

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 840

FINAL READING

Introduced by Fox, 7; Craighead, 6; Howard, 9; Kintner, 2; McCollister, 20; Morfeld, 46; Pansing Brooks, 28; Riepe, 12; Scheer, 19; Schnoor, 15; Watermeier, 1; Williams, 36.

Read first time January 08, 2016

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Health Carrier External Review Act; to
- 2 amend sections 44-1305 and 44-1307, Revised Statutes Cumulative
- 3 Supplement, 2014; to change provisions relating to the time allowed
- 4 for certain internal grievances; and to repeal the original
- 5 sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-1305, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 44-1305 (1)(a) A health carrier shall notify the covered person in
4 writing of the covered person's right to request an external review to be
5 conducted pursuant to section 44-1308, 44-1309, or 44-1310 and include
6 the appropriate statements and information as set forth in subsection (2)
7 of this section at the same time that the health carrier sends written
8 notice of:

9 (i) An adverse determination upon completion of the health carrier's
10 utilization review process set forth in the Utilization Review Act; and

11 (ii) A final adverse determination.

12 (b) As part of the written notice required under subdivision (1)(a)
13 of this section, a health carrier shall include the following, or
14 substantially equivalent, language: We have denied your request for the
15 provision of or payment for a health care service or course of treatment.
16 You may have the right to have our decision reviewed by health care
17 professionals who have no association with us if our decision involved
18 making a judgment as to the medical necessity, appropriateness, health
19 care setting, level of care, or effectiveness of the health care service
20 or treatment you requested by submitting a request for external review to
21 the Director of Insurance (insert address and telephone number of the
22 office of the director).

23 (c) The director may prescribe by rule and regulation the form and
24 content of the notice required under this section.

25 (2)(a) The health carrier shall include in the notice required under
26 subsection (1) of this section:

27 (i) For a notice related to an adverse determination, a statement
28 informing the covered person that:

29 (A) If the covered person has a medical condition in which the
30 timeframe for completion of an expedited review of a grievance involving
31 an adverse determination as set forth in section 44-7311 would seriously

1 jeopardize the life or health of the covered person or would jeopardize
2 the covered person's ability to regain maximum function, the covered
3 person or the covered person's authorized representative may file a
4 request for an expedited external review to be conducted pursuant to
5 section 44-1309 or 44-1310 if the adverse determination involves a denial
6 of coverage based on a determination that the recommended or requested
7 health care service or treatment is experimental or investigational and
8 the covered person's treating physician certifies in writing that the
9 recommended or requested health care service or treatment that is the
10 subject of the adverse determination would be significantly less
11 effective if not promptly initiated, at the same time the covered person
12 or the covered person's authorized representative files a request for an
13 expedited review of a grievance involving an adverse determination as set
14 forth in section 44-7311, but that the independent review organization
15 assigned to conduct the expedited external review will determine whether
16 the covered person shall be required to complete the expedited review of
17 the grievance prior to conducting the expedited external review; and

18 (B) The covered person or the covered person's authorized
19 representative may file a grievance under the health carrier's internal
20 grievance process as set forth in section 44-7308, but if the health
21 carrier has not issued a written decision to the covered person or his or
22 her authorized representative within the time allowed for an internal
23 grievance pursuant to section 44-7308 ~~thirty days following the date that~~
24 ~~the covered person or his or her authorized representative files the~~
25 ~~grievance with the health carrier~~ and the covered person or his or her
26 authorized representative has not requested or agreed to a delay, the
27 covered person or his or her authorized representative may file a request
28 for external review pursuant to section 44-1306 and shall be considered
29 to have exhausted the health carrier's internal grievance process for
30 purposes of section 44-1307; and

31 (ii) For a notice related to a final adverse determination, a

1 statement informing the covered person that:

2 (A) If the covered person has a medical condition in which the
3 timeframe for completion of a standard external review pursuant to
4 section 44-1308 would seriously jeopardize the life or health of the
5 covered person or would jeopardize the covered person's ability to regain
6 maximum function, the covered person or the covered person's authorized
7 representative may file a request for an expedited external review
8 pursuant to section 44-1309; or

9 (B) If the final adverse determination concerns:

10 (I) An admission, availability of care, continued stay, or health
11 care service for which the covered person received emergency services,
12 but has not been discharged from a facility, the covered person or the
13 covered person's authorized representative may request an expedited
14 external review pursuant to section 44-1309; or

15 (II) A denial of coverage based on a determination that the
16 recommended or requested health care service or treatment is experimental
17 or investigational, the covered person or the covered person's authorized
18 representative may file a request for a standard external review to be
19 conducted pursuant to section 44-1310 or if the covered person's treating
20 physician certifies in writing that the recommended or requested health
21 care service or treatment that is the subject of the request would be
22 significantly less effective if not promptly initiated, the covered
23 person or his or her authorized representative may request an expedited
24 external review to be conducted under section 44-1310.

