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3901-8-04

Accreditation of independent review organizations.

(A) Purpose

The purpose of this rule is to govern the accreditation and operation of independent review organizations.

(B) Authority

This rule is issued pursuant to the authority vested in the superintendent under sections 3901.041, 3901.19 to 3901.26 and 3922.22 of the Revised Code.

(C) Applicability and scope

Except as otherwise provided, this rule ~~shall apply~~ applies to:

- (1) Health plan issuers as defined in section 3922.01 of the Revised Code; and
- (2) Independent review organizations as defined in section 3922.01 of the Revised Code seeking accreditation or accredited by the superintendent to conduct external reviews on behalf of health plan issuers on or after January 1, 2012.

(D) Definitions

For purposes of this rule, the terms have the same meanings as those in Chapter 3922. of the Revised Code.

(E) General information

- (1) Each applicant for accreditation shall submit to the superintendent current verification of their accreditation by a national organization that accredits organizations providing expert reviews and related services; and shall certify compliance with relevant Ohio law on a form prescribed by the superintendent.
- (2) The independent review organization shall provide to the superintendent a certified statement from an officer of the independent review organization that the independent review organization is in compliance with divisions (B) and (C)(1) of section 3922.14 of the Revised Code concerning prohibited affiliations.
- (3) The independent review organization shall provide to the superintendent any other information the superintendent believes necessary to ensure that the

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independent review organization meets all of the requirements stated in Chapter 3922. of the Revised Code.

- (4) All policies and procedures described in paragraph (E) of this rule shall be documented and available for inspection upon request of the superintendent.
- (5) If there are no acceptable nationally recognized private accrediting entities providing independent review organization accreditation, each applicant for accreditation by the superintendent shall apply on a form prescribed by the superintendent and provide the following information: ~~set forth in paragraph (E)(5) of this rule.~~

~~The independent review organization shall provide to the superintendent:~~

- (a) A description of the areas of expertise available from the independent review organization and the number of clinical reviewers with expertise in each area, including subspecialties~~;~~
- (b) A description of the methods of recruiting and selecting impartial clinical reviewers and matching the clinical reviewers to specific cases~~;~~
- (c) A description of the policies and procedures for orientation and training of the clinical reviewers who perform external reviews~~;~~
- (d) A description of the procedures employed to ensure that clinical reviewers conducting external reviews meet all of the requirements in section 3922.15 of the Revised Code~~;~~
- (e) A description of the policies and procedures employed to protect the confidentiality of individual medical and treatment records, personal information, and protected health information in accordance with state and federal laws~~;~~
- (f) A description of the procedures to ensure that the independent review organization, clinical reviewer(s) or health care provider(s) do not have any prohibited affiliations as outlined in divisions (B) and (C)(1) of section 3922.14 of the Revised Code~~;~~
- (g) A description of the procedures to ensure that no conflict of interest exists in accordance with paragraph (G) of this rule~~;~~

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- (h) A description of the quality assurance program as outlined in section 3922.14 of the Revised Code and including the requirements of paragraph (H)(2) of this rule;⁷²
- (i) A description of the procedures for compliance with division (A)(2) of section 3922.14 of the Revised Code ensuring that appropriate personnel and systems are accessible and available twenty-four hours per day, seven days per week to receive and respond to a notice of selection for an external review and provide appropriate instructions;⁷²

(F) Confidentiality requirements

- (1) An independent review organization shall preserve the confidentiality of individual medical and treatment records, personal information, and protected health information as defined in division (U) of section 3922.01 of the Revised Code. This includes but is not limited to:
 - (a) Name;
 - (b) Address;
 - (c) Telephone number;
 - (d) Social security number;
 - (e) Medical history, diagnosis, prognosis, or medical condition; and
 - (f) Financial information.
- (2) An independent review organization may not disclose or publish individual medical and treatment records, personal information, protected health information, or other confidential information about a covered person without the prior written consent of the covered person or as otherwise required by law. An independent review organization may provide confidential information to a third party under contract or affiliated with the independent review organization for the sole purpose of performing the external review. Information provided to such third parties shall remain confidential.
- (3) The independent review organization shall maintain policies and procedures to protect the confidentiality of individual medical and treatment records,

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personal information, and protected health information in accordance with state and federal laws.

