

1 SENATE BILL NO. 380

2 INTRODUCED BY J. SMALL

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING HEALTH CARE INSURANCE LAWS;  
5 PROVIDING FOR EXEMPTIONS FOR PRIOR AUTHORIZATION REQUIREMENTS; ~~PROVIDING~~  
6 ~~EXEMPTIONS; PROVIDING FOR A PROVIDER'S RIGHT TO AN EXTERNAL REVIEW; REVISING~~  
7 ~~UTILIZATION REVIEW AND GRIEVANCE PROCEDURES; AMENDING SECTION 33-32-309, MCA; AND~~  
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 NEW SECTION. Section 1. Prior authorization requirements. (1) A health insurance issuer may  
13 not perform prior authorization on benefits for:

14 ~~(a) generic prescription drugs that are not listed within any of the schedules of controlled~~  
15 ~~substances found at 21 CFR 1308.11 through 21 CFR 1308.15 or the schedules of controlled substances found~~  
16 ~~in Title 50, chapter 32;~~

17 ~~(b)(A) any GENERIC prescription drug, ~~generic or brand name~~, that is not listed within any of the~~  
18 ~~schedules of controlled substances found at 21 CFR 1308.11 through 21 CFR 1308.15 or the schedules of~~  
19 ~~controlled substances found in Title 50, chapter 32, after a covered person has been prescribed the COVERED~~  
20 ~~drug AT THE SAME QUANTITY without interruption for 6 months;~~

21 ~~(e)(B) any prescription drug or drugs, generic or brand name, on the grounds of therapeutic~~  
22 ~~duplication FOR THE SAME DRUG if the covered person has already been subject to prior authorization on the~~  
23 ~~grounds of therapeutic duplication for the same dosage of the prescription drug or drugs and coverage of the~~  
24 ~~prescription drug or drugs was approved;~~

25 ~~(d)(C) any prescription drug, generic or brand name, solely because the dosage of the medication for~~  
26 ~~the covered person has been adjusted by the prescriber of the prescription drug, AS LONG AS THE DOSAGE IS~~  
27 ~~WITHIN THE DOSAGE APPROVED BY THE FOOD AND DRUG ADMINISTRATION OR IS CONSISTENT WITH CLINICAL DOSING~~  
28 ~~FOR THE MEDICATION; or~~

1           ~~(e)(D)~~ any prescription drug, generic or brand name, that is a long-acting injectable antipsychotic.

2           (2) Any adverse determination for a prescription drug made during prior authorization by a health  
3 insurance issuer must be made by:

4           ~~(a)~~ a physician who is in the same specialty as the prescriber of the prescription drug subject to  
5 prior authorization ; or

6           ~~(b)~~ a physician whose specialty focuses on the diagnosis and treatment of the condition for which  
7 the prescription drug was prescribed to treat, provided that prior authorization that does not result in an adverse  
8 determination does not require the involvement of a physician on the part of a health insurance issuer.

9           ~~(3)~~ ~~(a)~~ A health insurance issuer may not perform retrospective review on any benefits when:

10           ~~(i)~~ payment has already been furnished to the provider of a health care service unless the health  
11 insurance issuer has a credible reason to believe that fraud or other illegal activity may have occurred involving  
12 the health care service for which payment has been furnished; or

13           ~~(ii)~~ a health care service has been previously approved and deemed medically necessary during  
14 prior authorization or concurrent review, provided that the health insurance issuer may perform retrospective  
15 review if the health care service was delivered in a manner that exceeded the scope or duration of what was  
16 approved during prior authorization or concurrent review.

17           ~~(b)~~ Retrospectively reviewing approved, paid, or pending claims or authorizations of health care  
18 services for the purposes of informing future utilization review activities is not considered a form of retrospective  
19 review.

