BULLETIN

To: Private Review Agents

Health Maintenance Organizations Nonprofit Health Service Plans

Health Insurers

Re: Utilization Review Criteria and Standards

Disclosure to Providers

Date: April 6, 2000

Bulletin: Life and Health 00-11

Chapters 111 and 112 of the Acts of the General Assembly of 1998 imposed certain new requirements of law on health maintenance organizations, health insurers, and nonprofit health service plans, and transferred to the Maryland Insurance Administration the responsibility to regulate private review agents. The legislation was enacted to ensure that consumers and providers acting on behalf of consumers have adequate notice and procedures to appeal denials of coverage based on medical necessity.

The legislation requires disclosure to providers of criteria and standards used to conduct the business of utilization review, and also requires disclosure, in a notice of adverse decision, of specific criteria and standards that are the basis for the denial of coverage described in the notice.

Conduct of the Business of Utilization Review: Responsibility of Private Review Agents to Disclose Criteria Used

Under authority of Title 15, Subtitle 10B "Private Review Agents" of the Insurance Article, health care providers are entitled to know the specific criteria and standards used in conducting utilization review of proposed or delivered services. See IN §15-10B-05(c) and (d). The right of providers to know the criteria was established in the law *before* regulation of private review agents was transferred to the MIA.

On written request of an individual provider or an individual representing a health care facility, a private review agent shall provide a copy of the criteria and standards. Under regulations adopted to carry out Title 15, Subtitle 10B, the private review agent shall make the copy available for inspection by providers during normal business hours, and on request, shall provide a copy for a reasonable fee. See COMAR 31.10.21.03.

For nationally recognized criteria the private review agent shall give the name, publisher, publication date, and edition of the criteria.

For internally developed criteria, the private review agent shall give a copy of the criteria.

Section 15-10B-05(c) does not recognize criteria to be proprietary. A private review agent who claims criteria to be proprietary, or for any other reason refuses to release internally developed criteria, will be found to be in violation of the law, and subject to sanction under §15-10B-17.

Conduct of the Business of Utilization Review: Corresponding Responsibility of Carriers for Disclosure by Private Review Agents

A health maintenance organization, insurer, or nonprofit health service health plan shall give to any provider, on request of the provider, the name of the private review agent who conducts utilization review along with information needed by the provider to submit a written request to the private review agent for specific criteria and standards used in conducting utilization review.

Notice of Adverse Decision: Responsibility of Carriers to Specify Criteria and Standards for Denials of Coverage

Under Title 15, Subtitle 10A "Complaint Process for Adverse Decisions or Grievances" of the Insurance Article, a notice of an adverse decision must specify, in clear understandable language the factual bases for the adverse decision and criteria and standards on which the adverse decision is based. See IN §15-10A-02(i).

Compliance with the requirement, in Title 15, Subtitle 10A, to specify criteria that is the basis for an adverse decision is distinct from the requirement, under Title 15, Subtitle 10B, to give to a provider the criteria and standards that are used to conduct the business of utilization review.

The duty to specify criteria and standards in the adverse decision notice is an affirmative requirement of law.

No fee or written request may be demanded of a patient or provider.

Private Review Agents Conducting Utilization Review for HMOs in Maryland

This bulletin includes contact information for the private review agent for each health maintenance organization licensed in Maryland. A complete list of private review agents for all health insurers and nonprofit health service plans is not available at this time.

Enforcement by the MIA

A provider should submit a written complaint to the Insurance Commissioner if: 1) the provider is unable to obtain from a health maintenance organization, nonprofit health service plan or insurer information needed to contact its private review agent; or 2) the private review agent fails to provide a copy of specific criteria and standards used to conduct the business of utilization review.

A patient or a provider on behalf of the patient should submit a written complaint to the Insurance Commissioner if a notice of adverse decision fails to specify in clear understandable language the factual bases for the adverse decision and the criteria and standards on which the adverse decision is based.

Sections 27-303(7) and (8) and 27-304(16) and (17) of the Insurance Article govern enforcement by the MIA of activities of nonprofit health service plans and insurers as outlined in this bulletin. Section 19-706(g) of the Health-General Article makes title 27, Subtitle 3 of the Insurance Article applicable to health maintenance organizations.

Section 15-10B-17 of the Insurance Article governs enforcement by the MIA of activities of private review agents as outlined in this bulletin.

Submit written complaints to: Appeal and Grievance Unit

Maryland Insurance Administration 525 St. Paul Place Baltimore, Maryland 21202-2272

Questions about this bulletin may be directed to Felicia Johnson at 410-468-2259 or 800-492-6116 ext. 2259.

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