the covered person or, if applicable, the
18 covered person's authorized representative until the earlier of:

19 (i) the date on which the covered person or, if applicable, the covered person's authorized representative
20 responds to the request for additional information; or

21 (ii) the date on which the specified information was to have been submitted.

22 (c) If the covered person or, if applicable, the covered person's authorized representative fails to submit
23 the information before the end of the extension period, as specified in this section, the health insurance issuer
24 may deny the certification of the requested benefit.

25 (8) A notification of an adverse determination under this section must, in a manner calculated to be
26 understood by the covered person or, if applicable, the covered person's authorized representative, set forth:

27 (a) information sufficient to identify the benefit request or claim involved and, if applicable, the date of
28 service, the health care provider, the claim amount, the diagnosis code and its corresponding meaning, and the
29 treatment code and its corresponding meaning;

30 (b) the specific rationale behind the adverse determination, including the denial code and its

1 corresponding meaning, as well as a description of the health insurance issuer's standard, if any, that was used
2 in denying the benefit request or claim;

3 (c) a reference to the specific plan provision on which the determination is based;

4 (d) a description of any additional material or information necessary for the covered person or, if
5 applicable, the covered person's authorized representative to complete the benefit request, including an
6 explanation of why the material or information is necessary to complete the request;

7 (e) a description of the health insurance issuer's grievance procedures established pursuant to [sections
8 10 through 16], including any time limits applicable to those procedures;

9 (f) a copy of any internal rule, guideline, protocol, or other similar criteria that the health insurance issuer
10 may have relied on to make the adverse determination. Alternatively, the health insurance issuer may provide
11 a statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the adverse
12 determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of
13 charge to the covered person on request.

14 (g) an explanation of the scientific or clinical judgment for making the adverse determination if the
15 adverse determination is based on a medical necessity or experimental or investigational treatment or similar
16 exclusion or limit. Alternatively, the health insurance issuer may provide a statement that an explanation will be
17 provided to the covered person free of charge on request. The explanation under this subsection (8)(g) must
18 apply the terms of the health plan to the covered person's medical circumstances.

19 (h) a statement explaining the availability of further assistance from the commissioner's office and the
20 right of the covered person or, if applicable, the covered person's authorized representative to contact the
21 commissioner's office at any time for assistance or, on completion of the health insurance issuer's grievance
22 procedure and the external review process as provided under [sections 10 through 31], to file a civil suit in a court
23 of competent jurisdiction. The statement must include contact information for the commissioner's office.

24 (9) (a) A health insurance issuer shall provide the notice required under this section in a culturally and
25 linguistically appropriate manner as required in accordance with federal regulations, including 45 CFR 147.136(e),
26 and rules adopted pursuant to [sections 10 through 16].

27 (b) To satisfy the provisions of subsection (9)(a), the health insurance issuer shall, at a minimum:

28 (i) include in the English version of the notice a prominently displayed statement offering the provision
29 of the notice in a language other than English;

30 (ii) provide all subsequent notices to the covered person or, if applicable, the covered person's authorized

1 representative in the language requested by the covered person, if applicable; and

2 (iii) provide further assistance in the language requested by the covered person, if applicable, to the
3 extent the health insurance issuer maintains a consumer assistance process, such as a telephone hotline used
4 to answer questions or provide assistance with filing claims and appeals.

5 (10) If the adverse determination is a rescission, the health insurance issuer shall provide, in addition
6 to any applicable disclosures required under this section, in a notice sent at least 30 days in advance of
7 implementing the rescission decision:

8 (a) clear identification of the alleged fraudulent act, practice, or omission or the intentional
9 misrepresentation of material fact;

10 (b) an explanation of why the act, practice, or omission was fraudulent or was an intentional
11 misrepresentation of a material fact;

12 (c) the date when the advance notice period ends and the date to which the coverage is to be
13 retroactively rescinded;

14 (d) notice that the covered person or, if applicable, the covered person's authorized representative may
15 immediately file a grievance with the health insurance issuer requesting a review of the rescission; and

16 (e) a description of the health insurance issuer's grievance procedures, including any time limits
17 applicable to these procedures.

18 (11) A health insurance issuer may provide the notices required under this section in writing or
19 electronically.

20

21 **NEW SECTION. Section 6. Procedures for expedited utilization review and benefit**
22 **determinations.** (1) With respect to urgent care requests and concurrent review urgent care requests, a health
23 insurance issuer shall establish written procedures for receiving benefit requests from covered persons or, if
24 applicable, their authorized representatives, for conducting an expedited utilization review and making benefit
25 determinations, and for notifying the covered persons or their authorized representatives of the expedited
26 utilization review and benefit determinations.

27 (2) (a) The procedures established under subsection (1) must include a requirement for the health
28 insurance issuer to provide that, in the case of a failure by a covered person or, if applicable, the covered person's
29 authorized representative to follow the health insurance issuer's procedures for filing an urgent care request, the
30 covered person or the covered person's authorized representative must be notified of the failure and the proper

1 procedures to be followed for filing the request.

2 (b) The notice required under subsection (2)(a):

3 (i) must be provided to the covered person or, if applicable, the covered person's authorized
4 representative not later than 24 hours after receipt of the request; and

5 (ii) may be made orally, unless the covered person or, if applicable, the covered person's authorized
6 representative requests the notice in writing or electronically.

7 (c) To qualify for the provisions of this subsection (2) related to a failed filing procedure, the
8 communication must:

9 (i) be sent by a covered person or, if applicable, the covered person's authorized representative and
10 received by a person or organizational unit of the health insurance issuer responsible for handling benefit matters;
11 and

12 (ii) contain a reference to a specific covered person, a specific medical condition or symptom, and a
13 specific health care service, treatment, or health care provider for which approval is being requested.

14 (3) (a) For an urgent care request, unless the covered person or, if applicable, the covered person's
15 authorized representative has failed to provide sufficient information for the health insurance issuer to determine
16 whether or to what extent the benefits requested are covered benefits or payable under the health insurance
17 issuer's health plan, the health insurance issuer shall notify the covered person or, if applicable, the covered
18 person's authorized representative as soon as possible, taking into account the medical condition of the covered
19 person, but no later than 24 hours after the receipt of the request by the health insurance issuer.

20 (b) With respect to the request, the health insurance issuer shall state in the notification whether or not
21 the determination is an adverse determination. If the health insurance issuer's determination is an adverse
22 determination, the notice must comply with the provisions of subsection (7).

23 (4) (a) If the covered person or, if applicable, the covered person's authorized representative has failed
24 to provide sufficient information for the health insurance issuer to make a determination, the health insurance
25 issuer shall notify the covered person or, if applicable, the covered person's authorized representative either orally
26 or, if requested by the covered person or the covered person's authorized representative, in writing or
27 electronically of this failure and identify what specific information is needed. This notification must be made as
28 soon as possible but not later than 24 hours after receipt of the request.

29 (b) The health insurance issuer shall, taking into account the circumstances, provide the covered person
30 or, if applicable, the covered person's authorized representative with a reasonable period of time to submit the

1 necessary information. The reasonable period may not end less than 48 hours after the health insurance issuer
2 notifies the covered person or, if applicable, the covered person's authorized representative of the failure to
3 submit sufficient information as provided in subsection (4)(a).

4 (c) A health insurance issuer shall, in cases in which more information is required as provided in
5 subsection (4)(a), notify the covered person or, if applicable, the covered person's authorized representative of
6 its determination with respect to the urgent care request as soon as possible but not later than 48 hours after the
7 earlier of:

8 (i) the health insurance issuer's receipt of the requested information; or

9 (ii) the end of the period provided for the covered person or, if applicable, the covered person's authorized
10 representative to submit the requested information.

11 (d) If the covered person or, if applicable, the covered person's authorized representative fails to submit
12 the information before the end of the period of the extension, as specified in subsection (4)(b), the health
13 insurance issuer may deny the certification of the requested benefit.

14 (e) If the health insurance issuer's determination is an adverse determination, the health insurance issuer
15 shall provide notice of the adverse determination in accordance with subsection (7).

16 (5) (a) For concurrent review urgent care requests involving a request by the covered person or, if
17 applicable, the covered person's authorized representative to extend the course of treatment beyond the initial
18 period of time or the number of treatments, if the request is made at least 24 hours prior to the expiration of the
19 prescribed period of time or number of treatments, the health insurance issuer shall make a determination with
20 respect to the request and notify the covered person or, if applicable, the covered person's authorized
21 representative of the determination, whether it is an adverse determination or not, as soon as possible, taking
22 into account the covered person's medical condition, but not later than 24 hours after the health insurance issuer's
23 receipt of the request.

24 (b) If the health insurance issuer's determination is an adverse determination, the health insurance issuer
25 shall provide notice of the adverse determination as provided in subsection (7).

26 (6) For the purposes of this section, the time period within which a determination must be made begins
27 on the date the request is filed with the health insurance issuer in accordance with the health insurance issuer's
28 procedures established pursuant to [section 3] for filing a request. The date of the original request must be
29 counted without regard to whether all of the information necessary to make the determination accompanies the
30 filing of the request.

- 1 (7) A notification of an adverse determination under this section must, in a manner calculated to be
2 understood by the covered person or, if applicable, the covered person's authorized representative, set forth:
- 3 (a) information sufficient to identify the benefit request or claim involved and, if applicable, the date of
4 service, the health care provider, the claim amount, the diagnosis code and its corresponding meaning, and the
5 treatment code and its corresponding meaning;
- 6 (b) the specific rationale behind the adverse determination, including the denial code and its
7 corresponding meaning, as well as a description of the health insurance issuer's standard, if any, that was used
8 in denying the benefit request or claim;
- 9 (c) a reference to the specific plan provisions on which the determination is based;
- 10 (d) a description of any additional material or information necessary for the covered person or, if
11 applicable, the covered person's authorized representative to complete the request, including an explanation of
12 why the material or information is necessary to complete the request;
- 13 (e) a description of the health insurance issuer's internal review procedures established pursuant to
14 [sections 10 through 16], including any time limits applicable to those procedures;
- 15 (f) a description of the health insurance issuer's expedited grievance procedures established pursuant
16 to [sections 10 through 16], including any time limits applicable to those procedures;
- 17 (g) a copy of any internal rule, guideline, protocol, or other similar criteria that the health insurance issuer
18 may have relied on to make the adverse determination. Alternatively, the health insurance issuer may provide
19 a statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the adverse
20 determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of
21 charge to the covered person on request.
- 22 (h) an explanation of the scientific or clinical judgment for making the adverse determination if the adverse
23 determination is based on a medical necessity or experimental or investigational treatment or similar exclusion
24 or limit. Alternatively, the health insurance issuer may provide a statement that an explanation will be provided
25 to the covered person free of charge on request. The explanation under this subsection (7)(h) must apply the
26 terms of the health plan to the covered person's medical circumstances.
- 27 (i) instructions for requesting any of the following that are applicable:
- 28 (i) a copy of the rule, guideline, protocol, or other similar criteria relied on in making the adverse
29 determination in accordance with subsection (7)(g); or
- 30 (ii) the written statement of the scientific or clinical rationale for the adverse determination in accordance

1 with subsection (7)(h); and

2 (j) a statement explaining the availability of further assistance from the commissioner's office and the right
3 of the covered person or, if applicable, the covered person's authorized representative to contact the
4 commissioner's office at any time for assistance or, on completion of the health insurance issuer's grievance
5 procedure process as provided under [sections 10 through 16], to file a civil suit in a court of competent
6 jurisdiction. The statement must include contact information for the commissioner's office.

7 (8) A health insurance issuer shall provide the notice required under this section in the manner provided
8 in [section 5(9)].

9 (9) (a) A health insurance issuer may provide the notice required under this section orally, in writing, or
10 electronically.

11 (b) If notice of the adverse determination is provided orally, the health insurance issuer shall provide
12 written or electronic notice of the adverse determination within 3 days following the oral notification.

13
14 **NEW SECTION. Section 7. Emergency services.** (1) When conducting a utilization review or making
15 a benefit determination for emergency services, a health insurance issuer that provides benefits for services in
16 an emergency department of a hospital shall follow the provisions of this section.

17 (2) A health insurance issuer shall cover emergency services that screen and stabilize a covered person:

18 (a) without the need for prior authorization of the emergency services if a prudent lay person would have
19 reasonably believed that an emergency medical condition existed even if the emergency services are provided
20 on an out-of-network basis;

21 (b) without regard to whether the health care provider furnishing the services is a participating provider
22 with respect to the emergency services;

23 (c) if the emergency services are provided out-of-network, without imposing any administrative
24 requirement or limitation on coverage that is more restrictive than the requirements or limitations that apply to
25 emergency services received from network providers;

26 (d) if the emergency services are provided out-of-network, by complying with the cost-sharing
27 requirements in subsection (4); and

28 (e) without regard to any other term or condition of coverage, other than:

29 (i) the exclusion of or coordination of benefits;

30 (ii) an affiliation or waiting period as permitted under 42 U.S.C. 300gg-19a; or

1 (iii) cost-sharing, as provided in subsection (4)(a) or (4)(b), as applicable.

2 (3) For in-network emergency services, coverage of emergency services is subject to applicable
3 copayments, coinsurance, and deductibles.

4 (4) (a) Except as provided in subsection (4)(b), for out-of-network emergency services, any cost-sharing
5 requirement expressed as a copayment amount or coinsurance rate imposed with respect to a covered person
6 may not exceed the cost-sharing requirement for a covered person if the services were provided in-network.