20  
21           **NEW SECTION. Section 2. Exemption from prior authorization requirements.** (1) (A) A health  
22 insurance issuer that uses a REQUIRED prior authorization process for A COVERED PERSON'S benefits may not  
23 require ~~a~~ AN ORDERING HEALTH CARE provider to obtain prior authorization ON BEHALF OF A COVERED PERSON for a  
24 particular ~~benefit~~ CATEGORY OF PRIOR AUTHORIZATION if, in the most recent ~~6-month~~ JANUARY THROUGH  
25 SEPTEMBER evaluation period, ~~as described in subsection (2),~~ THE PROVIDER HAS HAD A MINIMUM OF 10 PRIOR  
26 AUTHORIZATION REQUESTS IN A PARTICULAR CATEGORY OF PRIOR AUTHORIZATIONS AND the health insurance issuer  
27 has approved ~~or would have approved~~ not less than 90% of the prior authorization requests IN THE PRIOR  
28 AUTHORIZATION CATEGORY submitted by the provider for the particular COVERED benefit.

1           (B) FOR THE PURPOSES OF THIS SECTION, "ORDERING HEALTH CARE PROVIDER" MEANS A HEALTH CARE  
2 PROVIDER AS DEFINED IN 33-32-102, EXCEPT FOR A CORPORATION, INSTITUTION, OR HEALTH CARE FACILITY, WHO IS A  
3 PARTICIPATING NETWORK PROVIDER WITH THE HEALTH INSURANCE ISSUER AND WHO REQUESTS OR ORDERS THE  
4 HEALTH CARE SERVICE THAT IS THE SUBJECT OF A REQUIRED PRIOR AUTHORIZATION PROCESS.

5           ~~(2) Except as provided by subsection (3), a health insurance issuer shall evaluate whether a~~  
6 ~~provider qualifies for an exemption from prior authorization requirements under subsection (1) once every 6~~  
7 ~~months.~~

8           (2) TO BE ELIGIBLE TO QUALIFY FOR AN EXEMPTION, THE ORDERING HEALTH CARE PROVIDER SHALL  
9 REQUEST THE EXEMPTION IN WRITING.

10           ~~(3) A health insurance issuer may continue an exemption under subsection (1) without evaluating~~  
11 ~~whether the provider qualifies for the exemption under subsection (1) for a particular evaluation period.~~

12           ~~(4) A provider is not required to request an exemption under subsection (1) to qualify for the~~  
13 ~~exemption.~~

14           (3) IF AN ORDERING HEALTH CARE PROVIDER QUALIFIES FOR THE EXEMPTION, THE HEALTH INSURANCE  
15 ISSUER SHALL PROVIDE A NOTICE TO THE PROVIDER THAT INCLUDES:

16           (A) A STATEMENT THAT THE PROVIDER QUALIFIES FOR AN EXEMPTION FROM PRIOR AUTHORIZATION  
17 REQUIREMENTS UNDER SUBSECTION (1);

18           (B) A LIST OF THE COVERED BENEFITS OR HEALTH CARE SERVICES TO WHICH THE EXEMPTION APPLIES;  
19 AND

20           (C) A STATEMENT OF THE DURATION OF THE EXEMPTION.

21           (4) A HEALTH INSURANCE ISSUER MAY DENY A REQUEST FOR EXEMPTION FROM PRIOR AUTHORIZATION  
22 REQUIREMENTS UNDER SUBSECTION (1) IF THE HEALTH INSURANCE ISSUER PROVIDES THE ORDERING HEALTH CARE  
23 PROVIDER WITH ACTUAL STATISTICS AND DATA FOR THE RELEVANT PRIOR AUTHORIZATION REQUEST EVALUATION PERIOD  
24 AND DETAILED INFORMATION SUFFICIENT TO DEMONSTRATE THAT THE PROVIDER DOES NOT MEET THE CRITERIA UNDER  
25 SUBSECTION (1) FOR AN EXEMPTION FROM PRIOR AUTHORIZATION REQUIREMENTS FOR THE PARTICULAR COVERED  
26 BENEFIT OR HEALTH CARE SERVICE.