25 (b) In addition to the information to be provided pursuant to
26 subdivision (2)(a) of this section, the health carrier shall include a
27 copy of the description of both the standard and expedited external
28 review procedures that the health carrier is required to provide pursuant
29 to section 44-1317 and shall highlight the provisions in the external
30 review procedures that give the covered person or the covered person's
31 authorized representative the opportunity to submit additional

1 information and include any forms used to process an external review.

2 (c) As part of any forms provided under subdivision (2)(b) of this
3 section, the health carrier shall include an authorization form or other
4 document approved by the director that complies with the requirements of
5 45 C.F.R. 164.508, by which the covered person, for purposes of
6 conducting an external review under the Health Carrier External Review
7 Act, authorizes the health carrier and the covered person's treating
8 health care provider to disclose protected health information, including
9 medical records, concerning the covered person that are pertinent to the
10 external review.

11 Sec. 2. Section 44-1307, Revised Statutes Cumulative Supplement,
12 2014, is amended to read:

13 44-1307 (1)(a) Except as provided in subsection (2) of this section,
14 a request for an external review pursuant to section 44-1308, 44-1309, or
15 44-1310 shall not be made until the covered person has exhausted the
16 health carrier's internal grievance process as set forth in the Health
17 Carrier Grievance Procedure Act.

18 (b) A covered person shall be considered to have exhausted the
19 health carrier's internal grievance process for purposes of this section
20 if the covered person or the covered person's authorized representative:

21 (i) Has filed a grievance involving an adverse determination
22 pursuant to section 44-7308; and

23 (ii) Except to the extent that the covered person or the covered
24 person's authorized representative requested or agreed to a delay, has
25 not received a written decision on the grievance from the health carrier
26 within the time allowed for an internal grievance pursuant to section
27 44-7308 thirty days following the date that the covered person or the
28 covered person's authorized representative filed the grievance with the
29 health carrier.

30 (c) Notwithstanding subdivision (1)(b) of this section, a covered
31 person or the covered person's authorized representative may not make a

1 request for an external review of an adverse determination involving a
2 retrospective review determination made pursuant to the Utilization
3 Review Act until the covered person has exhausted the health carrier's
4 internal grievance process.

5 (2)(a)(i) At the same time that a covered person or the covered
6 person's authorized representative files a request for an expedited
7 review of a grievance involving an adverse determination as set forth in
8 section 44-7311, the covered person or his or her authorized
9 representative may file a request for an expedited external review of the
10 adverse determination:

11 (A) Under section 44-1309 if the covered person has a medical
12 condition in which the timeframe for completion of an expedited review of
13 the grievance involving an adverse determination set forth in section
14 44-7311 would seriously jeopardize the life or health of the covered
15 person or would jeopardize the covered person's ability to regain maximum
16 function; or

17 (B) Under section 44-1310 if the adverse determination involves a
18 denial of coverage based upon a determination that the recommended or
19 requested health care service or treatment is experimental or
20 investigational and the covered person's treating physician certifies in
21 writing that the recommended or requested health care service or
22 treatment that is the subject of the adverse determination would be
23 significantly less effective if not promptly initiated.

24 (ii) Upon receipt of a request for an expedited external review
25 under subdivision (2)(a)(i) of this section, the independent review
26 organization conducting the external review in accordance with the
27 provisions of section 44-1309 or 44-1310 shall determine whether the
28 covered person shall be required to complete the expedited grievance
29 review process set forth in section 44-7311 before it conducts the
30 expedited external review.

31 (iii) Upon a determination made pursuant to subdivision (2)(a)(ii)

1 of this section that the covered person must first complete the expedited
2 grievance review process set forth in section 44-7311, the independent
3 review organization shall immediately notify the covered person and, if
4 applicable, the covered person's authorized representative of such
5 determination and the fact that it will not proceed with the expedited
6 external review set forth in section 44-1309 until completion of the
7 expedited grievance review process and the covered person's grievance at
8 the completion of the expedited grievance review process remains
9 unresolved.

10 (b) A request for an external review of an adverse determination may
11 be made before the covered person has exhausted the health carrier's
12 internal grievance procedures as set forth in section 44-7308 if the
13 health carrier agrees to waive the exhaustion requirement.

14 (3) If the requirement to exhaust the health carrier's internal
15 grievance procedures is waived under subdivision (2)(b) of this section,
16 the covered person or the covered person's authorized representative may
17 file a request in writing for a standard external review as set forth in
18 section 44-1308 or 44-1310.

19 Sec. 3. Original sections 44-1305 and 44-1307, Revised Statutes
20 Cumulative Supplement, 2014, are repealed.