7 (b) A covered person may be required to pay, in addition to the in-network cost-sharing expenses, the
8 excess amount the out-of-network provider charges that exceeds the amount the health insurance issuer is
9 required to pay under this subsection (4).

10 (c) A health insurance issuer complies with the requirements of this section by paying for emergency
11 services provided by an out-of-network provider in an amount not less than the greatest of the following and
12 taking into account exceptions in subsections (4)(d) and (4)(e):

13 (i) the amount negotiated with in-network providers for emergency services, excluding any in-network
14 copayment or coinsurance imposed with respect to the covered person;

15 (ii) the amount of the emergency service calculated using the same method the plan uses to determine
16 payments for out-of-network services but using the in-network cost-sharing provisions instead of the
17 out-of-network cost-sharing provisions; or

18 (iii) the amount that would be paid under medicare for the emergency services, excluding any in-network
19 copayment or coinsurance requirements.

20 (d) For capitated or other health plans that do not have a negotiated charge for each service for
21 in-network providers, subsection (4)(c)(i) does not apply.

22 (e) If a health plan has more than one negotiated amount for in-network providers for a particular
23 emergency service, the amount in subsection (4)(c)(i) is the median of those negotiated amounts.

24 (5) (a) Any cost-sharing requirement, other than a copayment or coinsurance requirement such as a
25 deductible or an out-of-pocket maximum, may be imposed with respect to emergency services that are provided
26 out-of-network if the cost-sharing requirement generally applies to out-of-network benefits.

27 (b) A deductible may be imposed with respect to out-of-network emergency services only as part of a
28 deductible that generally applies to out-of-network benefits.

29 (c) If an out-of-pocket maximum generally applies to out-of-network benefits, that out-of-pocket maximum
30 must apply to out-of-network emergency services.

1 (6) For an immediately required postevaluation or poststabilization services review, a health insurance
2 issuer shall provide access to a designated representative 24 hours a day, 7 days a week, to facilitate the review.

3
4 **NEW SECTION. Section 8. Confidentiality.** A health insurance issuer and its designee shall comply
5 with all applicable state and federal laws establishing confidentiality and reporting requirements with regard to
6 its utilization review program, including the provisions of Title 33, chapter 19, and 45 CFR, parts 160 and 164.

7
8 **NEW SECTION. Section 9. Disclosure.** (1) In the certificate of coverage or member handbook provided
9 to covered persons, a health insurance issuer shall include a clear and comprehensive description of its utilization
10 review procedures, including the procedures for obtaining review of adverse determinations, and a statement of
11 the rights and responsibilities of covered persons with respect to those procedures.

12 (2) A health insurance issuer shall include a summary of its utilization review procedures and benefit
13 determination procedures in materials intended for prospective covered persons.

14 (3) A health insurance issuer shall print on its membership cards a toll-free telephone number to call for
15 utilization review and benefit determinations.

16
17 **NEW SECTION. Section 10. Short title.** The provisions of [sections 10 through 31] may be cited as
18 the "Health Insurance Issuer Grievance Procedures and External Review Act".

19
20 **NEW SECTION. Section 11. Applicability and scope.** (1) Except as provided in subsection (2),
21 [sections 10 through 31] apply to all health insurance issuers.

22 (2) The provisions of [sections 10 through 31] do not apply to:

23 (a) a policy or certificate that provides coverage only for a specified disease or specified accident,
24 accident-only coverage, credit insurance as described in 33-1-206, dental, disability income, or hospital indemnity
25 insurance, long-term care insurance as defined in 33-22-1107, vision care insurance, or any other limited
26 supplemental benefit;

27 (b) a medicare supplement policy as defined in 33-22-903;

28 (c) coverage under a plan through medicare or medicaid or any coverage issued under Title 10, chapter
29 55, of the United States Code and any coverage issued as supplemental to that coverage; or

30 (d) any coverage issued as supplemental to liability insurance, workers' compensation or similar

1 insurance, automobile medical payment insurance, or any insurance under which benefits are payable with or
 2 without regard to fault, whether written on a group blanket basis or an individual basis.

3
 4 **NEW SECTION. Section 12. Purpose.** The purpose of [sections 10 through 16] is to provide standards
 5 for the establishment and maintenance of procedures by health insurance issuers to ensure that covered persons
 6 have the opportunity for the appropriate resolution of grievances.

7
 8 **NEW SECTION. Section 13. Grievance reporting and recordkeeping requirements -- definition.**

9 (1) (a) A health insurance issuer shall maintain within a register all written records that document grievances
 10 received during a calendar year, including the notices and claims associated with the grievances.

11 (b) For the purposes of this section, "register" means the written record of grievances received by a
 12 health insurance issuer that includes the notices and claims associated with the grievances as required by this
 13 section.

14 (2) Retention of the records in the register must be as provided in subsection (6), except that a health
 15 insurance issuer shall maintain for at least 6 years those records specified by the commissioner by rule.

16 (3) A health insurance issuer shall:

17 (a) maintain the records in a manner that is reasonably clear and accessible to the commissioner; and

18 (b) make the records available for examination, on request, by covered persons, the commissioner, and
 19 any appropriate federal oversight agency.

20 (4) A request for a review of a grievance involving an adverse determination must be processed in
 21 compliance with [section 15] and must be included in the register.

22 (5) For each grievance, the register must contain, at a minimum, the following information:

23 (a) a general description of the reason for the grievance;

24 (b) the date received;

25 (c) the date of each review or, if applicable, review meeting;

26 (d) a report on the resolution of the grievance, if applicable;

27 (e) the date of the resolution, if applicable; and

28 (f) the name of the covered person for whom the grievance was filed.

29 (6) Subject to the provisions of subsection (2), a health insurance issuer shall retain the register compiled
 30 in a calendar year for 3 years or until the commissioner has adopted a final report of an examination that contains

1 a review of the register for that calendar year, whichever is longer.

2 (7) (a) At least annually, a health insurance issuer shall submit to the commissioner a report in the format
3 specified by the commissioner.

4 (b) The report must include for each type of health plan offered by the health insurance issuer:

5 (i) the certificate of compliance required by [section 14(4)(b)];

6 (ii) the number of covered persons;

7 (iii) the total number of grievances;

8 (iv) the number of grievances resolved, if applicable, and their resolution;

9 (v) the number of grievances of which the health insurance issuer has been informed that were appealed
10 to the commissioner;

11 (vi) the number of grievances referred to an alternative dispute resolution procedure or resulting in
12 litigation; and

13 (vii) a synopsis of actions taken or being taken to correct problems that have been identified.

14
15 **NEW SECTION. Section 14. Grievance review procedures.** (1) Except as specified in [section 16],
16 a health insurance issuer shall use written procedures for receiving and resolving grievances from covered
17 persons as provided in [section 15].

18 (2) (a) Whenever a health insurance issuer fails to adhere to the requirements of [section 15 or 16], as
19 applicable, with respect to receiving and resolving grievances involving an adverse determination or waives the
20 review of the grievance, the covered person is considered to have exhausted the provisions of [sections 10
21 through 16] and may take action under subsection (2)(b).

22 (b) (i) A covered person may file a request for external review in accordance with the procedures outlined
23 in [sections 17 through 31].

24 (ii) In addition to filing a request under subsection (2)(b)(i), a covered person is entitled to pursue any
25 available remedies under state or federal law on the basis that the health insurance issuer failed to provide a
26 reasonable internal claims and appeals process that would yield a decision on the merits of the claim.

27 (3) (a) The provisions of [section 15 or 16] are not considered exhausted based on a minor violation that
28 does not cause and is not likely to cause prejudice or harm to the covered person as long as the health insurance
29 issuer demonstrates that the violation was for good cause or due to matters beyond the control of the health
30 insurance issuer and that the violation occurred in the context of an ongoing, good faith exchange of information

1 between the health insurance issuer and the covered person.

2 (b) The exception provided in subsection (3)(a) does not apply if the violation is part of a pattern or a
3 practice of violations by the health insurance issuer.

4 (c) Violations that are not minor include a violation of a notice or timing requirement imposed under
5 [section 15 or 16].

6 (4) A health insurance issuer shall file with the commissioner:

7 (a) a copy of the procedures required under subsection (1), including all forms used to process requests
8 made pursuant to [section 15]. Any subsequent material modifications to the documents must also be filed.

9 (b) as part of the annual report required by [section 13(7)], a certificate of compliance stating that the
10 health insurance issuer has established and maintains for each of its health plans a set of grievance procedures
11 that fully comply with the provisions of [sections 10 through 16]; and

12 (c) a description of the grievance procedures required under this section, which must be included in or
13 attached to the policy, certificate, membership booklet, outline of coverage, or other evidence of coverage
14 provided to covered persons. The grievance procedure documents must include a statement of a covered
15 person's right to contact the commissioner's office for assistance at any time. The statement must include the
16 telephone number and address of the commissioner's office.

17 (5) The commissioner may disapprove a filing received in accordance with subsection (4) if the filing fails
18 to comply with [sections 10 through 16] or applicable federal regulations.

19

20 **NEW SECTION. Section 15. Grievances involving adverse determination.** (1) Within 180 days after
21 the date of receipt of a notice of an adverse determination sent pursuant to [sections 1 through 9], a covered
22 person or, if applicable, the covered person's authorized representative may file a grievance with the health
23 insurance issuer requesting a review of the adverse determination.

24 (2) The health insurance issuer shall provide the covered person or, if applicable, the covered person's
25 authorized representative with the name, address, and telephone number of a person or organizational unit
26 designated to coordinate the review on behalf of the health insurance issuer.

27 (3) (a) In providing for a review under this section, the health insurance issuer shall ensure that the
28 review meets the requirements of this section and is conducted in a manner that ensures the independence and
29 impartiality of the individuals involved in making the review decision.

30 (b) To ensure the independence and impartiality of the individuals involved in making the review decision,

1 the health insurance issuer may not make hiring, compensation, termination, promotion, or other similar decisions
2 related to any of those individuals based on the likelihood that the individual will support the denial of benefits.

3 (4) (a) In the case of an adverse determination involving utilization review, the health insurance issuer
4 shall designate one or more appropriate clinical peers to review the adverse determination. A clinical peer may
5 not have been involved in the initial adverse determination.

6 (b) In designating an appropriate clinical peer pursuant to subsection (4)(a), the health insurance issuer
7 shall ensure that if more than one clinical peer is involved in the review, a majority of the individuals reviewing
8 the adverse determination are health care professionals who have appropriate expertise.

9 (5) In conducting a review under subsection (4), each clinical peer shall take into consideration all
10 comments, documents, records, and other information regarding the request for services submitted by the
11 covered person or, if applicable, the covered person's authorized representative without regard to whether the
12 information was submitted or considered in making the initial adverse determination.

13 (6) (a) A covered person does not have the right to attend or to have a representative in attendance at
14 the review, but the covered person or, if applicable, the covered person's authorized representative is entitled to:

15 (i) submit written comments, documents, records, and other material relating to the request for benefits
16 for the reviewer or reviewers to consider when conducting the review; and

17 (ii) receive from the health insurance issuer, on request and free of charge, reasonable access to and
18 copies of all documents, records, and other information relevant to the covered person's request for benefits.

19 (b) For the purposes of subsections (6)(a) and (11)(e)(iii), the term "relevant" in relation to a document,
20 record, or other information related to a covered person's request for benefits means the document, record, or
21 other information:

22 (i) was relied on in making the benefit determination;

23 (ii) was submitted, considered, or generated in the course of making the adverse determination without
24 regard to whether the document, record, or other information was relied on in making the benefit determination;

25 (iii) was used to demonstrate that in making the benefit determination, the health insurance issuer or its
26 designated representatives consistently applied to the covered person the required administrative procedures
27 and safeguards used for other similarly situated covered persons; or

28 (iv) constituted a statement of policy or guidance with respect to the health plan concerning the denied
29 health care service or treatment for the covered person's diagnosis without regard to whether the advice or
30 statement was relied on in making the benefit determination.

1 (7) The health insurance issuer shall make the provisions of subsection (6) known to the covered person
2 or, if applicable, the covered person's authorized representative within 3 working days after the date of receipt
3 of the grievance.

4 (8) For the purposes of calculating the time period within which a determination must be made and
5 noticed under subsection (9), the time period begins on the date the request for a grievance review is filed with
6 the health insurance issuer in accordance with the health insurance issuer's procedures for filing requests
7 established pursuant to [section 14] without regard to whether all of the information necessary to make the
8 determination accompanies the filing.

9 (9) (a) A health insurance issuer shall notify and issue a decision with respect to a grievance requesting
10 a review of an adverse determination involving a prospective review or a retrospective review request. The
11 notification must be in writing or sent electronically to the covered person or, if applicable, the covered person's
12 authorized representative.

13 (b) The health insurance issuer shall issue a decision and send notification as provided in this section
14 within a reasonable period of time that is appropriate considering the covered person's medical condition but no
15 later than 30 days after the date on which the health insurance issuer received the grievance request for the
16 review made pursuant to subsection (1).

17 (10) Prior to issuing a decision or final adverse determination in accordance with the timeframe provided
18 in subsection (9) and sufficiently in advance of the required date for a decision or final adverse determination to
19 allow the covered person or, if applicable, the covered person's authorized representative a reasonable
20 opportunity to respond prior to the date of the decision or final adverse determination, the health insurance issuer
21 shall provide free of charge to the covered person or, if applicable, the covered person's authorized
22 representative:

23 (a) any new or additional relevant evidence relied on or generated by the health insurance issuer or at
24 the health insurance issuer's direction in connection with the grievance; and

25 (b) in relation to the issuance and notice of a final adverse determination based on new or additional
26 rationale, the new or additional rationale.