27           (5) (A) A HEALTH INSURANCE ISSUER MAY ELECT TO EVALUATE DURING AN ANNUAL EVALUATION PERIOD  
28 WHETHER A HEALTH CARE PROVIDER CONTINUES TO QUALIFY FOR A PREVIOUSLY GRANTED EXEMPTION UNDER

1 SUBSECTION (1).

2 (B) A HEALTH INSURANCE ISSUER MAY ELECT TO CONTINUE AN EXEMPTION GRANTED UNDER SUBSECTION  
3 (1) WITHOUT EVALUATING DURING AN ANNUAL EVALUATION PERIOD WHETHER THE HEALTH CARE PROVIDER CONTINUES  
4 TO QUALIFY FOR THE EXEMPTION.

5 (C) A HEALTH INSURANCE ISSUER SHALL PROVIDE NOTICE TO A HEALTH CARE PROVIDER, CONSISTENT  
6 WITH THE NOTICE REQUIREMENTS OF SUBSECTION (3), OF A DETERMINATION MADE UNDER EITHER SUBSECTION (5)(A)  
7 OR SUBSECTION (5)(B).

8 (6) (A) A HEALTH INSURANCE ISSUER MAY TERMINATE A PREVIOUSLY GRANTED EXEMPTION:

9 (i) BY ISSUING THE HEALTH CARE PROVIDER NOTICE OF INTENT TO TERMINATE AN EXEMPTION FROM PRIOR  
10 AUTHORIZATION REQUIREMENTS AT ANY TIME DURING OCTOBER THROUGH NOVEMBER OF EACH YEAR, TO BE EFFECTIVE  
11 JANUARY 1 OF THE FOLLOWING CALENDAR YEAR;

12 (ii) IF, ON THE BASIS OF AN EXAMINATION OF A RANDOM SAMPLE OF CLAIMS THAT REPRESENT NOT FEWER  
13 THAN 10 AND NOT MORE THAN 50 HEALTH CARE SERVICES SUBJECT TO A PARTICULAR CATEGORY OF PRIOR  
14 AUTHORIZATION SUBMITTED BY THE HEALTH CARE PROVIDER DURING THE MOST RECENT EVALUATION PERIOD  
15 DESCRIBED BY SUBSECTION (1), THE HEALTH INSURANCE ISSUER MAKES A DETERMINATION THAT LESS THAN 90% OF  
16 THE SERVICES SUBJECT TO A PARTICULAR CATEGORY OF PRIOR AUTHORIZATION MET THE MEDICAL NECESSITY CRITERIA  
17 THAT WOULD HAVE BEEN USED BY THE HEALTH INSURANCE ISSUER WHEN CONDUCTING PRIOR AUTHORIZATION REVIEW  
18 FOR THE PARTICULAR COVERED BENEFIT DURING THE RELEVANT EVALUATION PERIOD; AND

19 (iii) THE HEALTH INSURANCE ISSUER PROVIDES THE HEALTH CARE PROVIDER WITH:

20 (A) THE SAMPLE INFORMATION USED TO MAKE THE DETERMINATION UNDER SUBSECTION (6)(A)(ii); AND

21 (B) A PLAIN LANGUAGE EXPLANATION OF HOW THE PROVIDER MAY APPEAL THE DETERMINATION UTILIZING  
22 THE HEALTH INSURANCE ISSUER'S PROVIDER DISPUTE RESOLUTION PROCESS.

23 (B) IF A PRIOR AUTHORIZATION EXEMPTION IS TERMINATED BY A HEALTH INSURANCE ISSUER DUE TO  
24 FRAUD, WASTE, ABUSE, OR CRIMINAL CONDUCT, THE TERMINATION MUST TAKE EFFECT IMMEDIATELY.

25 (7) IF A HEALTH INSURANCE ISSUER DOES NOT FINALIZE THE TERMINATION AS SPECIFIED IN SUBSECTION  
26 (6), THEN THE HEALTH CARE PROVIDER IS CONSIDERED TO CONTINUE TO QUALIFY FOR THE EXEMPTION.

