

Technical Advisory regarding 28 Pa. Code § 9.707

(Relating to External Grievance Process for MA MCOs)

Section 2162 of Act 68 of 1998, amending the Insurance Company Law of 1921 and codified at 28 Pa. Code §§ 9.707 and 9.708, requires Managed Care Organizations (MCOs) to establish and maintain an external grievance process. This notice relates exclusively to the external grievance process with respect to Medical Assistance and Children's Health Insurance Managed Care Organizations (collectively, MA MCOs). (The external grievance process for commercial insurance is preempted by the Affordable Care Act. *See* Notice 2014-11 (44 Pa. B. 6175, Sept. 27, 2014) and Notice, 41 Pa. B. 7041, Dec. 31, 2011).

Under the cited regulations, upon receipt of notice that an MA MCO has received an external grievance request, the Bureau of Managed Care (BMC) will, within two business days:

- assign the case a number and select an External Review Organization (ERO);
- notify the member, MA MCO, and ERO of assignment; and
- provide information about the ERO to the member.

As a result of the COVID-19 Public Health Emergency (PHE), on March 17, 2020, the BMC delegated the responsibilities of selecting an ERO and providing notice to members to the MA MCOs. This delegation of responsibilities to the MA MCOs also diminished the need for MA MCOs to notify the BMC of the grievance request.

As coverage flexibilities implemented under the COVID-19 PHE are rescinded, the BMC anticipates a higher than normal volume of external grievance reviews to be filed. Due to this expected increase, effective **July 1, 2021**, the BMC resumed the roles of assigning each case a number and ERO, leveraging SharePoint to allow for coordinated file-sharing among the assigned ERO, the MA MCO, and the BMC. MA MCOs will resume the role of notifying the BMC of the request for an external review and requesting an ERO. Such notification must be made to the BMC within five business days of the MA MCO's receipt of an external grievance request using the web-based resource created for ERO assignments (to be provided).

MA MCOs will retain the responsibility of providing notice of the assignment to the member and ERO using **the BMC's ERO assignment notice**, included as Attachment A. BMC expects the MA MCO to provide a verifiable record that the notification has been provided to the member. This best practice will help ensure that notifications are being timely sent and that members are being informed of the progress of their external grievance request.

The BMC anticipates providing further direction regarding the external grievance process for MA MCOs at a later date. Until such time, the process for external grievance reviews for MA MCOs will follow what is illustrated in Attachment B.

Attachment A

[COPY OF BMC ERO ASSIGNMENT NOTICE TEMPLATE]

Attachment B

[Process effective July 1, 2021]

ATTACHMENT A

[Date Letter Mailed]

Member Name
Address
City, State Zip

Member ID: *****

Subject: External Review Assignment to **[ERO]**

ERO Tracking Number: **[assigned by BMC]**

Dear **[Member Name]**:

The Pennsylvania Insurance Department's Bureau of Managed Care has assigned **[ERO Name]** to conduct the External Review of your Grievance about **[briefly identify subject of grievance]**. **[ERO Name]** will determine if this service is medically necessary under your coverage. A certified or licensed doctor employed by **[ERO Name]** will make a final decision within 60 days of your request for External Review. The decision will be based on a review of documents provided by **[MCO name]** (see documents listed below) and any additional information you provide.

You may send information about your Grievance to **[ERO Name]**. For example, you could provide a letter that explains why the denied service is medically necessary. You could also send medical records or letters from your doctors, friends, or family members.

You may submit this additional information to [ERO Name] within 15 days of when you get the notice from [MCO Name] that tells you that your Grievance was received. Send your additional information to:

[ERO Name, contact, address, fax, phone, email]

[MCO Name] has sent the following documents to **[ERO Name]**:

- **[MCO Name]'s decision**
- **[Supporting information – including documents identified in 28 Pa. Code § 9.707(b)(5)]**
- **[Summary of applicable issues in easily understood language and format that meets a 6th grade reading level]**
- **[Contractual language supporting denial].**
 - NOTE: The definition of “medical necessity” used by **[MCO Name]** is: **[provide medical necessity definition used in internal grievance review – this should be copied directly from the plan documents]**. For more information about medical necessity, please see your Handbook.

ATTACHMENT A

[ERO Name] is an independent organization certified to conduct external reviews by the Bureau of Managed Care. **[MCO Name]** was not involved in selecting **[ERO Name]** to review your Grievance. If you would like more information about **[ERO Name]** contact the Bureau of Managed Care at **[contact phone and address]**. If you believe **[ERO Name]** has a conflict of interest (i.e., cannot fairly review your Grievance), please contact the Bureau of Managed Care within seven business days of the date on this letter.

If you have any questions about this process, please contact:

[MCO contact]

Sincerely,

[signature line]

cc: **[Participant Representative, if any]**
[Provider, if provider filed the request for external review]

[Non-discrimination tag line]

ATTACHMENT B

Process as of July 1, 2021