27 (11) The decision issued pursuant to subsection (9) must specify in a manner calculated to be understood
28 by the covered person or, if applicable, the covered person's authorized representative the following:

29 (a) the titles and qualifying credentials of each person participating in the review process;

30 (b) information sufficient to identify the claim involved with respect to the grievance, including, as

1 applicable, the date of service, the health care provider, the claim amount, the diagnosis code and its
2 corresponding meaning, and the treatment code and its corresponding meaning;

3 (c) a statement from the persons participating in the review of their understanding of the covered
4 person's grievance;

5 (d) the decision of the persons conducting the review, provided in clear terms, and the contract basis
6 or medical rationale on which the decision was based, provided in sufficient detail for the covered person or, if
7 applicable, the covered person's authorized representative to respond further to the health insurance issuer's
8 position;

9 (e) a reference to the evidence or documentation used as the basis for the decision. The information
10 required under this subsection (11)(e) must also include for a review decision issued pursuant to subsection (9)
11 that upholds an adverse determination:

12 (i) all specific reasons that uphold the final internal adverse determination, including the denial code and
13 its corresponding meaning, as well as a description of the health insurance issuer's standard, if any, that was
14 used in reaching the denial;

15 (ii) the reference to the specific plan provisions on which the adverse determination is based;

16 (iii) a statement that the covered person is entitled to receive, on request and free of charge, reasonable
17 access to and copies of all documents, records, and other information relevant to the covered person's benefit
18 request;

19 (iv) a copy of any specific rule, guideline, protocol, or other similar criteria that the health insurance issuer
20 may have relied on to make the final adverse determination. Alternatively, the health insurance issuer may
21 provide a statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the final
22 adverse determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free
23 of charge to the covered person on request;

24 (v) an explanation of the scientific or clinical judgment used for making the adverse determination if the
25 final adverse determination is based on a medical necessity or experimental or investigational treatment or similar
26 exclusion or limit. The explanation must apply the terms of the health plan to the covered person's medical
27 circumstances. Alternatively, the health insurance issuer may provide a statement that an explanation will be
28 provided to the covered person free of charge on request.

29 (vi) instructions for requesting all of the following that are applicable:

30 (A) a copy of the rule, guideline, protocol, or other similar criteria relied on in making the final adverse

1 determination in accordance with subsection (11)(e)(iv); or

2 (B) the written statement of the scientific or clinical rationale for the final adverse determination in
3 accordance with subsection (11)(e)(v);

4 (vii) a statement, if applicable, indicating:

5 (A) a description of the procedures for obtaining an independent external review of the final adverse
6 determination pursuant to [sections 17 through 31]; and

7 (B) the covered person's right to bring a civil action in a court of competent jurisdiction;

8 (viii) the following statement, if applicable:

9 "You and your plan may have other voluntary alternative dispute resolution options, such as mediation.
10 One way to find out what may be available is to contact your state insurance commissioner."

11 (ix) notice of the covered person's right to contact the commissioner's office for further assistance on any
12 claim, grievance, or appeal at any time, including the telephone number and address of the commissioner's office.

13 The notice under this subsection (11)(e)(ix) must be provided in accordance with federal regulations and as
14 provided in [section 5(9)].

15

16 **NEW SECTION. Section 16. Expedited review of grievance involving adverse determination.** (1)

17 A health insurance issuer shall establish written procedures for the expedited review of urgent care requests of
18 grievances involving an adverse determination.

19 (2) A health insurance issuer shall provide an expedited review of a grievance involving an adverse
20 determination with respect to a concurrent review of an urgent care request involving an admission, availability
21 of care, continued stay, or health care service for a covered person who has received emergency services but
22 has not been discharged from a facility. The procedures in subsection (1) must also specify the process for the
23 concurrent review of urgent care requests under this subsection (2).

24 (3) The procedures under this section must provide that a covered person or, if applicable, the covered
25 person's authorized representative may request an expedited review orally, in writing, or electronically.

26 (4) On receipt of a request for an expedited review, a health insurance issuer shall appoint one or more
27 appropriate clinical peers to review the adverse determination. An appointed clinical peer may not have been
28 involved in making the initial adverse determination.

29 (5) In an expedited review, all necessary information, including the health insurance issuer's decision,
30 must be transmitted between the health insurance issuer and the covered person or, if applicable, the covered

1 person's authorized representative in the most expeditious method available, whether by telephone, facsimile,
2 or other method.

3 (6) (a) The timeframe for making a decision under an expedited review and notification, as provided in
4 subsection (8), must be as expeditious as the covered person's medical condition requires but may take no more
5 than 72 hours after the receipt of the request for the expedited review.

6 (b) If the expedited review is of a grievance involving an adverse determination with respect to a
7 concurrent review urgent care request, the health insurance issuer shall continue the health care service or
8 treatment without liability to the covered person until the covered person has been notified of the determination.

9 (7) For purposes of calculating the timeframe within which a decision is required to be made under
10 subsection (6), the time period within which the decision must be made begins on the date the request is filed
11 with the health insurance issuer in accordance with the health insurance issuer's procedures for filing requests
12 established under [section 14] without regard to whether all of the information necessary to make the
13 determination accompanies the filing.

14 (8) A notification of a decision under this section must be in a manner calculated to be understood by
15 the covered person or, if applicable, the covered person's authorized representative and, if necessary, meet the
16 requirements of subsection (9). The notification must include:

17 (a) the titles and qualifying credentials of each person participating in the expedited review process;

18 (b) information sufficient to identify the claim involved with respect to the grievance, including as
19 applicable the date of service, the health care provider, the claim amount, the diagnosis code and its
20 corresponding meaning, and the treatment code and its corresponding meaning;

21 (c) a statement of the reviewers' understanding of the covered person's grievance;

22 (d) a description in clear terms of the decision of the reviewers and the contract basis or medical
23 rationale in sufficient detail for the covered person to respond further to the health insurance issuer's position;

24 (e) a reference to the evidence or documentation used as the basis for the decision. If the decision
25 involves an adverse determination, the notice must provide:

26 (i) all specific reasons for the adverse determination, including the denial code and its corresponding
27 meaning, as well as a description of the health insurance issuer's standard, if any, that was used in reaching the
28 denial;

29 (ii) the reference to the specific plan provisions on which the determination is based;

30 (iii) if the adverse determination is based on incomplete documentation, a description of any additional

1 material or information necessary for the covered person to complete the request, including an explanation of why
2 the material or information is necessary to complete the request;

3 (iv) a copy of any internal rule, guideline, protocol, or other similar criteria if relied on by the health
4 insurance issuer to make the adverse determination. Alternatively, the health insurance issuer may provide a
5 statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the adverse
6 determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of
7 charge to the covered person on request.

8 (v) an explanation of the scientific or clinical judgment used for making the adverse determination if the
9 adverse determination is based on a medical necessity or experimental or investigational treatment or similar
10 exclusion or limit. The explanation must apply the terms of the health plan to the covered person's medical
11 circumstances. Alternatively, the health insurance issuer may provide a statement that an explanation will be
12 provided to the covered person free of charge on request.

13 (vi) instructions for requesting any of the following that are applicable:

14 (A) a copy of the rule, guideline, protocol, or other similar criteria relied on in making the adverse
15 determination in accordance with subsection (8)(e)(iv); or

16 (B) the written statement of the scientific or clinical rationale for the adverse determination in accordance
17 with subsection (8)(e)(v);

18 (vii) a statement describing the procedures for obtaining an independent external review of the adverse
19 determination pursuant to [sections 17 through 31];

20 (viii) the following statement:

21 "You and your plan may have other voluntary alternative dispute resolution options, such as mediation.
22 One way to find out what may be available is to contact your state insurance commissioner."

23 (ix) a statement indicating the covered person's right to bring a civil action in a court of competent
24 jurisdiction; and

25 (x) a notice of the covered person's right to contact the commissioner's office for assistance at any time,
26 including the telephone number and address of the commissioner's office.

27 (9) The notice under subsection (8)(e) must be provided in accordance with federal regulations and as
28 provided in [section 5(9)].

29 (10) (a) A health insurance issuer may provide the notice required under this section orally, in writing,
30 or electronically.

1 (b) If notice of the adverse determination is provided orally, the health insurance issuer shall provide
2 written or electronic notice of the adverse determination within 3 days after the oral notification.

3
4 **NEW SECTION. Section 17. Purpose.** The purpose of [sections 17 through 31] is to provide uniform
5 standards for the establishment and maintenance of external review procedures to ensure that covered persons
6 have the opportunity for an independent review of an adverse determination or a final adverse determination.

7
8 **NEW SECTION. Section 18. Definitions for external review.** For the purposes of [sections 17 through
9 31], the following definitions apply:

10 (1) "Adverse determination" means a determination by a health insurance issuer or its designated
11 utilization review organization that an admission, availability of care, continued stay, or other health care service
12 that is a covered benefit has been reviewed and, based on the information provided, does not meet the health
13 insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care, or level
14 of effectiveness and as a result the requested service or payment for the service has been denied, reduced, or
15 terminated.

16 (2) "Best evidence" means evidence based on:

17 (a) randomized clinical trials;

18 (b) a cohort study or case-control study if randomized clinical trials are not available;

19 (c) a case series if information as provided in subsection (2)(a) or (2)(b) is unavailable; or

20 (d) an expert opinion if information as provided subsection (2)(a), (2)(b), or (2)(c) is unavailable.

21 (3) "Case-control study" means a retrospective evaluation of two groups of patients with different
22 outcomes to determine which specific interventions the patients received.

23 (4) "Case series" means an evaluation of a series of patients with a particular outcome, without the use
24 of a control group.

25 (5) "Cohort study" means a prospective evaluation of two groups of patients with only one group of
26 patients receiving a specific intervention.

27 (6) "Disclose" means to release, transfer, or otherwise divulge protected health information to any person
28 other than the individual who is the subject of the protected health information.

29 (7) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best
30 evidence based on the overall systematic review of the research in making decisions about the care of individual

1 patients.

2 (8) "Expert opinion" means a belief or an interpretation by specialists with experience in a specific area
3 about the scientific evidence pertaining to a particular service, intervention, or therapy.

4 (9) "Health information" means information or data, whether oral or recorded in any form or medium,
5 including personal facts or information about events or relationships that relate to:

6 (a) the past, present, or future physical, mental, or behavioral health or condition of a covered person
7 or a member of the covered person's family;

8 (b) the provision of health care services to a covered person; or

9 (c) payment for the provision of health care services to a covered person.

10 (10) "Independent review organization" means an entity that conducts independent external reviews of
11 adverse determinations and final adverse determinations.

12 (11) "Medical or scientific evidence" means evidence found in the following sources:

13 (a) peer-reviewed scientific studies published in or accepted for publication by medical journals that meet
14 nationally recognized requirements for scientific manuscripts and that submit most of their published articles for
15 review by experts who are not part of the editorial staff;

16 (b) peer-reviewed medical literature, including literature relating to therapies reviewed and approved by
17 a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria
18 of the national institutes of health's library of medicine for indexing in Index Medicus and Excerpta Medica,
19 published by the Reed Elsevier group;

20 (c) medical journals recognized by the secretary of health and human services under 42 U.S.C.
21 1395x(t)(2)(B) of the federal Social Security Act;

22 (d) the following standard reference compendia:

23 (i) the American Hospital Formulary Service Drug Information;

24 (ii) Drug Facts and Comparisons;

25 (iii) the American Dental Association Guide to Dental Therapeutics; and

26 (iv) the United States Pharmacopeia;

27 (e) findings, studies, or research conducted by or under the auspices of federal government agencies
28 and nationally recognized federal research institutes, including:

29 (i) the federal agency for healthcare research and quality;

30 (ii) the national institutes of health;

1 (iii) the national cancer institute;
2 (iv) the national academy of sciences;
3 (v) the centers for medicare and medicaid services;
4 (vi) the food and drug administration; and
5 (vii) any national board recognized by the national institutes of health for the purpose of evaluating the
6 medical value of health care services; or

7 (f) any other medical or scientific evidence that is comparable to the sources listed in subsection (11)(d)
8 or (11)(e).

9 (12) "NAIC" means the national association of insurance commissioners.

10 (13) "Protected health information" means health information:

11 (a) that identifies an individual who is the subject of the information; or

12 (b) with respect to which there is a reasonable basis to believe that the information could be used to
13 identify an individual.

14 (14) "Randomized clinical trial" means a controlled, prospective study of patients who have been
15 assigned at random to an experimental group or a control group at the beginning of the study with only the
16 experimental group of patients receiving a specific intervention. The term includes a study of the groups for
17 variables and anticipated outcomes over time.

18
19 **NEW SECTION. Section 19. Notice of right to external review.** (1) A health insurance issuer shall:

20 (a) notify the covered person or, if applicable, the covered person's authorized representative in writing
21 of the covered person's right to request an external review pursuant to [section 22, 23, or 24]; and

22 (b) include the appropriate statements and information described in subsection (4) at the same time that
23 the health insurance issuer sends written notice of:

24 (i) an adverse determination upon completion of the health insurance issuer's utilization review process
25 described in [sections 1 through 9]; and

26 (ii) a final adverse determination.