27 ~~(5)(8)~~ (A) A-IF A HEALTH CARE PROVIDER IS TERMINATED PURSUANT TO SUBSECTION (6), THE provider's  
28 exemption from prior authorization requirements under subsection (1) remains in effect until:

1 (a) ~~the 30th day after the date the health insurance issuer notifies the provider of the issuer's~~  
2 ~~determination to rescind the exemption under subsection (1), if the provider does not appeal the issuer's~~  
3 ~~determination; or~~ JANUARY 1 OF THE FOLLOWING CALENDAR YEAR.

4 (b) ~~if~~ IF the HEALTH CARE provider appeals the determination, the PROVIDER'S EXEMPTION REMAINS IN  
5 EFFECT UNTIL THE fifth-5TH day after the date an independent review organization THE FINAL REVIEWER IN THE  
6 HEALTH INSURANCE ISSUER'S DISPUTE RESOLUTION PROCESS, AS SET FORTH IN SUBSECTION (10), affirms the HEALTH  
7 INSURANCE issuer's determination to rescind-TERMINATE the exemption-, PROVIDED, HOWEVER, THAT IF THE  
8 TERMINATION IS AFFIRMED BY THE HEALTH INSURANCE ISSUER, THE EFFECTIVE DATE OF THE TERMINATION REMAINS  
9 JANUARY 1 AND THE ISSUER MAY, IN ITS DISCRETION, REVIEW ANY CLAIMS FOR MEDICAL NECESSITY AFTER THE  
10 EFFECTIVE DATE OF THE TERMINATION.

11 (6) ~~If a health insurance issuer does not finalize a rescission determination as specified in~~  
12 ~~subsection (5), then the provider is considered to have met the criteria under subsection (1) to continue to~~  
13 ~~qualify for the exemption.~~

14 (7) ~~A health insurance issuer may rescind an exemption from prior authorization requirements~~  
15 ~~under subsection (1) only:~~

16 (a) ~~during January or June of each year;~~

17 (b) ~~if the health insurance issuer makes a determination, on the basis of an examination of a~~  
18 ~~random sample of not fewer than 20 and no more than 50 claims submitted by the provider during the most~~  
19 ~~recent evaluation period described by subsection (2), that less than 90% of the claims for the particular benefit~~  
20 ~~met the medical necessity criteria that would have been used by the health insurance issuer when conducting~~  
21 ~~prior authorization review for the particular benefit during the relevant evaluation period; and~~

22 (c) ~~if the health insurance issuer complies with other applicable requirements specified in this~~  
23 ~~section, including:~~

24 (i) ~~notifying the provider not less than 25 days before the proposed rescission is to take effect;~~

25 and

26 (ii) ~~providing with the notice under subsection (7)(c) (i):~~

27 (A) ~~the sample information used to make the determination under subsection (7) (b); and~~

28 (B) ~~a plain language explanation of how the provider may appeal and seek an independent review~~

1 of the determination.

2 ~~(8)(9)~~ A determination made under subsection (7)(b) ~~(6)~~ must be made by A LICENSED HEALTH CARE  
3 PROVIDER. an individual licensed to practice medicine under Title 37, chapter 3. For a determination made under  
4 subsection (7)(b) with respect to a physician, the determination must be made by an individual licensed to  
5 practice medicine under Title 37, chapter 3, who has the same or similar specialty as that physician.

6 ~~(9)~~ A health insurance issuer may deny an exemption from prior authorization requirements under  
7 subsection (1) only if:

8 ~~(a)~~ the provider does not have the exemption at the time of the relevant evaluation period; and

9 ~~(b)~~ the health insurance issuer provides the provider with actual statistics and data for the relevant  
10 prior authorization request evaluation period and detailed information sufficient to demonstrate that the provider  
11 does not meet the criteria for an exemption from prior authorization requirements for the particular benefit under  
12 subsection (1).

