

Subject Utilization review and prior authorization

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## **Article 1: Utilization review and prior authorization of health care services**

This article makes changes to statutes governing utilization review and prior authorization of health care services. Changes include:

- changing terms used for decisions adverse to the enrollee, and decisions that are in favor of the enrollee;
- defining additional terms;
- modifying timelines within which utilization review organizations must make standard determinations, expedited review determinations, and decisions under the standard appeal process;
- prohibiting retrospective revocation or limitation of a prior authorization;
- requiring prior authorization requirements and restrictions and data on prior authorizations to be posted on public websites; and
- providing for continuity of care regarding prior authorizations.

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### **Section Description – Utilization review and prior authorization of health care services**

#### **1 Coverage of service; prior authorization.**

Adds § 62A.58. Prohibits a health carrier from denying or limiting coverage of a service an enrollee has already received on the basis of lack of prior authorization or second opinion, if the service would otherwise have been covered had prior authorization or second opinion been obtained. (This prohibition currently applies to health maintenance organizations; this section makes it apply to all health carriers.)

#### **2 Jurisdiction.**

Amends § 62M.01, subd. 2. Amends a subdivision specifying the jurisdiction of chapter 62M, to specify that the chapter applies to any entity that provides, offers, or administers hospital, outpatient, medical, prescription drug, or other health benefits under a policy, plan, or contract.

**Section Description – Utilization review and prior authorization of health care services**

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- 3      **Adverse determination.**  
Adds subd. 1a to § 62M.02. Defines adverse determination as a decision by a utilization review organization that is partially or wholly adverse to the enrollee, including a decision to deny on the basis that the service is not medically necessary (this term replaces the term “determination not to certify” currently used in chapter 62M).
- 4      **Authorization.**  
Amends § 62M.02, subd. 5. Changes a term used in this chapter, from certification to authorization, to refer to a determination by a utilization review organization that an admission, extension of stay, or other health care service meets the utilization review requirements of the applicable health plan and the health plan company will pay for the covered benefit.
- 5      **Clinical criteria.**  
Amends § 62M.02, subd. 8. Modifies the definition of clinical criteria to specify it includes clinical protocols, and changes a term used.
- 6      **Emergency service.**  
Adds subd. 10a to § 62M.02. Defines emergency service for this chapter by reference to a definition in section 62Q.55.
- 7      **Medically necessary.**  
Adds subd. 13a to § 62M.02. Defines medically necessary for this chapter by reference to a definition in section 62Q.53.
- 8      **Utilization review.**  
Amends § 62M.02, subd. 20. Amends the definition of utilization review to clarify that it includes prior authorization.
- 9      **Utilization review organization.**  
Amends § 62M.02, subd. 21. Amends the definition of utilization review organization to specify it includes any entity that provides, offers, or administers hospital, outpatient, medical, prescription drug, or other health benefits under a policy, plan, or contract.
- 10     **Standard review determination.**  
Amends § 62M.05, subd. 3a. Requires a utilization review organization to make a determination on all requests for utilization review within four business days after receiving the request, instead of ten business days as in current law. Also requires the written notification sent to the enrollee of the utilization review organization’s

**Section Description – Utilization review and prior authorization of health care services**

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- determination to include all reasons relied on for the determination, rather than the principal reason relied on as in current law. Modifies terms used.
- 11     **Expedited review determination.**  
Amends § 62M.05, subd. 3b. Requires a utilization review organization to make a determination on a request for expedited determination within 48 hours after the initial request, rather than 72 hours as in current law. Modifies terms used.
- 12     **Failure to provide necessary information.**  
Amends § 62M.05, subd. 4. Clarifies that a utilization review organization must have written procedures for the failure of a provider or enrollee to provide information necessary to make a determination on the request.
- 13     **Standard appeal.**  
Amends § 62M.06, subd. 3. For standard appeal, requires a utilization review organization to notify the enrollee, attending health care professional, and claims administrator of its determination on an appeal within 15 days after receipt of the notice of appeal, rather than 30 days as in current law. If a utilization review organization cannot make a determination with 15 days, allows it to take up to 72 additional hours, rather than 14 additional days as in current law. Modifies terms used.
- 14     **Prior authorization of services.**  
Amends § 62M.07. A new subdivision 3 prohibits a utilization review organization from revoking, limiting, conditioning, or restricting a prior authorization that has been authorized unless the prior authorization was authorized based on fraud or misinformation, or a previously approved prior authorization conflicts with state or federal law. Specifies that application of cost-sharing does not constitute a limit, condition, or restriction. In subdivisions 1, 2, and 4, clarifies language and modifies terms used.
- 15     **Physician reviewer; determinations.**  
Amends § 62M.09, subd. 3. Specifies that a physician must make the determination to authorize or the adverse determination in all cases where the organization has concluded an adverse determination for clinical reasons is appropriate. Requires this physician to hold a current, unrestricted Minnesota license to practice medicine and to have the same or similar medical specialty as the provider that typically manages the condition.