27 (2) The health insurance issuer shall include in the written notice required under subsection (1) the
28 following, or substantially equivalent, language:

29 "We have denied your request for the provision of or payment for a health care service or course of
30 treatment. You have the right to have our decision reviewed by health care professionals who have no association

1 with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care
2 setting, level of care, or level of effectiveness of the health care service or treatment you requested. You may
3 exercise this right by submitting a request for external review to the office of the insurance commissioner [insert
4 address and telephone number of the office of the insurance commissioner]."

5 (3) The commissioner may prescribe the form and content of the notice required under this section.

6 (a) The notice must include the following information:

7 (i) information sufficient to identify the claim involved, including the date of service, the health care
8 provider, and the claim amount, if applicable; and

9 (ii) a statement describing the availability, on request, of the diagnosis or treatment code and its
10 corresponding meaning.

11 (b) On receiving a request for a diagnosis or treatment code, the health insurance issuer shall provide
12 the information as soon as practicable. The health insurance issuer may not consider the request for that
13 information, in itself, to be a grievance or a request for an external review.

14 (4) The health insurance issuer shall include in the notice required under subsection (1) a statement that:

15 (a) for a notice related to an adverse determination:

16 (i) the covered person or, if applicable, the covered person's authorized representative may file a
17 grievance under the health insurance issuer's internal grievance process provided for in [section 15];

18 (ii) if the health insurance issuer has not issued a written decision to the covered person or the covered
19 person's authorized representative within 30 days of the date the covered person or the covered person's
20 authorized representative files the grievance with the health insurance issuer and the covered person or the
21 covered person's authorized representative has not requested or agreed to a delay, the covered person or the
22 covered person's authorized representative may file a request for external review pursuant to [section 20]. Under
23 those conditions, the covered person or the covered person's authorized representative is considered to have
24 exhausted the health insurance issuer's internal grievance process for the purposes of [section 14].

25 (iii) the covered person or the covered person's authorized representative may file a request for an
26 expedited external review to be conducted pursuant to [section 23 or 24], as applicable, under the following
27 circumstances:

28 (A) a review under [section 23] may be requested if the covered person has a medical condition with
29 regard to which the timeframe for completion of an expedited grievance review of an adverse determination would
30 seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to

1 regain maximum function; and

2 (B) a review under [section 24] may be requested if the adverse determination involves a denial of
3 coverage based on a determination that the recommended or requested health care service or treatment is
4 experimental or investigational and the covered person's treating health care provider certifies in writing that the
5 recommended or requested health care service or treatment that is the subject of the adverse determination
6 would be significantly less effective if not promptly initiated. The physician's certification must be submitted at the
7 same time that the covered person or the covered person's authorized representative files a request for an
8 expedited review of a grievance involving an adverse determination. However, the independent review
9 organization assigned to conduct the expedited external review is responsible for determining whether the
10 covered person is required to complete the expedited review of the grievance before the expedited external
11 review can begin.

12 (iv) informs the covered person or the covered person's authorized representative of the other exhaustion
13 methods listed in [section 21];

14 (b) for a notice related to a final adverse determination, the covered person or the covered person's
15 authorized representative may file a request for:

16 (i) an expedited external review under [section 23] if the covered person has a medical condition for
17 which the timeframe for completion of a standard external review under [section 22] would seriously jeopardize
18 the life or health of the covered person or would jeopardize the covered person's ability to regain maximum
19 function;

20 (ii) an expedited external review under [section 23] if the covered person has received emergency
21 services and has not been discharged from a facility and the request concerns an admission, the availability of
22 care, a continued stay, or a health care service for which the covered person received emergency services;

23 (iii) a standard external review under [section 22] if the denial of coverage was based on a determination
24 that the recommended or requested health care service or treatment is experimental or investigational; or

25 (iv) an expedited external review under [section 23] if a covered person to which subsection (4)(b)(iii)
26 applies attaches a written certification from the covered person's treating health care provider that the
27 recommended or requested health care service or treatment that is the subject of the request would be
28 significantly less effective if not promptly initiated.

29 (5) In addition to the information to be provided in subsections (1) and (2), the health insurance issuer
30 shall:

1 (a) include a description of both the standard and the expedited external review procedures as required
2 by the disclosure requirements under [section 31], highlighting the provisions in the external review procedures
3 that give the covered person or, if applicable, the covered person's authorized representative the opportunity to
4 submit additional information and including any forms used to process an external review; and

5 (b) state that the commissioner's office is available to assist covered persons with the external review
6 process. This statement must include the commissioner's contact information.

7 (6) Among the forms provided under this section, the health insurance issuer shall include an
8 authorization form or other document approved by the commissioner that complies with the requirements of 45
9 CFR 164.508 and 33-19-206, by which the covered person, for purposes of conducting an external review under
10 [sections 17 through 31], authorizes the health insurance issuer and the covered person's treating health care
11 provider to disclose protected health information, including medical records, concerning the covered person for
12 the purposes of the external review.

13
14 **NEW SECTION. Section 20. Request for external review.** (1) Except for a request for an expedited
15 external review provided for in [section 23], all requests for an external review must be made in writing to the
16 commissioner.

17 (2) A request for expedited external review may be made by telephone or in another expeditious manner.

18 (3) The commissioner may prescribe the form and content of external review requests submitted under
19 this section.

20 (4) A covered person or, if applicable, the covered person's authorized representative may make a
21 request for an external review of an adverse determination or a final adverse determination.

22
23 **NEW SECTION. Section 21. Exhaustion of internal grievance process.** (1) Except as provided in
24 subsections (2), (4), (5), and (6), a request for an external review pursuant to [section 22, 23, or 24] may not be
25 made until the covered person has exhausted the health insurance issuer's internal grievance process provided
26 for in [sections 10 through 16].

27 (2) For the purposes of this section, a covered person is considered to have exhausted the health
28 insurance issuer's internal grievance process if the covered person or, if applicable, the covered person's
29 authorized representative:

30 (a) has filed a grievance involving an adverse determination pursuant to [section 15]; and

1 (b) has not received a written decision on the grievance from the health insurance issuer within 30 days
2 following the date the covered person or the covered person's authorized representative filed the grievance with
3 the health insurance issuer except to the extent the covered person or the covered person's authorized
4 representative requested or agreed to a delay.

5 (3) Except as provided in subsection (2), a covered person or, if applicable, the covered person's
6 authorized representative may not request an external review of an adverse determination involving a
7 retrospective review determination made pursuant to [sections 10 through 16] until the covered person has
8 exhausted the health insurance issuer's internal grievance process.

9 (4) (a) At the same time a covered person or, if applicable, the covered person's authorized
10 representative files a request for an expedited review of a grievance involving an adverse determination under
11 [section 15], the covered person or the covered person's authorized representative may file a request for an
12 expedited external review of the adverse determination:

13 (i) under [section 23] if the covered person has a medical condition for which the timeframe for
14 completion of an expedited review of the grievance involving an adverse determination provided for in [section
15 15] would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's
16 ability to regain maximum function; or

17 (ii) under [section 24] if the adverse determination involves a denial of coverage based on a determination
18 that:

19 (A) the recommended or requested health care service or treatment is experimental or investigational;
20 and

21 (B) the covered person's treating health care provider certifies in writing that the recommended or
22 requested health care service or treatment that is the subject of the adverse determination would be significantly
23 less effective if not promptly initiated.

24 (b) On receipt of a request for an expedited external review under subsection (4)(a), the independent
25 review organization conducting the external review as provided under [section 23 or 24] shall determine whether
26 the covered person must be required to complete the expedited review process for grievances provided for in
27 [section 16] before an expedited external review can be conducted.

28 (c) Upon a determination made pursuant to subsection (4)(b) that the covered person must first be
29 required to complete the expedited grievance review process provided for in [section 16], the independent review
30 organization shall immediately notify the covered person or, if applicable, the covered person's authorized

1 representative of this determination. The notification also must state that the independent review organization
2 will not proceed with the expedited external review under [section 23] until:

- 3 (i) the expedited grievance review process under [section 16] is completed; and
4 (ii) the covered person's grievance at the completion of the expedited grievance review process remains
5 unresolved.

6 (5) A request for an external review of an adverse determination may be made before the covered
7 person has exhausted the health insurance issuer's internal grievance procedures as provided in [section 14]
8 whenever the health insurance issuer agrees to waive the exhaustion requirement.

9 (6) If the requirement to exhaust the health insurance issuer's internal grievance procedures is waived
10 under subsection (5), the covered person or, if applicable, the covered person's authorized representative may
11 file a request in writing for a review under [section 22 or 24], as applicable.

12
13 **NEW SECTION. Section 22. Standard external review.** (1) Within 6 months after the date of receipt
14 of a notice of an adverse determination or a final adverse determination pursuant to [section 19], a covered
15 person or, if applicable, the covered person's authorized representative may file a request for an external review
16 with the commissioner.

17 (2) Within 1 business day after the date of receipt of a request for external review, the commissioner shall
18 send a copy of the request to the health insurance issuer.

19 (3) Within 5 business days after the date of receipt of the copy of the external review request from the
20 commissioner, the health insurance issuer shall complete a preliminary review of the request to determine
21 whether:

22 (a) the individual is or was a covered person in the health plan at the time the health care service or
23 treatment was requested or, in the case of a retrospective review, was a covered person in the health plan at the
24 time the health care service or treatment was provided;

25 (b) the health care service or treatment that is the subject of the adverse determination or the final
26 adverse determination is a covered service under the covered person's health plan but is not covered because
27 of a determination by the health insurance issuer that the health care service or treatment does not meet the
28 health insurance issuer's requirements for medical necessity, appropriateness, health care setting, level of care,
29 or level of effectiveness;

30 (c) the covered person has exhausted the health insurance issuer's internal grievance process as set

1 forth in [sections 10 through 16] or the covered person is exempt under [section 14(2)]; and

2 (d) the covered person or the covered person's authorized representative has provided all of the
3 information and forms required to process an external review.

4 (4) Within 1 business day after completion of the preliminary review, the health insurance issuer shall
5 notify the commissioner and the covered person or, if applicable, the covered person's authorized representative
6 in writing as to whether:

7 (a) the request is complete; and

8 (b) the request is eligible for external review.

9 (5) (a) If the request is not complete, the health insurance issuer shall inform the commissioner and the
10 covered person or, if applicable, the covered person's authorized representative in writing and include in the
11 notice the information or materials that are needed to make the request complete.

12 (b) If the request is not eligible for external review, the health insurance issuer shall inform the
13 commissioner and the covered person or, if applicable, the covered person's authorized representative in writing
14 and include in the notice the reasons for the request's ineligibility.

15 (6) (a) The commissioner may specify the form for the health insurance issuer's notice of initial
16 determination under subsection (5) and any supporting information to be included in the notice.

17 (b) The notice of initial determination provided under subsection (5) must include a statement informing
18 the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the
19 commissioner a health insurance issuer's initial determination that the external review request is ineligible for
20 review.

21 (7) (a) If the commissioner receives a request under [section 20], the commissioner may require a
22 referral for external review, notwithstanding a health insurance issuer's initial determination that the request is
23 ineligible.

24 (b) A determination by the commissioner under subsection (7)(a) must be based on the terms of the
25 covered person's health plan and all applicable provisions of [sections 1 through 31].

26 (8) Whenever the commissioner receives a notice that a request is eligible for external review following
27 the preliminary review conducted pursuant to subsection (3), the commissioner shall within 1 business day after
28 the date of receipt of the notice:

29 (a) assign an independent review organization from the list of approved independent review
30 organizations compiled and maintained by the commissioner pursuant to [section 26] to conduct the external

1 review;

2 (b) notify the health insurance issuer of the name of the independent review organization assigned under
3 subsection (8)(a); and

4 (c) notify in writing the covered person or, if applicable, the covered person's authorized representative
5 that the commissioner considered the request eligible for external review and initiated an external review.

6 (9) The assigned independent review organization, in reaching its decision, is not bound by any
7 decisions or conclusions reached during the health insurance issuer's utilization review process set forth in
8 [sections 1 through 9] or the health insurance issuer's internal grievance process set forth in [sections 10 through
9 16].

10 (10) The commissioner shall include in the notice provided to the covered person or, if applicable, the
11 covered person's authorized representative a statement that the covered person or the covered person's
12 authorized representative may submit in writing to the assigned independent review organization within 5
13 business days following the date of receipt of the notice provided pursuant to subsection (8) any additional
14 information for the independent review organization to consider when conducting the external review. The
15 independent review organization shall accept and consider information submitted within 5 business days after
16 the date of receipt of the notice and may accept and consider additional information submitted after the 5
17 business days.

18 (11) Within 5 business days after the date of receipt of the notice provided pursuant to subsection (8),
19 the health insurance issuer or its designated utilization review organization shall provide to the assigned
20 independent review organization the medical records, documents, and any information used in making the
21 adverse determination or final adverse determination.

22 (12) Except as provided in subsection (13), failure by the health insurance issuer or its designated
23 utilization review organization to provide the documents and information within the time specified in subsection
24 (11) may not delay the conduct of the external review.

25 (13) (a) If the health insurance issuer or its designated utilization review organization fails to provide the
26 documents and information within the time specified in subsection (11), the assigned independent review
27 organization may terminate the external review and make a decision to reverse the adverse determination or final
28 adverse determination.