13 ~~(10)~~ A HEALTH CARE PROVIDER WHO IS DENIED A PRIOR AUTHORIZATION EXEMPTION OR WHOSE EXISTING  
14 PRIOR AUTHORIZATION IS TO BE TERMINATED MAY REQUEST AN APPEAL AND REVIEW OF THAT DETERMINATION BY  
15 UTILIZING THE HEALTH INSURANCE ISSUER'S PROVIDER DISPUTE RESOLUTION PROCESS.

16 ~~(10)~~ A health insurance issuer may not deny or reduce payment to a provider for a benefit for which  
17 the provider has qualified for an exemption from prior authorization requirements under subsection (1) based on  
18 medical necessity or appropriateness of care unless the provider:

19 ~~(a)~~ knowingly and materially misrepresented the benefit in a request for payment submitted to the  
20 health insurance issuer with the specific intent to deceive and obtain an unlawful payment from the issuer; or

21 ~~(b)~~ failed to substantially furnish or deliver the benefit.

22 ~~(11)~~ A health insurance issuer may not conduct a retrospective review of a benefit subject to an  
23 exemption except:

24 ~~(a)~~ to determine if the provider still qualifies for an exemption under this section; or

25 ~~(b)~~ if the health insurance issuer has a reasonable cause to suspect a basis for denial exists under  
26 subsection (10).

27 ~~(12)~~ Not later than 5 days after qualifying for an exemption from prior authorization requirements  
28 under subsection (1), a health insurance issuer must provide to a provider a notice that includes:

1 (a) ~~— a statement that the provider qualifies for an exemption from prior authorization requirements~~  
2 ~~under subsection (1);~~

3 (b) ~~— a list of the benefits to which the exemption applies; and~~

4 (c) ~~— a statement of the duration of the exemption.~~

5 (13) ~~— If a provider submits a prior authorization request for a benefit for which the provider qualifies~~  
6 ~~for an exemption from prior authorization requirements under subsection (1), the health insurance issuer shall~~  
7 ~~promptly provide a notice to the provider that includes:~~

8 (a) ~~— the information described by subsection (12); and~~

9 (b) ~~— a notification of the health insurance issuer's payment requirements.~~

10 (14)(11) ~~Nothing in this section may be construed to:~~

11 (a) ~~authorize a HEALTH CARE provider to provide a health care service outside the scope of the~~  
12 ~~provider's applicable license issued under Title 37; or~~

13 (b) ~~require a health insurance issuer to pay for a COVERED benefit that is NOT A MEDICALLY~~  
14 ~~NECESSARY COVERED BENEFIT OR THAT IS performed in violation of the laws of this state.~~

15  
16 **NEW SECTION. Section 3. — Provider right to external review.** (1) ~~Notwithstanding any other~~  
17 ~~provision of this part, a provider has the right to an independent external review of an adverse determination~~  
18 ~~regarding a prior authorization exemption under Title 33, chapter 32, part 2, conducted by an independent~~  
19 ~~review organization. A health insurance issuer may not require a provider to engage in an internal grievance~~  
20 ~~process before requesting a review by an independent review organization under this p art.~~

21 (2) ~~— A health insurance issuer shall pay:~~

22 (a) ~~— for any independent external review of an adverse determination regarding a prior authorization~~  
23 ~~exemption requested under this section; and~~

24 (b) ~~— a reasonable fee determined by the Montana b oard of m edical e xaminers for any copies of~~  
25 ~~medical records or other documents requested from a provider during an exemption rescission independent~~  
26 ~~external review requested under this section.~~

27 (3) ~~— An independent review organization shall complete a review of an adverse determination~~  
28 ~~regarding a prior authorization exemption not later than the seventh day after the date a provider files the~~

1 request for an independent external review under this section.

