



Pete Ricketts, Governor

## NOTICE

**TO:** All Carriers Writing Major Medical and Short-Term Limited Duration Health Insurance in Nebraska

**FROM:** Bruce R. Ramge, CPCU, CIE  
Director of Insurance

**DATE:** December 7, 2020

**RE:** **Implementation of Portal for Processing External Reviews**

The Health Carrier External Review Act, Neb. Rev. Stat. §§ 44-1301 to 44-1318, applies to all health carriers, with exceptions listed at § 44-1304(2). Generally speaking, the Act creates a right for insureds to obtain an independent review of a health carrier's denial of a claim that involves medical decision-making, for example a denial based on medical necessity or a denial stating that the requested service or treatment is experimental or investigational. This right to an external appeal is only available after the insured has appealed a denied claim with the insurer and received a "final adverse determination," as defined at § 44-1303(22) or after a utilization review completed using the process set forth in the Utilization Review Act.

The External Review Act prescribes duties for the Department of Insurance (Department), health carriers, and Independent Review Organizations (IROs) that have historically been performed via mailing paper forms, fax machines, or HIPAA-compliant secure email. The Department has developed a secure portal to process external reviews electronically, focused on achieving the following:

- Faster expedited external review dispositions;
- Automated submissions with fewer applications returned to the insured as incomplete or incorrect;
- Common information sharing and increased transparency for all stakeholders;
- Reduction in manual steps for all stakeholders; and
- Increased ease of use for healthcare providers seeking to obtain an approval for their patients.

**Insured patients** will be able to submit an external review application online by typing directly into the electronic forms in the portal, attach supporting documentation, and view the current status of their external review case.

**Treating healthcare providers** will be able to submit an external review application online after being appointed as an authorized representative by their patients, attach supporting documentation, view case status, complete the forms that require physician signature (justification for expedited review or approval of an experimental or investigational treatment) by typing directly into the electronic forms in the portal.

**Insurers** will be able to communicate external review eligibility determinations by typing directly into the electronic forms in the portal, attach supporting documentation, view case status, and view all external reviews involving their insurance company.

**Independent review organizations (IROs)** will receive information from the Department, healthcare providers, and insurers through the portal, along with supporting medical records or other documentation. When IROs reach a decision, they can upload that document into the portal for it to be automatically transmitted to all involved parties.

**The secure portal will notify all linked parties when a case status changes or when additional supporting documentation is attached.**

Because the secure portal will replace several functions prescribed by statute, this Notice is to provide assurance to patients, healthcare providers, insurers, and IROs that certain statutory notice requirements will be met through use of the secure portal, and those notices do not need to be duplicated by mailing full copies of certain applicable forms, sending health records via regular or electronic mail, or sending notifications or documents via facsimile. These statutory notice requirements are discussed in detail below.

#### **Notice of Right to Request External Review**

Under § 44-1305(1)(b), insurers are required to provide notice in writing of the covered person's right to request an external review and include certain language explaining that right. Under § 44-1305(1)(c), the Director of Insurance may prescribe by rule and regulation the form and content of the required notice. That language is included in Appendix A of the Health Carrier External Review regulation, Title 210 Neb. Admin. Code Ch. 87, available [here](#).

Under § 44-1305(2)(b), health carriers are also required to provide the External Review Request Form at Title 210 Neb. Admin. Code Ch. 87, Appendix B, with all final adverse benefit determinations eligible for external review. Health carriers may replace printing and sending this form by adding a reference to the Department's external review page, where insureds can access the secure portal, and printable forms are available, along with a phone number to request the forms by mail. This language would be added to the language in Appendix A, as a new paragraph under "External Review."

## Sample Language

You can apply for an external review online through the Department's website by going to <https://ecmp.nebraska.gov/DOI-ER/>. This online application replaces the need to complete forms and submit them to the Department by mail or fax.

Printable versions of external review forms are also available on the Department's website at <https://doi.nebraska.gov/> or they can be mailed to you upon request by calling the Department at 877-564-7323 (toll-free in Nebraska) or 402-471-0888.

Similar language should be added to any letter to insureds to give notice that appeal of a denied health claim was upheld (in other words, any final adverse determination eligible for external review).

To summarize, notice before implementation of the external review portal included both Appendix A and Appendix B, a total of eight pages. Notice after implementation of the portal includes additional language in letters sent at the time of a final adverse determination, Appendix A with an additional paragraph, and no Appendix B, a total of one page.

Additional statutory requirements for notices and information transfer that will occur through the secure portal include:

- Health Care Provider certification that an external review meets the requirements for expedited review, as part of the application materials in Appendix B;
- Health Care Provider certification that an investigational or experimental treatment meets the external review standard for approval, as part of the application materials in Appendix B;
- Department submission of external review applications to insurers with a request for eligibility determination;
- Insurer determination of eligibility, with notice to the insured if the review is determined eligible;
- Department review of eligibility when an insurer determines the claim is not eligible for external review, with notice to the insured of the Department's eligibility determination;
- Department assignment of the external review to an IRO;
- IRO notification to the Department when there is a conflict of interest;
- Applicant and Health Care Provider submission of medical records, written explanation of why claim should be covered, medical rationale to IRO (optional);
- IRO sends insurer copy of information from Applicant or Health Care Provider, after which the insurer may reconsider its adverse determination;
- Insurer provides medical records and other documents forming the basis for the claim denial and appeal denial to the IRO within five days of IRO assignment;

- IRO provides written notice of decision that includes rationale, references to evidence or documentation, including evidence-based standards, considered in reaching its decision;
- IRO may provide its bill for services to the insurer through the secure portal.

When an applicant completes the initial forms in the portal, the applicant should supply an email address for their health care provider. The applicant will also supply insurance company information, and insurers will register with the system so that emails are directed to the right person at the insurance company. This will allow notice to and contribution from the health care provider and insurer during the external review process. Every time any person associated with the external review enters information or uploads files, a notice will be sent to all parties associated with the external review.

For any party with a statutory duty to provide notice or documents listed above, participation in external reviews through the secure portal will replace the requirement for written notice or submission of information and documents.

Questions concerning this Notice may be directed to Laura Arp, Life and Health Policy Administrator at [laura.arp@nebraska.gov](mailto:laura.arp@nebraska.gov).