29 (b) Within 1 business day after making a decision under subsection (13)(a), the independent review
30 organization shall notify the covered person or, if applicable, the covered person's authorized representative as

1 well as the health insurance issuer and the commissioner.

2 (14) If the provisions of subsection (13) do not apply, the assigned independent review organization shall
3 review all of the information and documents received pursuant to subsection (11) and any other information
4 submitted in writing to the independent review organization by the covered person or, if applicable, the covered
5 person's authorized representative pursuant to subsection (10).

6 (15) On receipt of any information submitted by the covered person or, if applicable, the covered person's
7 authorized representative pursuant to subsection (10), the assigned independent review organization shall within
8 1 business day after receipt forward the information to the health insurance issuer.

9 (16) On receipt of the information, if any, forwarded as provided in subsection (15), the health insurance
10 issuer may reconsider its adverse determination or final adverse determination that is the subject of the external
11 review.

12 (17) Reconsideration by the health insurance issuer of its adverse determination or final adverse
13 determination pursuant to subsection (16) may not delay or terminate the external review.

14 (18) The external review may be terminated only if the health insurance issuer decides, on completion
15 of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage
16 or payment for the health care service or treatment that is the subject of the adverse determination or final
17 adverse determination.

18 (19) (a) Within 1 business day after making a decision to reverse its adverse determination or final
19 adverse determination, as provided in subsection (18), the health insurance issuer shall notify the following in
20 writing of its decision:

21 (i) the covered person or, if applicable, the covered person's authorized representative;

22 (ii) the assigned independent review organization; and

23 (iii) the commissioner.

24 (b) The assigned independent review organization shall terminate the external review on receipt of the
25 notice from the health insurance issuer sent pursuant to subsection (19)(a).

26 (20) In addition to the documents and information provided pursuant to subsection (11), the assigned
27 independent review organization, to the extent the information or documents are available and the independent
28 review organization considers them appropriate, shall consider the following in reaching a decision:

29 (a) the covered person's medical records;

30 (b) the attending health care professional's recommendation;

1 (c) consulting reports from appropriate health care professionals and other documents submitted by the
2 health insurance issuer, the covered person, the covered person's authorized representative, or the covered
3 person's treating health care provider;

4 (d) the terms of coverage under the covered person's health plan with the health insurance issuer to
5 ensure that the independent review organization's decision is not contrary to the terms of coverage under the
6 covered person's health plan with the health insurance issuer;

7 (e) the most appropriate practice guidelines, which must include generally accepted practice guidelines,
8 evidence-based standards, or any other practice guidelines developed by the federal government or national or
9 professional medical societies, boards, and associations;

10 (f) any applicable clinical review criteria developed and used by the health insurance issuer or its
11 designated utilization review organization; and

12 (g) the opinion of the independent review organization's clinical peer after considering the provisions of
13 subsections (20)(a) through (20)(f) to the extent the information or documents are available and the clinical peer
14 considers the information appropriate.

15 (21) Within 45 days after the date of receipt of the request for an external review, the assigned
16 independent review organization shall provide written notice of its decision to uphold or reverse the adverse
17 determination or the final adverse determination to:

18 (a) the covered person or, if applicable, the covered person's authorized representative;

19 (b) the health insurance issuer; and

20 (c) the commissioner.

21 (22) The independent review organization shall include in the notice sent pursuant to subsection (21):

22 (a) a general description of the reason for the request for the external review;

23 (b) the date the independent review organization received the assignment from the commissioner to
24 conduct the external review;

25 (c) the time period over which the external review was conducted;

26 (d) the date of the independent review organization's decision;

27 (e) the principal reasons for the decision;

28 (f) the rationale for the decision; and

29 (g) references to the evidence or documentation, including the evidence-based standards, considered
30 in reaching the decision.

1 (23) If a notice of a decision under subsection (21) reverses the adverse determination or final adverse
 2 determination, the health insurance issuer shall immediately approve the coverage that was the subject of the
 3 adverse determination or final adverse determination.

4 (24) (a) The commissioner shall assign an approved independent review organization in accordance with
 5 this section on a random basis or using another method of assignment that ensures the independence and
 6 impartiality of the assignment process.

7 (b) In making the assignment, the commissioner shall consider whether an independent review
 8 organization is qualified to conduct the particular external review based on the nature of the health care service
 9 or treatment that is the subject of the adverse determination or final adverse determination.

10 (c) The commissioner shall also take into account other circumstances, including conflict of interest
 11 concerns pursuant to [section 27(4)].

12

13 **NEW SECTION. Section 23. Expedited external review.** (1) Except as provided in subsection (12),
 14 a covered person or, if applicable, the covered person's authorized representative may request an expedited
 15 external review with the commissioner at the time the covered person receives:

16 (a) an adverse determination if:

17 (i) the adverse determination involves a medical condition of the covered person for which the timeframe
 18 for completion of an expedited internal review of a grievance involving an adverse determination under [section
 19 16] would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's
 20 ability to regain maximum function; and

21 (ii) the covered person or the covered person's authorized representative has filed a request for an
 22 expedited review of a grievance involving an adverse determination as provided in [section 16]; or

23 (b) a final adverse determination if:

24 (i) the covered person has a medical condition for which the timeframe for completion of a standard
 25 external review pursuant to [section 22] would seriously jeopardize the life or health of the covered person or
 26 would jeopardize the covered person's ability to regain maximum function; or

27 (ii) the final adverse determination concerns an admission, availability of care, continued stay, or health
 28 care service for which the covered person received emergency services but has not been discharged from a
 29 facility.

30 (2) On receipt of a request for an expedited external review, the commissioner shall immediately send

1 a copy of the request to the health insurance issuer.

2 (3) (a) On receipt of the request pursuant to subsection (2), the health insurance issuer shall immediately
3 determine whether the request meets the review requirements under [section 22(3)].

4 (b) The health insurance issuer shall immediately notify the commissioner and the covered person or,
5 if applicable, the covered person's authorized representative of its eligibility determination.

6 (4) (a) The commissioner may specify the form for the health insurance issuer's notice of initial
7 determination under subsection (3)(b) and any supporting information to be included in the notice.

8 (b) The notice of initial determination under subsection (3)(b) must include a statement informing the
9 covered person or, if applicable, the covered person's authorized representative of the right to appeal to the
10 commissioner a health insurance issuer's initial determination that the external review request is ineligible for
11 review.

12 (5) (a) The commissioner may determine that a request is eligible for external review under [section
13 22(7)] and require a referral for external review, notwithstanding a health insurance issuer's initial determination
14 that the request is ineligible.

15 (b) A determination by the commissioner under subsection (5)(a) must be based on the terms of the
16 covered person's health plan and all applicable provisions of [sections 1 through 31].

17 (6) On receipt of a notice that a request meets review requirements, the commissioner shall immediately
18 assign an independent review organization to conduct the expedited external review. The assignment must be
19 from the list of approved independent review organizations compiled and maintained by the commissioner
20 pursuant to [section 26]. The commissioner shall immediately notify the health insurance issuer of the name of
21 the assigned independent review organization.

22 (7) In reaching a decision as provided in subsection (10), the assigned independent review organization
23 is not bound by any decisions or conclusions reached during the health insurance issuer's utilization review
24 process, as provided in [sections 1 through 9], or the health insurance issuer's internal grievance process
25 provided in [sections 10 through 16].

26 (8) On receipt of the commissioner's notice containing the name of the independent review organization
27 assigned to conduct the expedited external review, the health insurance issuer or its designated utilization review
28 organization shall provide or transmit all necessary documents and information used in making the adverse
29 determination or final adverse determination to the assigned independent review organization electronically or
30 by telephone or facsimile or any other available expeditious method.

1 (9) In addition to the documents and information provided under subsection (8), the assigned
2 independent review organization, to the extent the information or documents are available and the independent
3 review organization considers them appropriate, shall consider the documents listed in [section 22(20)] in
4 reaching a decision.

5 (10) (a) As expeditiously as the covered person's medical condition or circumstances require but no more
6 than 72 hours after receiving the request for an expedited external review that meets the review requirements
7 set forth in [section 22(3)], the assigned independent review organization shall:

8 (i) decide whether to uphold or reverse the adverse determination or final adverse determination; and

9 (ii) notify the covered person or, if applicable, the covered person's authorized representative as well as
10 the health insurance issuer and the commissioner of the decision.

11 (b) If the notice required under subsection (10)(a) was not provided in writing, the assigned independent
12 review organization shall within 48 hours after the date of providing the notice:

13 (i) provide written confirmation of the decision to the covered person or, if applicable, the covered
14 person's authorized representative as well as to the health insurance issuer and the commissioner; and

15 (ii) include the information required in [section 22(22)].

16 (11) On receipt of the notice regarding a decision reversing the adverse determination or final adverse
17 determination, the health insurance issuer shall immediately approve the coverage that was the subject of the
18 adverse determination or final adverse determination.

19 (12) An expedited external review may not be provided for retrospective adverse or retrospective final
20 adverse determinations.

21 (13) (a) The commissioner shall assign an approved independent review organization in accordance with
22 this section on a random basis or using another method of assignment that ensures the independence and
23 impartiality of the assignment process.

24 (b) In making the assignment, the commissioner shall consider whether an independent review
25 organization is qualified to conduct the particular external review based on the nature of the health care service
26 or treatment that is the subject of the adverse determination or final adverse determination.

27 (c) The commissioner shall also take into account other circumstances, including conflict of interest
28 concerns pursuant to [section 27(4)].

29

30 **NEW SECTION. Section 24. External review of adverse determinations for experimental or**

1 **investigational treatment -- expedited external review.** (1) Within 6 months after the date when a covered
2 person or, if applicable, the covered person's authorized representative receives notice pursuant to [section 19]
3 of an adverse determination or final adverse determination that involves a denial of coverage because a health
4 insurance issuer determined that the health care service or treatment recommended or requested is experimental
5 or investigational, the covered person or the covered person's authorized representative may file a request for
6 an external review with the commissioner.

7 (2) (a) A covered person or, if applicable, the covered person's authorized representative may make an
8 oral request for an expedited external review of the adverse determination or final adverse determination pursuant
9 to subsection (1) if the covered person's treating health care provider certifies, in writing, that the recommended
10 or requested health care service or treatment that is the subject of the request would be significantly less effective
11 if not promptly initiated.

12 (b) On receipt of a request for an expedited external review, the commissioner shall immediately notify
13 the health insurance issuer.

14 (c) (i) On receipt of the commissioner's notice pursuant to subsection (2)(b), the health insurance issuer
15 shall immediately determine whether the request meets the review requirements of subsection (4).

16 (ii) The health insurance issuer shall immediately notify the commissioner and the covered person or,
17 if applicable, the covered person's authorized representative of its eligibility determination.

18 (iii) The commissioner may specify the form for the health insurance issuer's notice of initial determination
19 under subsection (2)(c)(ii) and any supporting information to be included in the notice.

20 (iv) The notice of initial determination under subsection (2)(c)(ii) must include a statement informing the
21 covered person or, if applicable, the covered person's authorized representative of the right to appeal to the
22 commissioner a health insurance issuer's initial determination that the external review request is ineligible for
23 review.

24 (d) (i) The commissioner may determine that a request is eligible for external review under [section 20]
25 or subsection (4) of this section and may require a referral for external review, notwithstanding a health insurance
26 issuer's initial determination that the request is ineligible.

27 (ii) A determination by the commissioner under subsection (2)(d)(i) must be based on the terms of the
28 covered person's health plan and all applicable provisions of [sections 1 through 31].

29 (e) On receipt of a notice that the expedited external review request meets the review requirements of
30 subsection (4), the commissioner shall immediately:

1 (i) assign an independent review organization from the list of approved independent review organizations
2 compiled and maintained by the commissioner pursuant to [section 26] to conduct the expedited external review;
3 and

4 (ii) notify the health insurance issuer of the name of the assigned independent review organization.

5 (f) On receipt of the notice of the assigned independent review organization pursuant to subsection
6 (2)(e), the health insurance issuer or its designated utilization review organization shall provide or transmit to the
7 assigned independent review organization electronically, by telephone, by facsimile, or by any other available
8 expeditious method all necessary documents and information used in making the adverse determination or final
9 adverse determination.

10 (3) Except for a request for an expedited external review made pursuant to subsection (2)(a), within 1
11 business day after the date that the commissioner receives a request for an external review, the commissioner
12 shall notify the health insurance issuer of the request.