**Section Description – Utilization review and prior authorization of health care services**

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**16 Availability of criteria.**

Amends § 62M.10, subd. 7. For prior authorizations, requires a utilization review organization to submit its requirements and restrictions to all health plan companies for which it performs utilization review, and requires health plan companies to post these requirements and restrictions on its public website. (For utilization review determinations other than prior authorization, a utilization review organization must provide its criteria used to determine medical necessity, appropriateness, and efficacy to an enrollee, provider, and the commissioner of commerce upon request.)

**17 Notice; new prior authorization requirements or restrictions; change to existing requirement or restriction.**

Adds subd. 8 to § 62M.10. Before a utilization review organization may implement a new requirement or restriction or amend an existing requirement or restriction, requires the organization to submit it to all health plan companies for which the organization performs utilization review, and requires the health plan company to post the new or amended requirement or restriction on its web site. At least 45 days before a utilization review organization implements a new requirement or restriction or amends an existing requirement or restriction, requires the organization to provide written or electronic notice to all Minnesota-based, in-network attending health care professionals.

**18 Continuity of care; prior authorizations.**

Adds § 62M.17.

**Subd. 1. Compliance with prior authorization approved by previous utilization review organization; change in health plan company.** If an enrollee obtains health coverage from a new health plan company that uses an different utilization review organization from the enrollee's previous health benefit plan, requires the enrollee's new health plan company to comply with prior authorizations issued for the enrollee's previous health benefit plan for at least the first 60 days the enrollee is covered under the new health benefit plan. To obtain this coverage, requires the enrollee or enrollee's attending health care professional to submit documentation to the enrollee's new health plan company.

**Subd. 2. Effect of change in prior authorization criteria.** Paragraph (a) provides if a utilization review organization changes coverage terms or clinical criteria used to conduct prior authorizations, prohibits the organization from applying the change in coverage terms or change in clinical criteria until the next plan year, for any enrollee who received prior authorization for a service using the coverage terms or clinical criteria in effect before the effective date of the change.

**Section Description – Utilization review and prior authorization of health care services**

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Paragraphs (b) and (c) establish exceptions to paragraph (a), and allow a change in coverage terms to apply during the plan year if (1) coverage terms for a drug or device were changed because the drug or device was deemed unsafe, was withdrawn from the market, or was the subject of warning or recommended changes in use; or (2) a utilization review organization removes a brand name drug from its formulary or changes coverage of a drug so that an enrollee's costs are increased, as long as the organization meets the other conditions in that paragraph.

**19 Annual posting on website; prior authorizations.**

Adds § 62M.18. By April 1 of each year, requires a health plan company to post on its public website the following information for the previous calendar year, for each commercial product:

- the number of prior authorization requests for which an authorization was issued; and
- the number of prior authorization requests for which an adverse determination was issued, broken out by health care services, by whether the determination was appealed, and by whether the determination was upheld or reversed on appeal.

Requires information posted under this section to be written in easily understandable language.

**20 Repealer.**

Repeals the following sections: 62D.12, subdivision 19 (prohibits an HMO from denying or limiting coverage of a service the enrollee has already received solely on the basis of lack of prior authorization or second opinion; this section is replaced by the new section 62A.58 that applies to all health carriers); and 62M.02, subdivision 19 (definition of reconsideration request for chapter 62M; this term is not used in that chapter). Also repeals Minnesota Rules, part 4685.0100, subpart 9b (defines medically necessary care for a chapter regulating health maintenance organizations).

## **Article 2: Conforming changes**

This article modifies terms used, changes references from a range of statutes to a reference to chapter 62M, directs the revisor of statutes to modify terms used and to change references, and makes other technical changes to conform with the changes made in article 1.



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