2 (4) — A provider may request that the independent review organization consider another random  
3 sample of not less than 20 and no more than 50 claims submitted to the health insurance issuer by the provider  
4 during the relevant evaluation period for the relevant health care service as part of its review. If the provider  
5 makes a request under this subsection, the independent review organization shall base its determination on the  
6 medical necessity of claims reviewed by the health insurance issuer under Title 33, chapter 32, part 2, and  
7 reviewed under this subsection.

8 (5) — A health insurance issuer is bound by an independent external review determination that does  
9 not affirm the determination made by the health insurance issuer to rescind a prior authorization exemption.

10 (6) — A health insurance issuer may not retrospectively deny a benefit based on a rescission of an  
11 exemption, even if the health insurance issuer's determination to rescind the prior authorization exemption is  
12 affirmed by an independent review organization.

13 (7) — If a determination of a prior authorization exemption made by the health insurance issuer is  
14 overturned on review by an independent review organization, the health insurance issuer:

15 (a) — may not attempt to rescind the exemption before the end of the next evaluation period that  
16 occurs; and

17 (b) — may only rescind the exemption after if the entity complies with the previous provisions of this  
18 section.

19

20 **Section 4.** Section 33-32-309, MCA, is amended to read:

21 **"33-32-309. — Expedited review of grievance involving adverse determination.** (1) A health  
22 insurance issuer shall establish written procedures for the expedited review of urgent care requests of  
23 grievances involving an adverse determination, and separate written procedures for the expedited review of  
24 prescription drug grievances involving an adverse determination, as described in subsection (11).

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



1 ~~process for the concurrent review of urgent care requests under this subsection (2).~~

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

4 ~~(4) — On receipt of a request for an expedited review, a health insurance issuer shall appoint one or~~  
5 ~~more physicians or health care professionals of the same licensure to review the adverse determination. An~~  
6 ~~appointed physician or health care professional of the same licensure may not have been involved in making~~  
7 ~~the initial adverse determination.~~

8 ~~(5) — In an expedited review, all necessary information, including the health insurance issuer's~~  
9 ~~decision, must be transmitted between the health insurance issuer and the covered person or, if applicable, the~~  
10 ~~covered person's authorized representative in the most expeditious method available, whether by telephone,~~  
11 ~~facsimile, or other method.~~

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

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

18 ~~(7) — For purposes of calculating the timeframe within which a decision is required to be made under~~  
19 ~~subsection (6), the time period within which the decision must be made begins on the date the request is filed~~  
20 ~~with the health insurance issuer in accordance with the health insurance issuer's procedures for filing requests~~  
21 ~~established under 33-32-307 without regard to whether all of the information necessary to make the~~  
22 ~~determination accompanies the filing.~~

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

26 ~~(a) — the titles and qualifying credentials of each physician or health care professional of the same~~  
27 ~~licensure participating in the expedited review process;~~

28 ~~(b) — information sufficient to identify the claim involved with respect to the grievance, including the~~

1 ~~date of service, the health care provider, and, if applicable, the claim amount;~~

2 ~~(c) — a statement describing the availability, upon request, of the diagnosis code and its~~  
3 ~~corresponding meaning and the treatment code and its corresponding meaning. On receiving a request for a~~  
4 ~~diagnosis or treatment code, the health insurance issuer shall provide the information as soon as practicable. A~~  
5 ~~health insurance issuer may not consider a request for the diagnosis code and treatment information, in itself,~~  
6 ~~to be a request to file a grievance for external review as outlined in Title 33, chapter 32, part 4.~~

7 ~~(d) — a statement from the physicians or health care professionals of the same licensure participating~~  
8 ~~in the review of their understanding of the covered person's grievance;~~

9 ~~(e) — a description in clear terms of the decision of the physicians or health care professionals of the~~  
10 ~~same licensure and the contract basis or medical rationale in sufficient detail for the covered person to respond~~  
11 ~~further to the health insurance issuer's position;~~

12 ~~(f) — a reference to the evidence or documentation used as the basis for the decision. If the decision~~  
13 ~~involves an adverse determination, the notice must provide:~~