13 (4) Within 5 business days following the date that the health insurance issuer receives the notice sent
14 under subsection (3), the health insurance issuer shall conduct and complete a preliminary review of the request
15 to determine whether:

16 (a) the individual is or was a covered person in the health plan at the time the health care service or
17 treatment was recommended or requested or, in the case of a retrospective review, was a covered person in the
18 health plan at the time the health care service or treatment was provided;

19 (b) the recommended or requested health care service or treatment that is the subject of the adverse
20 determination or final adverse determination:

21 (i) is a covered benefit under the covered person's health plan except for the health insurance issuer's
22 determination that the service or treatment is experimental or investigational for a particular medical condition;

23 and

24 (ii) is not explicitly listed as an excluded benefit under the covered person's health plan;

25 (c) the covered person's treating health care provider has certified that one of the following situations
26 is applicable:

27 (i) standard health care services or treatments have not been effective in improving the condition of the
28 covered person;

29 (ii) standard health care services or treatments are not medically appropriate for the covered person; or

30 (iii) there is no available standard health care service or treatment covered by the health insurance issuer

1 that is more beneficial than the recommended or requested health care service or treatment described in
2 subsection (4)(d);

3 (d) (i) the covered person's treating health care provider has recommended a health care service or
4 treatment that the physician certifies, in writing, is likely to be more beneficial to the covered person, in the
5 physician's opinion, than any available standard health care services or treatments; or

6 (ii) a physician who is licensed, board-certified, or eligible to take the examination to become
7 board-certified and is qualified to practice in the area of medicine appropriate to treat the covered person's
8 condition has certified in writing that scientifically valid studies using accepted protocols demonstrate that the
9 health care service or treatment requested by the covered person who is subject to the adverse determination
10 or final adverse determination is likely to be more beneficial to the covered person than any available standard
11 health care services or treatments;

12 (e) the covered person has exhausted the health insurance issuer's internal grievance process provided
13 in [sections 10 through 16] or the covered person is exempt under [section 14(2)]; and

14 (f) the covered person or, if applicable, the covered person's authorized representative has provided all
15 of the information and forms required by the commissioner to process an external review.

16 (5) Within 1 business day after completion of the preliminary review, the health insurance issuer shall
17 notify the commissioner and the covered person or, if applicable, the covered person's authorized representative
18 in writing as to whether:

19 (a) the request is complete; and

20 (b) the request is eligible for external review.

21 (6) (a) If the request is not complete, the health insurance issuer shall inform the commissioner and the
22 covered person or, if applicable, the covered person's authorized representative in writing and include in the
23 notice the information or materials that are needed to make the request complete.

24 (b) If the request is not eligible for external review, the health insurance issuer shall inform the
25 commissioner and the covered person or, if applicable, the covered person's authorized representative in writing
26 and include in the notice the reasons for the request's ineligibility.

27 (7) (a) The commissioner may specify the form for the health insurance issuer's notice of initial
28 determination under subsection (6) and any supporting information to be included in the notice.

29 (b) The notice of initial determination provided under subsection (6) must include a statement informing
30 the covered person or, if applicable, the covered person's authorized representative of the right to appeal to the

1 commissioner a health insurance issuer's initial determination that the external review request is ineligible for
2 review.

3 (8) If a request for external review is determined eligible for external review, the health insurance issuer
4 shall notify the commissioner and the covered person or, if applicable, the covered person's authorized
5 representative.

6 (9) Within 1 business day after the date of receipt of the notice from the health insurance issuer that the
7 external review request is eligible for external review pursuant to subsection (2)(d) or (8), the commissioner shall:

8 (a) assign an independent review organization from the list of approved independent review
9 organizations compiled and maintained by the commissioner pursuant to [section 26] to conduct the external
10 review;

11 (b) notify the health insurance issuer of the name of the independent review organization assigned under
12 subsection (9)(a); and

13 (c) notify in writing the covered person or, if applicable, the covered person's authorized representative
14 of the request's eligibility and acceptance for external review.

15 (10) The commissioner shall include in the notice provided to the covered person or, if applicable, the
16 covered person's authorized representative a statement that the covered person or, if applicable, the covered
17 person's authorized representative may submit in writing to the assigned independent review organization within
18 5 business days following the date of receipt of the notice provided pursuant to subsection (9) any additional
19 information for the independent review organization to consider when conducting the external review. The
20 independent review organization shall accept and consider information submitted within 5 business days after
21 the date of receipt of the notice and may accept and consider additional information submitted after the 5
22 business days.

23 (11) Within 1 business day after the receipt of the notice of assignment to conduct the external review
24 pursuant to subsection (9), the assigned independent review organization shall:

25 (a) select one or more clinical peers, as the independent review organization determines to be
26 appropriate pursuant to subsection (12), to conduct the external review; and

27 (b) make a decision, based on the opinion of the clinical peers, to uphold or reverse the adverse
28 determination or final adverse determination.

29 (12) (a) In selecting clinical peers to conduct the external review, the assigned independent review
30 organization shall select physicians or other health care providers who meet the minimum qualifications described

1 in [section 27] and who, through clinical experience in the past 3 years, are experts in the treatment of the
2 covered person's condition and knowledgeable about the recommended or requested health care service or
3 treatment.

4 (b) The choice of the physicians or other health care providers to conduct the external review may not
5 be made by the covered person, the covered person's authorized representative, if applicable, or the health
6 insurance issuer.

7 (13) (a) In accordance with subsection (20), each clinical peer shall provide a written opinion to the
8 assigned independent review organization on whether the recommended or requested health care service or
9 treatment should be covered.

10 (b) In reaching an opinion, clinical peers are not bound by any decisions or conclusions reached during
11 the health insurance issuer's utilization review process provided for in [sections 1 through 9] or in the health
12 insurance issuer's internal grievance process provided for in [sections 10 through 16].

13 (14) (a) Within 5 business days after the date of receipt of the notice provided pursuant to subsection (9),
14 the health insurance issuer or its designated utilization review organization shall provide to the assigned
15 independent review organization any documents and information considered in making the adverse determination
16 or the final adverse determination.

17 (b) Except as provided in subsection (15), failure by the health insurance issuer or its designated
18 utilization review organization to provide the documents and information within the time specified in subsection
19 (14)(a) may not delay the conduct of the external review.

20 (15) (a) If the health insurance issuer or its designated utilization review organization fails to provide the
21 documents and information within the time specified in subsection (14)(a), the assigned independent review
22 organization may terminate the external review and decide to reverse the adverse determination or final adverse
23 determination.

24 (b) Immediately upon making the determination under subsection (15)(a), the independent review
25 organization shall notify the covered person or, if applicable, the covered person's authorized representative, the
26 health insurance issuer, and the commissioner.

27 (16) On receipt of any information submitted by the covered person or, if applicable, the covered person's
28 authorized representative pursuant to subsection (10), the assigned independent review organization shall, within
29 1 business day after the receipt of the information, forward the information to the health insurance issuer.

30 (17) (a) On receipt of the information required to be forwarded pursuant to subsection (16), the health

1 insurance issuer may reconsider its adverse determination or final adverse determination that is the subject of
2 the external review.

3 (b) Reconsideration by the health insurance issuer of its adverse determination or final adverse
4 determination pursuant to subsection (17)(a) may not delay or terminate the external review.

5 (18) (a) The external review may be terminated only if the health insurance issuer decides, on completion
6 of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage
7 or payment for the recommended or requested health care service or treatment that is the subject of the adverse
8 determination or final adverse determination.

9 (b) Immediately upon making the decision to reverse its adverse determination or final adverse
10 determination, as provided in subsection (18)(a), the health insurance issuer shall notify the covered person or,
11 if applicable, the covered person's authorized representative, the assigned independent review organization, and
12 the commissioner in writing of its decision.

13 (c) The assigned independent review organization shall terminate the external review on receipt of the
14 notice from the health insurance issuer pursuant to subsection (18)(b).

15 (19) Each clinical peer selected pursuant to subsection (12) shall review all of the information and
16 documents received pursuant to subsection (14) and any other information submitted in writing by the covered
17 person or, if applicable, the covered person's authorized representative pursuant to subsection (10).

18 (20) (a) Except as provided in subsection (20)(c), within 20 days after being selected in accordance with
19 subsection (12) to conduct the external review, each clinical peer shall provide an opinion to the assigned
20 independent review organization pursuant to subsection (21) on whether the recommended or requested health
21 care service or treatment should be covered.

22 (b) Except for an opinion provided pursuant to subsection (20)(c), each clinical peer's opinion must be
23 in writing and must include the following information:

24 (i) a description of the covered person's medical condition;

25 (ii) a description of the indicators relevant to determining whether there is sufficient evidence to
26 demonstrate that the recommended or requested health care service or treatment is more likely than not to be
27 more beneficial to the covered person than any available standard health care services or treatments and that
28 the adverse risks of the recommended or requested health care service or treatment would not be substantially
29 increased over those of available standard health care services or treatments;

30 (iii) a description and analysis of any medical or scientific evidence considered in reaching the opinion;

1 (iv) a description and analysis of any evidence-based standard; and
2 (v) information on whether the clinical peer's rationale for the opinion is based on subsection (21)(a) or
3 (21)(b).

4 (c) (i) For an expedited external review, each clinical peer shall provide an opinion orally or in writing to
5 the assigned independent review organization as expeditiously as the covered person's medical condition or
6 circumstances require but no later than 5 calendar days after the clinical peer was selected in accordance with
7 subsection (12).

8 (ii) If the opinion provided pursuant to subsection (20)(c)(i) was not in writing, the clinical peer shall
9 provide to the assigned independent review organization written confirmation of the opinion within 48 hours after
10 the date the opinion was delivered and include the information required under subsection (20)(b).

11 (21) In addition to the documents and information provided under this section, each clinical peer selected
12 pursuant to subsection (12) shall consider the following information in reaching an opinion as required in
13 subsection (20) to the extent that the information is available and the clinical peer considers the information to
14 be appropriate:

15 (a) the covered person's pertinent medical records;

16 (b) the attending physician's or health care professional's recommendation;

17 (c) consulting reports from appropriate health care professionals and other documents submitted by the
18 health insurance issuer, the covered person, the covered person's authorized representative, or the covered
19 person's treating physician or health care provider;

20 (d) the terms of coverage under the covered person's health plan with the health insurance issuer. The
21 terms of coverage must be analyzed to ensure that, except for the health insurance issuer's determination that
22 the recommended or requested health care service or treatment that is the subject of the opinion is experimental
23 or investigational, the clinical peer's opinion is not contrary to the terms of coverage under the covered person's
24 health benefit plan with the health insurance issuer; and

25 (e) whether:

26 (i) the recommended or requested health care service or treatment has been approved by the food and
27 drug administration, if applicable, for the condition;

28 (ii) the recommended or requested health care service or treatment is typically covered by other insurers
29 or payers, such as medicare; or

30 (iii) medical or scientific evidence or evidence-based standards demonstrate that the expected benefits

1 of the recommended or requested health care service or treatment is more likely than not to be more beneficial
2 to the covered person than any available standard health care service or treatment and that the adverse risks
3 of the recommended or requested health care service or treatment would not be substantially increased over
4 those of available standard health care services or treatments.

5 (22) (a) Except as provided in subsection (22)(b), within 20 days after the date of receiving the opinion
6 of each clinical peer pursuant to subsection (20), the assigned independent review organization shall make a
7 decision and provide written notice of the decision to the covered person or, if applicable, the covered person's
8 authorized representative as well as the health insurance issuer and the commissioner.

9 (b) (i) For an expedited external review, within 48 hours after the date of receiving the opinion of each
10 clinical peer pursuant to subsection (20), the assigned independent review organization, in accordance with
11 subsection (22)(c), shall make a decision and provide notice of the decision orally or in writing to the recipients
12 listed in subsection (22)(a).

13 (ii) If the notice provided under subsection (22)(b)(i) was not in writing, within 48 hours after the date of
14 providing that notice the assigned independent review organization shall provide written confirmation of the
15 decision to the recipients listed in subsection (22)(a) and include the information set forth in subsection (22)(d).

16 (c) (i) If a majority of the clinical peers respond that the recommended or requested health care service
17 or treatment should be covered, the independent review organization shall make a decision to reverse the health
18 insurance issuer's adverse determination or final adverse determination.

19 (ii) If a majority of the clinical peers respond that the recommended or requested health care service or
20 treatment should not be covered, the independent review organization shall make a decision to uphold the health
21 insurance issuer's adverse determination or final adverse determination.

22 (iii) If the clinical peers are evenly split as to whether the recommended or requested health care service
23 or treatment should be covered, the independent review organization shall obtain the opinion of an additional
24 clinical peer to help the independent review organization make a decision based on the opinions of a majority of
25 the clinical peers pursuant to subsections (22)(c)(i) or (22)(c)(ii).

26 (iv) The additional clinical peer selected under (22)(c)(iii) shall use the same information to reach an
27 opinion as used by the clinical peers who have already submitted their opinions pursuant to subsection (20).

28 (v) The selection of the additional clinical peer under subsection (22)(c)(iii) may not extend the time within
29 which the assigned independent review organization is required to make a decision based on the opinions of the
30 clinical peers.

1 (d) The independent review organization shall include in the notice provided pursuant to subsection
2 (22)(b):

3 (i) a general description of the reason for the request for external review;

4 (ii) the written opinion of each clinical peer, including the opinion of each clinical peer as to whether the
5 recommended or requested health care service or treatment should be covered and the rationale for the
6 reviewer's recommendation;

7 (iii) the date on which the independent review organization was assigned by the commissioner to conduct
8 the external review;

9 (iv) the time period during which the external review was conducted;

10 (v) the date of the independent review organization's decision; and

11 (vi) the principal rationale for its decision.

12 (e) On receipt of a notice of a decision pursuant to subsection (22)(c)(i) reversing the adverse
13 determination or final adverse determination, the health insurance issuer shall immediately approve coverage
14 of the recommended or requested health care service or treatment that was the subject of the adverse
15 determination or final adverse determination.

16 (23) (a) The commissioner shall assign an approved independent review organization in accordance with
17 this section on a random basis or using another method of assignment that ensures the independence and
18 impartiality of the assignment process.

19 (b) In making the assignment, the commissioner shall consider whether an independent review
20 organization is qualified to conduct the particular external review based on the nature of the health care service
21 or treatment that is the subject of the adverse determination or final adverse determination.

