Concise Explanatory Statement: Rule #2016-17

History

- The Office of the Insurance Commissioner (OIC)
    - A CR 101 was filed on: June 17, 2016
    - The comment period was open until: August 5, 2016
    - A stakeholder draft was released on July 27, 2016
    - A stakeholder meeting was held on August 10, 2016
    - A CR 102 was filed on: October 17, 2016
    - The comment period was open until: November 21, 2016
    - A rule-making hearing was held on: November 22, 2016
- The OIC did receive comments during the comment period

Office of the Insurance Commissioner's reasons for adopting rule

HB 2326, passed in 2016, requires that by January 1, 2017, the regulatory authority over Independent Review Organizations (IRO) be transferred from Department of Health to the Office of the Insurance Commissioner. The legislation requires that rules be adopted providing procedure and criteria for certifying IROs by taking into consideration rules adopted by DOH that regulate IROs. The rules adopted must require IROs to report decisions and associated information directly to the OIC via the Commissioner's on-line database. As part of this process, we've created a new chapter, WAC 284-43A, and moved IRO related chapters from WAC 284-43 and rule language from DOH into the new chapter.

Contact: Name | 555-555-5555 | name@oic.wa.gov

Text differences between CR-105 published text and CR-103 text

No changes

X Editing changes only

□ Differences and supporting reasons: Ensuring all WAC references were implemented and "enrollee" definition was adjusted for readability.

Summary of comments that the OIC received on the proposed rule during the CR-105 comment period

During the CR 101 comment period:

1. Request rule: 1) require IROs submit full redacted decisions to OIC and make them available in online database or at request of consumers; 2) require IROs use standardized template for IRO decisions and annual report form; 3) adopt stronger certification standards than current DOH standards; 4) require IROs offer translation of decisions in insured's primary language; 5) OIC select precedential decisions and issue memos to insurers as reminders or for enforcement purposes.

Commissioner responded that HB 2326 required rules be adopted providing procedure and criteria for certifying IROs by taking into consideration rules adopted by DOH that regulate IROs. Rules must require IROs to report decisions and associated information directly to the OIC. Remaining comments do not apply to current rulemaking and is considered out of scope.

2. Concerns expressed with current DOH IRO process.

Commissioner responded comment does not apply to current rulemaking and is considered out of scope.

3. Request references to DOH regulations be edited to reference OIC; also, WAC 284-43-4060 duplicates much of the information listed in draft WAC 284-43A-140.

Commissioner responded OIC has endeavored to change all applicable references from DOH to OIC. OIC has moved IRO related WACs from WAC 284-43 into WAC 284-43A and has repealed those IRO related WACs in 284-43.

4. Request rule: 1) require more specific parameters for criteria and considerations; 2) require IROs must make determinations consistent with scope of covered

benefits, including benefit exclusions and provider network limitations; 3) require new rules to clarify required application of carrier clinical criteria; 4) request formal appeal process of IRO determinations; 5) request more structured complaint procedure relating to information on outcome of complaints.

Commissioner responded comment does not apply to current rulemaking and is considered out of scope.

5. Clarification requested, page 43 (7) "carriers must report to the commissioner each assignment made to the IRO not later than one business day after the assignment is made," vs. page 45 (4) "carriers must report to the commissioner each assignment to an IRO not later than three business days after the assignment is made." Are these saying the same thing?

Commissioner responded there is no conflict because one references non-grandfathered plans and the other references grandfathered plans. Non-grandfathered plans have less time because, per federal law, the carrier is required to give the enrollee notice within 1 day.

6. Request: 1) require IROs submit full redacted decisions to OIC and make them available in online database or at request of consumers; 2) strengthen addressing qualification and assignment of expert reviewers to cases and adding an enforcement means; 3) stronger qualifications requirements for contract specialists and that requirements parallel clinical reviewers; 4) require IROs use standardized template for IRO decisions, and include required elements for certification, IRO attestations, and annual report form; 5) require rule state that non-ELP individuals receive decision in insured's primary language and that failure to translate a decision issued to a non-ELP enrollee should be enforceable.

Commissioner responded that HB 2326 required rules be adopted providing procedure and criteria for certifying IROs by taking into consideration rules adopted by DOH that regulate IROs. Rules must require IROs to report decisions and associated information directly to the OIC. Remaining comments do not apply to current rulemaking and is considered out of scope.

7. Suggest adding language to WAC 284-43A-140, "Appellants need not be provided the right to external review in cases of denials pursuant to benefit contract exclusions." This language is consistent with the definition of "adverse benefit determination," where you need an actual benefit to have determination subject to appeal.

Commissioner responded comment does not apply to current rulemaking and is considered out of scope.

8. Request 1) contractual decisions be reviewed by attorneys; 2) expanding complaint process to IRO review decisions that do not comply with basis review or rationale documentation standards; 3) purpose of complaint process be to alert OIC of issues regarding reviews; 4) clarify scope of IRO reviews.

Commissioner responded comment does not apply to current rulemaking and is considered out of scope.

During the CR 102 comment period:

1. Request: 1) IROs/carriers submit full redacted decisions to OIC and make them available in online database; 2) strengthen addressing qualification and assignment of expert reviewers to cases and adding an enforcement means; 3) stronger qualifications requirements for contract specialists and that requirements parallel clinical reviewers; 4) ensure quality and consistency of IRO decisions and require IROs use standardized template for IRO decisions, and include required elements for certification, IRO attestations, and annual report form; 5) require rule state that non-ELP individuals receive decision in insured's primary language and that failure to translate a decision issued to a non-ELP enrollee should be enforceable; 6) request field "diagnosis" be made a required criteria and full date of decision.

Commissioner responded that HB 2326 required rules be adopted providing procedure and criteria for certifying IROs by taking into consideration rules adopted by DOH that regulate IROs. Rules must require IROs to report decisions and associated information directly to the OIC. Remaining comments do not apply to current rulemaking and is considered out of scope.

Date completed: November 23, 2016
Analyst: Stacy R. Middleton