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

17 ~~(ii) — the reference to the specific plan provisions on which the determination is based;~~

18 ~~(iii) — if the adverse determination is based on incomplete documentation, a description of any~~  
19 ~~additional material or information necessary for the covered person to complete the request, including an~~  
20 ~~explanation of why the material or information is necessary to complete the request;~~

21 ~~(iv) — a copy of any internal rule, guideline, protocol, or other similar criteria if relied on by the health~~  
22 ~~insurance issuer to make the adverse determination. Alternatively, the health insurance issuer may provide a~~  
23 ~~statement that a specific rule, guideline, protocol, or other similar criteria was relied on to make the adverse~~  
24 ~~determination and that a copy of the rule, guideline, protocol, or other similar criteria will be provided free of~~  
25 ~~charge to the covered person on request.~~

26 ~~(v) — an explanation of the scientific or clinical judgment used for making the adverse determination~~  
27 ~~if the adverse determination is based on a medical necessity or experimental or investigational treatment or~~  
28 ~~similar exclusion or limit. The explanation must apply the terms of the health plan to the covered person's~~

1 medical circumstances. Alternatively, the health insurance issuer may provide a statement that an explanation  
2 will be provided to the covered person free of charge on request.

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

4 (A) — a copy of the rule, guideline, protocol, or other similar criteria relied on in making the adverse  
5 determination in accordance with subsection (8)(f)(iv); or

6 (B) — the written statement of the scientific or clinical rationale for the adverse determination in  
7 accordance with subsection (8)(f)(v);

8 (vii) — a statement describing the procedures for obtaining an independent external review of the  
9 adverse determination pursuant to Title 33, chapter 32, part 4;

10 (viii) — the following statement, if applicable:

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

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

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

17 (9) — The notice under subsection (8)(f) must be provided in accordance with federal regulations and  
18 as provided in 33-32-211(9).

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

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

23 (11) — (a) Notwithstanding any other provision of this part, any adverse determination for a  
24 prescription drug made during the course of prior authorization is eligible for an expedited review of a  
25 grievance, initiated by the prescriber of the prescription drug, if the prescriber of the prescription drug subject to  
26 prior authorization believes that, in the prescriber's professional judgment, the covered person will suffer  
27 serious harm without access to the prescription drug subject to prior authorization.

28 (b) — On initiation of the expedited review of the grievance by the prescriber of the prescription drug

1 ~~subject to prior authorization, a health insurance issuer shall render a decision on the expedited review of the~~  
2 ~~grievance within 48 hours and provide written notice.~~

3 ~~(c) If a health insurance issuer does not render a decision on the expedited review of the~~  
4 ~~grievance initiated by the prescriber of the prescription drug subject to prior authorization within 48 hours of~~  
5 ~~initiation, the initial adverse determination must be automatically overturned, and the covered person must be~~  
6 ~~granted immediate approval for coverage of the prescription drug subject to prior authorization.~~

7 ~~(d) The decision rendered during the expedited review of the grievance by a health insurance~~  
8 ~~issuer must be made by a physician who is in the same specialty as the prescriber of the prescription drug~~  
9 ~~subject to prior authorization or must be made by a physician whose specialty focuses on the diagnosis and~~  
10 ~~treatment of the condition for which the prescription drug was prescribed to treat. "~~

11  
12 **NEW SECTION. Section 3. Codification instruction.** (1) [Sections 1 and 2] are intended to be  
13 codified as an integral part of Title 33, chapter 32, part 2, and the provisions of Title 33, chapter 32, part 2,  
14 apply to [sections 1 and 2].

15 (2) [Section 3] is intended to be codified as an integral part of Title 33, chapter 32, part 4, and the  
16 provisions of Title 33, chapter 32, part 4, apply to [section 3].

17  
18 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

19  
20 **NEW SECTION. Section 5. Applicability.** [This act] applies to policies and plans THAT ARE offered  
21 ISSUED or ~~sold~~ RENEWED on or after January 1, 2024.

22 - END -