22 (c) The commissioner shall also take into account other circumstances, including conflict of interest
23 concerns pursuant to [section 27(4)].

24

25 **NEW SECTION. Section 25. Binding nature of external review decisions.** (1) An external review
26 decision is binding on:

27 (a) the health insurance issuer; and

28 (b) the covered person except to the extent that the covered person has other remedies available under
29 applicable federal or state law.

30 (2) A covered person or, if applicable, the covered person's authorized representative may not file a

1 subsequent request for external review involving the same adverse determination or final adverse determination
2 for which the covered person has already received an external review decision pursuant to [sections 17 through
3 31].

4
5 **NEW SECTION. Section 26. Approval of independent review organizations.** (1) The commissioner
6 shall approve independent review organizations that are eligible to conduct external reviews under [sections 17
7 through 31].

8 (2) To be eligible for approval by the commissioner to conduct external reviews under [sections 17
9 through 31], an independent review organization:

10 (a) must be accredited by a nationally recognized private accrediting entity as provided in subsection
11 (5) and meet the minimum qualifications provided in [section 27]; and

12 (b) shall submit an application for approval in accordance with subsection (4).

13 (3) The commissioner shall develop an application form for initially approving and for reapproving
14 independent review organizations to conduct external reviews.

15 (4) Any independent review organization seeking to be approved to conduct external reviews under
16 [sections 17 through 31] shall submit the application form and include with the form all documentation and
17 information necessary for the commissioner to determine whether the independent review organization satisfies
18 the minimum qualifications established under [section 27] and subsection (5) of this section.

19 (5) An independent review organization is eligible for approval under this section only if it is accredited
20 by a nationally recognized private accrediting entity approved by the commissioner as having independent review
21 organization accreditation standards that are equivalent to or exceed the minimum qualifications for independent
22 review organizations established under [section 27].

23 (6) The commissioner's approval of an independent review organization is effective for 2 years unless
24 the commissioner determines before the expiration date that the independent review organization is not satisfying
25 the minimum qualifications established under [section 27].

26 (7) If the commissioner determines that an independent review organization has lost its accreditation
27 or no longer satisfies the minimum requirements established under [section 27], the commissioner shall terminate
28 the approval of the independent review organization and remove the independent review organization from the
29 list of independent review organizations maintained by the commissioner pursuant to subsection (8).

30 (8) The commissioner shall maintain and periodically update a list of approved independent review

1 organizations.

2

3 **NEW SECTION. Section 27. Minimum qualifications for independent review organizations.** (1)

4 To be approved to conduct external reviews as provided in [section 26], an independent review organization shall
5 establish and maintain written policies and procedures that govern all aspects of both the standard external
6 review process and the expedited external review process set forth in [sections 22 and 23]. The written policies
7 and procedures must include, at a minimum:

8 (a) a quality assurance mechanism that ensures:

9 (i) that external reviews are conducted within the specified timeframes and that required notices are
10 provided in a timely manner;

11 (ii) that the independent review organization is unbiased;

12 (iii) both the selection of qualified and impartial clinical peers to conduct external reviews on behalf of the
13 independent review organization and the suitable matching of reviewers to specific cases;

14 (iv) that the independent review organization employs or contracts with an adequate number of clinical
15 peers to meet the objective of qualified, impartial reviews;

16 (v) the confidentiality of medical and treatment records as well as clinical review criteria; and

17 (vi) that any person employed by or under contract with the independent review organization adheres
18 to the requirements of [sections 17 through 31];

19 (b) a toll-free telephone service to receive information related to external reviews on a 24-hour-a-day,
20 7-day-a-week basis. The telephone service must be capable of accepting, recording, or providing appropriate
21 instruction to incoming telephone callers during other-than-normal business hours.

22 (c) an agreement to maintain and provide to the commissioner the information required under [section
23 29].

24 (2) All clinical peers assigned by an independent review organization to conduct external reviews must:

25 (a) be physicians or other appropriate health care providers; and

26 (b) meet the following minimum qualifications:

27 (i) be an expert in the treatment of the covered person's medical condition that is the subject of the
28 external review;

29 (ii) be knowledgeable about the recommended health care service or treatment through recent or current
30 actual clinical experience treating patients with the same or similar medical conditions of the covered person;

1 (iii) hold a nonrestricted professional license in a state of the United States and, for physicians, a current
2 certification by a recognized American medical specialty board in one or more areas appropriate to the subject
3 of the external review; and

4 (iv) have no history of disciplinary actions or sanctions, including participation restrictions or a loss of staff
5 privileges either taken or pending by any hospital, government agency, governmental unit, or any regulatory body
6 if the disciplinary actions or sanctions raise a substantial question as to the clinical peer's physical, mental, or
7 professional competence or moral character.

8 (3) In addition to the requirements in subsection (1), an independent review organization may not own
9 or control, be a subsidiary of, or in any way be owned or controlled by or exercise control over a health plan, a
10 health insurance issuer, a national, state, or local trade association of health plans, or a national, state, or local
11 trade association of health care providers.

12 (4) (a) In addition to the requirements in subsections (1) through (3), to be approved under [section 26]
13 to conduct an external review of a specified case, neither the independent review organization selected to
14 conduct the external review nor any clinical peer assigned by the independent review organization to conduct the
15 external review may have a material professional, familial, or financial conflict of interest with any of the following:

16 (i) the health insurance issuer that is the subject of the external review;

17 (ii) the covered person whose treatment is the subject of the external review or, if applicable, the covered
18 person's authorized representative;

19 (iii) any officer, director, or management employee of the health insurance issuer that is the subject of
20 the external review;

21 (iv) the health care provider, the health care provider's medical group, or the independent practice
22 association recommending the health care service or treatment that is the subject of the external review;

23 (v) the facility at which the recommended health care service or treatment would be provided; or

24 (vi) the developer or manufacturer of the principal drug, device, procedure, or other therapy being
25 recommended for the covered person whose treatment is the subject of the external review.

26 (b) In determining whether an independent review organization or a clinical peer assigned by the
27 independent review organization to conduct the external review has a material professional, familial, or financial
28 conflict of interest, the commissioner shall take into consideration:

29 (i) situations in which the independent review organization to be assigned to conduct an external review
30 of a specified case or a clinical peer to be assigned by the independent review organization to conduct an

1 external review of a specified case may have an apparent professional, familial, or financial relationship or
2 connection with a person described in subsection (4)(a) if the characteristics of that relationship or connection
3 do not pose a material professional, familial, or financial conflict of interest that otherwise would result in the
4 disapproval of the independent review organization or of the clinical peer from conducting the external review;
5 and

6 (ii) whether other medical expertise is available within a reasonable timeframe.

7 (5) (a) An independent review organization that is accredited by a nationally recognized private
8 accrediting entity that has independent review accreditation standards determined by the commissioner to be
9 equivalent to or exceed the minimum qualifications of this section is presumed to be in compliance with this
10 section and eligible for approval under [section 26]. However, the commissioner shall also consider the conflict
11 of interest provisions of subsection (4).

12 (b) The commissioner shall initially and periodically review the independent review organization
13 accreditation standards of a nationally recognized private accrediting entity to determine whether the entity's
14 standards are and continue to be equivalent to or exceed the minimum qualifications established under this
15 section. The commissioner may accept a review conducted by the NAIC for the determination under this
16 subsection (5)(b).

17 (c) On request, a nationally recognized private accrediting entity shall make its current independent
18 review organization accreditation standards available to the commissioner or the NAIC to enable the
19 commissioner to determine if the entity's standards are equivalent to or exceed the minimum qualifications
20 established under this section. The commissioner may exclude any private accrediting entity that is not reviewed
21 by the NAIC.

22
23 **NEW SECTION. Section 28. Liability limits for independent review organization.** (1) Except as
24 provided in subsection (2), an independent review organization or clinical peer working on behalf of an
25 independent review organization or an employee, agent, or contractor of an independent review organization is
26 not liable to any person for any opinions rendered or acts or omissions performed within the scope of the
27 organization's or person's duties under the law during or upon completion of an external review conducted
28 pursuant to [sections 17 through 31].

29 (2) The liability exemption under subsection (1) does not apply if the opinion was rendered or if the act
30 or omission was performed in bad faith or involved gross negligence.

1

2 **NEW SECTION. Section 29. External review reporting requirements.** (1) An independent review
3 organization assigned pursuant to [section 22, 23, or 24] to conduct an external review shall maintain written
4 records in the aggregate by state and by health insurance issuer on all requests for external reviews for which
5 the independent review organization conducted an external review during the calendar year.

6 (2) Each independent review organization required to maintain written records as provided in subsection
7 (1) shall submit to the commissioner, at least annually by January 1, a report in the format specified by the
8 commissioner.

9 (3) The report must include, aggregated by state and by health insurance issuer:

10 (a) the total number of requests for external review;

11 (b) the number of requests for external review resolved and, of those resolved, the number resolved
12 upholding the adverse determination or final adverse determination and the number resolved reversing the
13 adverse determination or final adverse determination;

14 (c) the average length of time for resolution;

15 (d) a summary of the types of coverages or cases for which an external review was sought, provided in
16 the format required by the commissioner;

17 (e) the number of external reviews that were terminated pursuant to [section 22(18)] as the result of a
18 reconsideration by the health insurance issuer of its adverse determination or final adverse determination after
19 the receipt of additional information from the covered person or, if applicable, the covered person's authorized
20 representative; and

21 (f) any other information the commissioner may request or require.

22 (4) The independent review organization shall retain the written records required pursuant to subsection
23 (1) for at least 6 years.

24 (5) Each health insurance issuer shall maintain in the aggregate by state and for each type of health plan
25 offered by the health insurance issuer written records on all requests for external review for which the health
26 insurance issuer received notice from the commissioner pursuant to [sections 1 through 31].

27 (6) Each health insurance issuer required to maintain written records on all requests for external review
28 pursuant to subsection (5) shall submit to the commissioner, at least annually by January 1, a report in the format
29 specified by the commissioner.

30 (7) The report must include in the aggregate by state and by type of health plan:

- 1 (a) the total number of requests for external review;
- 2 (b) the number of requests determined eligible for a full external review based on the total number of
3 requests for external review reported under subsection (7)(a);
- 4 (c) the number of requests for external review resolved and, of those resolved, the number resolved
5 upholding the adverse determination or final adverse determination and the number resolved reversing the
6 adverse determination or final adverse determination;
- 7 (d) the average length of time for resolution;
- 8 (e) a summary of the types of coverage or cases for which an external review was sought, as provided
9 in the format required by the department;
- 10 (f) the number of external reviews that were terminated as the result of a reconsideration by the health
11 carrier of its adverse determination or final adverse determination after the receipt of additional information from
12 the covered person or, if applicable, the covered person's authorized representative; and
- 13 (g) any other information the commissioner may request or require.
- 14 (8) The health insurance issuer shall retain the written records required pursuant to subsection (5) for
15 at least 6 years.

16

17 **NEW SECTION. Section 30. Funding of external review.** The health insurance issuer against which
18 a request for a standard external review or an expedited external review is filed shall pay the costs of the
19 independent review organization for conducting the external review.

20

21 **NEW SECTION. Section 31. Disclosure requirements.** (1) Each health insurance issuer shall include
22 a description of the external review procedures in or attached to the policy, certificate, membership booklet,
23 outline of coverage, or other evidence of coverage provided to covered persons.

24 (2) The disclosure required under subsection (1) must:

- 25 (a) be in a format prescribed by the commissioner; and
- 26 (b) include a statement that informs the covered person of the right of the covered person or, if
27 applicable, the covered person's authorized representative to file a request for an external review of an adverse
28 determination or final adverse determination with the commissioner. The statement may explain that external
29 review is available when the adverse determination or final adverse determination involves an issue of medical
30 necessity, appropriateness, health care setting, level of care, or level of effectiveness. The statement must

1 include the telephone number and address of the commissioner.

2 (3) In addition to the requirements under subsection (2), the statement must inform the covered person
3 that, when filing a request for an external review, the covered person or, if applicable, the covered person's
4 authorized representative is required to authorize the release of any medical records of the covered person that
5 may be required to be reviewed for the purpose of reaching a decision on the external review.

6

7 **Section 32.** Section 33-32-101, MCA, is amended to read:

8 **"33-32-101. Purpose.** The legislature finds and declares that it is the purpose of this chapter to:

9 (1) promote the delivery of quality health care in a cost-effective manner;

10 (2) foster greater coordination between health care providers, third-party payors, and others who
11 conduct utilization review activities;

12 (3) ensure access to health care services; ~~and~~

13 (4) protect patients, employers, and health care providers by ensuring that utilization review activities
14 result in informed decisions on the appropriateness of medical care made by those best qualified to be involved
15 in the utilization review process; and

16 (5) establish standards and criteria for the structure and operation of utilization review and benefit
17 determination processes designed to facilitate ongoing assessment and management of health care services."

