

OIC responses to questions regarding the prior authorization rule (R 2016-19)

The following represent answers to questions asked of the OIC by a stakeholder after the adoption of the rule. Additional implementation-related information will be made public if more questions are asked by stakeholders. Please refer to the complete text of the [rule](#) and the [concise explanatory statement](#) for additional information about the rule.

1. **WAC 284-43-0160 (10) “Expedited prior authorization request”**: What is the difference between jeopardize and seriously jeopardize, for purposes of knowing when this is triggered? Is this type of prior authorization only for those emergency situations that involve “seriously jeopardy” and not those that would result in serious impairment or serious dysfunction (the other 2 categories of emergency medical condition defined in (7) that aren’t included in the definition of expedited prior authorization request)?

OIC response: Expedited prior authorization requests are not for emergency situations. Per RCW 48.43.093, prior authorization shall not be required for emergency services under the prudent layperson standard. Expedited prior authorizations requests are to be used by providers when the timeframe required to receive a standard prior authorization approval is insufficient based on the needs of the enrollee.

2. **WAC 284-43-2000 (6)(b)**: Does the reference to “urgent inpatient services that require concurrent review” mean prior auth requests that are defined as “expedited prior authorization requests” under WAC 284-43-0160 (10)? Or is this a different category that is undefined?

OIC response: It is a different category that is undefined. Rules related to concurrent review are distinct from those that apply to prior authorization. The focus of the rules was on prior authorization, not general utilization review. Therefore, we only made changes to WAC 284-43-2000 when we felt it was absolutely necessary to implement the rule.

3. **WAC 284-43-2000 (6)(b)**: For the post-service review requests, is the 30 day time frame for a response based on the date of service or 30 days from when the request was received, and is it extended by the time frame for the carrier to determine whether extenuating circumstances justify the post service request?

OIC response: The 30 day time frame starts “upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information...” It is not extended by the time frame for the carrier to determine whether extenuating circumstances justify the post-service request, unless the carrier determination results in the carrier asking for additional information. In this instance, the timeframe would be extended to start “upon the sooner of the receipt of all necessary information of the expiration of the deadline for providing information.”

4. **WAC 284-43-2050 (8):** Does the time to keep the documentation for prior auth (defined in the regulation til the claim is paid or appeals process exhausted) mean that post-appeal, the material can be destroyed and isn't considered part of the appeal file records retention time frame?

OIC response: This recordkeeping requirement does not supersede other recordkeeping requirements. The documentation must be kept post-appeal according to records retention time frames.

5. **WAC 284-43-2050 (8)(a) and (b):** The rule requiring written acknowledgment doesn't address electronic communication. However, page 20 of the CES, states that written notice includes electronic notice; that the method must be transparent and auditable. Is there a regulation or statute that defines written acknowledgment using this standard? I can't find it, and if this is the requirement for the rule, shouldn't it be in the rule? Or was the OIC thinking that WAC 284-43-3090 applies to the prior authorization rules?

OIC response: The OIC generally understands written notices to include electronic communication. There is not a regulation or statute that defines written acknowledgement. WAC 284-43-3090 only applies to this rule in relation to adverse benefit determinations.

6. **WAC 284-43-2050 (10) (b) (iii):** This section appears to be brand new to the rule. From whose perspective is this situation to be evaluated? Can an issuer deny authorization if they find that a provider or facility established a preferred delivery timeline that ignored the prior authorization requirements and the necessary time to conduct prior authorization? There is a big difference between the provider setting a preferred delivery timeline in advance of the procedure and having a medically necessary procedure arise that doesn't permit prior authorization. This section does not distinguish between those. Can you confirm whether the issuer can assess the good faith aspect of the provider's claiming a preferred delivery timeline?

OIC response: The situation is to be evaluated from the perspective of the provider, but the carrier can assess the good faith aspect of the provider's claiming a preferred delivery timeline. If a provider is unable to receive approval for an expedited prior authorization prior to the necessary date of delivery of a service, the provider can submit the request as an extenuating circumstance. However, a carrier can deny authorization if they find that a provider or facility established a delivery timeline that ignored the prior authorization requirements and necessary time to conduct prior authorization.

7. **WAC 284-43-2050 (14):** RCW 48.43.055 requires carriers to have a complaint process for provider/facility complaints, and distinguishes those from complaints on behalf of members. Member appeals and the provider's role in those are explained in chapter 284-43 WAC -- Under

WAC 284-43-3030 (2), -3050 (2), 3070 (1)(b) and -3170 (3);, the OIC currently requires us to give the provider/facility notice of a coverage decision, including denial of prior authorization requests, prohibits issuers from penalizing or retaliating against providers who support a member's appeal, and permits a provider to appeal on a member's behalf if it is an expedited appeal.

Since the subchapter in chapter WAC 284-43 addressing appeals already contains multiple provisions explaining how providers are involved in appeals, and appeals on behalf of members are treated differently from provider/facility complaints, does this new section in the Prior Auth rules expand the requirements for the appeals subchapter, or does it envision a separate, third appeal track for providers related to prior auth, since carriers are statutorily prohibited from addressing provider/facility based issues that are member coverage related in their provider/facility complaint process. Another question is whether the OIC's expectation is that the provider or facility may use the member appeal process, in non-urgent situations, on behalf of the member, independent of the member's appointing them as a representative? How do we reconcile that for members who don't want to appeal? Or is this requiring a third, separate appeal process available to providers and facilities solely related to prior authorization?

OIC response: The OIC is not creating a third, separate process for providers and facilities related to prior authorization. The requirement in WAC 284-43-2050 (14) grants providers and facilities the right to appeal a prior authorization denial (using the member appeal process) on behalf of the enrollee, without their written consent.

8. **WAC 284-43-2050 (19):** Does this section mean that a carrier does not have to make customer service predetermination services available to members unless they choose to? In reviewing the CES, we note that the intent appears to be that it is a voluntary process (p. 15)

OIC response: Correct. Carriers are not required to have a predetermination process.

9. **WAC 284-43-2050 (20):** The section appears to contemplate a written notice. Often predetermination requests are fulfilled by telephone by a customer service representative. Is the OIC now requiring us to conduct this service to members only via written communication? Or does this section only impose the requirement if we are responding to a written request? Or (third possibility our implementation discussion raised) are we now required to document every customer service call regarding predetermination and mail the customer a written notice?

OIC response: Carriers are required to document every customer service call regarding predetermination and mail the customer a written notice.