18

19 **Section 33.** Section 33-32-102, MCA, is amended to read:

20 **"33-32-102. Definitions.** As used in this chapter, the following definitions apply:

21 ~~(1) "Commissioner" means the commissioner of insurance provided for in 2-15-1993.~~

22 (1) "Adverse determination", except as provided in [section 18], means:

23 (a) a determination by a health insurance issuer or its designated utilization review organization that,
24 based on the provided information and after application of any utilization review technique, a requested benefit
25 under the health insurance issuer's health plan is denied, reduced, or terminated or that payment is not made in
26 whole or in part for the requested benefit because the requested benefit does not meet the health insurance
27 issuer's requirement for medical necessity, appropriateness, health care setting, level of care, or level of
28 effectiveness or is determined to be experimental or investigational;

29 (b) a denial, reduction, termination, or failure to provide or make payment in whole or in part for a
30 requested benefit based on a determination by a health insurance issuer or its designated utilization review

- 1 organization of a person's eligibility to participate in the health insurance issuer's health plan;
2 (c) any prospective review or retrospective review of a benefit determination that denies, reduces, or
3 terminates or fails to provide or make payment in whole or in part for a benefit; or
4 (d) a rescission of coverage determination.
5 (2) "Ambulatory review" means a utilization review of health care services performed or provided in an
6 outpatient setting.
7 (3) "Authorized representative" means:
8 (a) a person to whom a covered person has given express written consent to represent the covered
9 person in an external review;
10 (b) a person authorized by law to provided substituted consent for a covered person; or
11 (c) a family member of the covered person or the covered person's treating health care provider only if
12 the covered person is unable to provide consent.
13 (4) "Case management" means a coordinated set of activities conducted for individual patient
14 management of serious, complicated, protracted, or otherwise complex health conditions.
15 (5) "Certification" means a determination by a health insurance issuer or its designated utilization review
16 organization that an admission, availability of care, continued stay, or other health care service has been
17 reviewed and, based on the information provided, satisfies the health insurance issuer's requirements for medical
18 necessity, appropriateness, health care setting, level of care, and level of effectiveness.
19 (6) "Clinical peer" means a physician or other health care provider who:
20 (a) holds a nonrestricted license in a state of the United States; and
21 (b) is trained or works in the same or a similar specialty to the specialty that typically manages the
22 medical condition, procedure, or treatment under review.
23 (7) "Clinical review criteria" means the written screening procedures, decision abstracts, clinical
24 protocols, and practice guidelines used by a health insurance issuer to determine the necessity and
25 appropriateness of health care services.
26 (8) "Concurrent review" means a utilization review conducted during a patient's stay or course of
27 treatment in a facility, the office of a health care professional, or another inpatient or outpatient health care setting.
28 (9) "Covered benefits" or "benefits" means those health care services to which a covered person is
29 entitled under the terms of a health plan.
30 (10) "Covered person" means a policyholder, a certificate holder, a member, a subscriber, an enrollee,

1 or another individual participating in a health plan.

2 (11) "Discharge planning" means the formal process for determining, prior to discharge from a facility,
3 the coordination and management of the care that a patient receives after discharge from a facility.

4 (12) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of
5 sufficient severity, including severe pain, that a prudent lay person who possesses an average knowledge of
6 health and medicine could reasonably expect to see resulting from the absence of immediate medical attention,
7 including a serious impairment to bodily functions, serious dysfunction of a bodily organ or part, or serious
8 jeopardy to the person's health or, with respect to a pregnant woman, the health of the woman or the fetus.

9 (13) "Emergency services" means with respect to an emergency medical condition:

10 (a) a medical screening examination that is within the capability of the emergency department of a
11 hospital, including ancillary services routinely available to the emergency department to evaluate the emergency
12 medical condition; and

13 (b) further medical examination and treatment needed to stabilize a patient to the extent that the
14 examination and treatment are within the capability of the staff and facilities available at a hospital.

15 (14) "External review" describes the set of procedures provided for in [sections 17 through 31].

16 (15) "Final adverse determination" means an adverse determination involving a covered benefit that has
17 been upheld by a health insurance issuer or its designated utilization review organization at the completion of the
18 health insurance issuer's internal grievance process as provided in [sections 10 through 16].

19 (16) "Grievance" means a written complaint or an oral complaint if the complaint involves an urgent care
20 request submitted by or on behalf of a covered person regarding:

21 (a) availability, delivery, or quality of health care services, including a complaint regarding an adverse
22 determination made pursuant to utilization review;

23 (b) claims payment, handling, or reimbursement for health care services; or

24 (c) matters pertaining to the contractual relationship between a covered person and a health insurance
25 issuer.

26 (2)(17) "Health care provider" or "provider" means a person, corporation, facility, or institution licensed
27 by the state to provide, or otherwise lawfully providing, health care services, including but not limited to:

28 (a) a physician, health care facility as defined in 50-5-101, osteopath, dentist, nurse, optometrist,
29 chiropractor, podiatrist, physical therapist, psychologist, licensed social worker, speech pathologist, audiologist,
30 licensed addiction counselor, or licensed professional counselor; and

1 (b) an officer, employee, or agent of a person described in subsection (2)(a) acting in the course and
2 scope of employment.

3 ~~(18)~~ "Health care services" means the health care and services provided by health care providers,
4 including drugs, medicines, ambulance services, and other therapeutic and rehabilitative services and supplies
5 for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

6 (19) "Health insurance issuer" has the meaning provided in 33-22-140.

7 (20) "Network" means the group of participating providers providing services to a managed care plan.

8 (21) "Participating provider" means a health care provider who, under a contract with a health insurance
9 issuer or with its contractor or subcontractor, has agreed to provide health care services to covered persons with
10 the expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly
11 from the health insurance issuer.

12 (22) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint
13 stock company, a trust, an unincorporated organization, or any similar entity or combination of entities in this
14 subsection (22).

15 (23) "Prospective review" means a utilization review conducted prior to an admission or a course of
16 treatment.

17 (24) (a) "Rescission" means a cancellation or the discontinuance of coverage under a health plan that
18 has a retroactive effect.

19 (b) The term does not include a cancellation or discontinuance under a health plan if the cancellation
20 or discontinuance of coverage:

21 (i) has only a prospective effect; or

22 (ii) is effective retroactively to the extent that the cancellation or discontinuance is attributable to a failure
23 to timely pay required premiums or contributions toward the cost of coverage.

24 (25) (a) "Retrospective review" means a review of medical necessity conducted after services have been
25 provided to a patient.

26 (b) The term does not include the review of a claim that is limited to an evaluation of reimbursement
27 levels, veracity of documentation, accuracy of coding, or adjudication for payment.

28 (26) "Second opinion" means an opportunity or requirement to obtain a clinical evaluation by a health care
29 provider other than the one originally making a recommendation for a proposed health care service to assess the
30 clinical necessity and appropriateness of the initial proposed health care service.

1 (27) "Stabilize" means, with respect to an emergency condition, to ensure that no material deterioration
 2 of the condition is, within a reasonable medical probability, likely to result from or occur during the transfer of the
 3 individual from a facility.

4 (28) (a) "Urgent care request" means a request for a health care service or course of treatment with
 5 respect to which the time periods for making a nonurgent care request determination could:

6 (i) seriously jeopardize the life or health of the covered person or the ability of the covered person to
 7 regain maximum function; or

8 (ii) subject the covered person, in the opinion of a physician with knowledge of the covered person's
 9 medical condition, to severe pain that cannot be adequately managed without the health care service or treatment
 10 that is the subject of the request.

11 (b) Except as provided in subsection (28)(c), in determining whether a request is to be treated as an
 12 urgent care request, an individual acting on behalf of the health insurance issuer shall apply the judgment of a
 13 prudent lay person who possesses an average knowledge of health and medicine.

14 (c) Any request that a physician with knowledge of the covered person's medical condition determines
 15 is an urgent care request within the meaning of subsection (28)(a) must be treated as an urgent care request.

16 ~~(4)(29) (a) "Utilization review" means a system for review of health care services for a patient to~~
 17 ~~determine the set of formal techniques designed to monitor the use of or to evaluate the clinical necessity, or~~
 18 ~~appropriateness, efficacy, or efficiency of services, whether that review is prospective, concurrent, or~~
 19 ~~retrospective, when the review will be used directly or indirectly in order to determine whether the health care~~
 20 ~~services, procedures, or settings. Techniques may include ambulatory review, prospective review, second~~
 21 ~~opinions, certification, concurrent review, case management, discharge planning, or retrospective review. will be~~
 22 ~~paid, covered, or provided.~~

23 ~~(b) Utilization review does not include routine claim administration or determination that does not include~~
 24 ~~determinations of medical necessity or appropriateness.~~

25 (30) "Utilization review organization" means an entity that conducts utilization review, other than a health
 26 insurance issuer performing a review for its own health plans."

27
 28 **Section 34.** Section 33-32-103, MCA, is amended to read:
 29 **"33-32-103. Utilization review plan.** ~~A person~~ An entity covered under the provisions of this chapter
 30 may not conduct a utilization review of health care services provided or to be provided to a patient covered under

1 a contract or plan for health care services issued in this state unless that person entity, at all times, maintains with
2 the commissioner a current utilization review plan that includes:

3 (1) a description of review criteria, standards, and procedures to be used in evaluating proposed or
4 delivered health care services that, to the extent possible, must:

5 (a) be based on nationally recognized criteria, standards, and procedures;

6 (b) reflect community standards of care, except that a utilization review plan for health care services
7 under the medicaid program provided for in Title 53 need not reflect community standards of care;

8 (c) ensure quality of care; and

9 (d) ensure access to needed health care services;

10 ~~(2) the provisions by which patients or providers may seek reconsideration or appeal of adverse
11 decisions by the person conducting the utilization review;~~

12 ~~—— (3) the type and qualifications of the personnel either employed or under contract to perform the
13 utilization review;~~

14 ~~(4)(2)~~ policies and procedures to ensure that a representative of the person entity conducting the
15 utilization review is reasonably accessible to patients and health care providers at all times;

16 ~~(5)(3)~~ policies and procedures to ensure compliance with all applicable state and federal laws to protect
17 the confidentiality of individual medical records;

18 ~~(6)(4)~~ a copy of the materials designed to inform applicable patients and health care providers of the
19 requirements of the utilization review plan; and

20 ~~(7)(5)~~ any other information as that may be required by the commissioner that is necessary to implement
21 this chapter."

22

23 **Section 35.** Section 33-32-104, MCA, is amended to read:

24 **"33-32-104. Preemption by federal law.** If any provision of this chapter is preempted ~~or duplicated~~ by
25 federal law or regulations as applied to any specific health care service, then the provision of this chapter that
26 is preempted ~~or duplicated~~ by federal law or regulations does not apply to that health care service but only to the
27 extent of the preemption ~~or duplication~~."

28

29 **Section 36.** Section 33-32-105, MCA, is amended to read:

30 **"33-32-105. Application -- exemptions.** (1) The provisions of this chapter apply to: ~~a person or entity~~

1 performing utilization reviews who is, or is affiliated with, under contract with, or acting on behalf of:

2 ~~—— (a) a Montana business entity; or~~

3 ~~—— (b) a third party that provides or administers health care benefits to citizens of this state, including:~~

4 ~~—— (i) a health insurer, nonprofit health service plan, health service corporation, employees' health and~~
 5 ~~welfare fund, or preferred provider organization authorized to offer health insurance policies or contracts;~~

6 ~~—— (ii) a health maintenance organization issued a certificate of authority in accordance with Title 33, chapter~~
 7 ~~31; or~~

8 ~~—— (iii) a state agency.~~

9 (a) a health insurance issuer that offers a health plan and provides or performs utilization review
 10 services;

11 (b) any designee of the health insurance issuer or utilization review organization that performs utilization
 12 review functions on the health insurance issuer's behalf; and

13 (c) a health insurance issuer or its designated utilization review organization that provides or performs
 14 prospective review or retrospective review benefit determinations.

15 (2) A general in-house utilization review for a health care provider, including an in-house utilization
 16 review that is conducted by or for a long-term care facility and that is required by regulations for medicare or
 17 medicaid regulations, is exempt from the provisions of this chapter as long as the review does not directly result
 18 in the approval or denial of payment for health care services for a particular case.

19 (3) A peer review procedure conducted by a professional society or association of providers is exempt
 20 from the provisions of this chapter."

21

22 **Section 37.** Section 33-33-103, MCA, is amended to read:

23 **"33-33-103. Definitions.** As used in this chapter, the following definitions apply:

24 (1) "Utilization review" ~~means the same as~~ has the meaning provided in 33-32-102(4) 33-32-102.

25 (2) "Utilization review organization" means an entity that provides utilization review services."
 26

26

27 **NEW SECTION. Section 38. Repealer.** The following sections of the Montana Code Annotated are
 28 repealed:

29 33-32-201. Conduct of utilization review.

30 33-32-203. Appeal and assignment of claim.

- 1 33-32-204. Commissioner to adopt rules.
2 33-37-101. Definitions.
3 33-37-102. Independent review of adverse determinations.
4 33-37-103. Peer review.
5 33-37-104. Contract provisions -- contract termination.
6 33-37-105. Rulemaking authority.
7 33-37-106. Application to certain entities.
8 33-37-110. Administration of managed care organization.

9

10 **NEW SECTION. Section 39. Codification instruction.** [Sections 1 through 31] are intended to be
11 codified as an integral part of Title 33, chapter 32, and the provisions of Title 33, chapter 32, apply to [sections
12 1 through 31].

13

14 **NEW SECTION. Section 40. Severability.** If a part of [this act] is invalid, all valid parts that are
15 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
16 the part remains in effect in all valid applications that are severable from the invalid applications.

17

18 **NEW SECTION. Section 41. Effective date -- applicability.** [This act] is effective January 1, 2016, and
19 applies to health insurance coverage as defined in 33-22-140(12) in effect on or after January 1, 2016, except
20 that [this act] does not apply to excepted benefits as defined in 33-22-140(8).

21

- END -