- (4) An independent review organization shall preserve the confidentiality of proprietary information of the health plan issuer and shall not disclose such information without the prior written consent of the company or as otherwise required by law.
- (5) All policies and procedures described in paragraph (F) of this rule shall be documented and available for inspection upon request of the superintendent.

(G) Conflicts of interest

- (1) The independent review organization shall maintain policies and procedures ensuring that:
 - (a) No clinical reviewer or health care provider with which the clinical reviewer is affiliated shall have any prohibited affiliation as outlined in divisions (B) and (C)(1) of section 3922.14 of the Revised Code; and
 - (b) No conflict of interest exists among:
 - (i) The independent review organization and its clinical reviewers;
 - (ii) The independent review organization and the health plan issuer or any officer, director, or managerial employee of the health plan issuer; and
 - (iii) The independent review organization and the parties involved in the case under review.
- (2) All policies and procedures described in paragraph (G) of this rule shall be documented and available for inspection upon request of the superintendent.

(H) Administrative and operational policies and procedures

- (1) The independent review organization shall retain the services of a physician currently licensed and in good standing to practice medicine by a state licensing agency in the United States to provide medical oversight of the external review process.

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- (2) The independent review organization shall develop and maintain written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process set forth in Chapter 3922. of the Revised Code, including a quality assurance mechanism that does all of the following:
 - (a) Ensures that external reviews are conducted within the time frames prescribed under Chapter 3922. of the Revised Code and that the required notices are provided in a timely manner;
 - (b) Ensures the selection of qualified and impartial clinical reviewers to conduct external reviews on behalf of the independent review organization;
 - (c) Ensures that chosen clinical reviewers are suitably matched according to their area of expertise to specific cases and that the independent review organization employs or contracts with an adequate number of clinical reviewers to meet this requirement;
 - (d) Ensures the confidentiality of medical and treatment records and clinical review criteria;
 - (e) Ensures that any person employed by, or who is under contract with, the independent review organization adheres to the requirements of Chapter 3922. of the Revised Code;
 - (f) Ensures that the external reviews and recommendations provided by the clinical reviewers are based on sound clinical evidence and take into consideration the information identified in Chapter 3922. of the Revised Code;
 - (g) Ensures that in addition to the information required for consideration by section 3922.07 of the Revised Code, to the extent available and appropriate, a clinical reviewer considers relevant federal and state laws and guidelines when conducting its review; and
 - (h) Ensures that external reviews and recommendations are clear and monitored by the independent review organization for quality on an ongoing basis.
- (3) All administrative and operational policies and procedures described in

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paragraph (H) of this rule shall be documented and available for inspection upon request of the superintendent.

(I) Application examinations

The superintendent or designee may conduct onsite or offsite qualifying examinations of independent review organizations pursuant to sections 3901.011 and 3901.04 of the Revised Code at the expense of the independent review organization. All documents shall be available for inspection at the time of any qualifying examination at the administrative offices of the independent review organization.

(J) Amendments

- (1) The independent review organization shall report to the superintendent any material changes in the information in the application or renewal, not later than the thirtieth day before the date on which the change takes effect. This would include but not be limited to notifying the superintendent immediately upon the occurrence of any change to the independent review organization's accreditation to perform external reviews and related services by a national accrediting organization.
- (2) Each accredited independent review organization shall notify the superintendent of a change of significant information, including but not limited to, contact information and available areas of expertise, including subspecialties, as soon as possible, but no later than thirty days after a change.

(K) Renewal and examinations

- (1) Each accredited independent review organization shall annually apply for renewal of its accreditation in the form prescribed by the superintendent not later than sixty days before the anniversary date of the issuance of the accreditation. Each accredited independent review organization shall include a certification that no material changes exist that have not already been filed with the superintendent. This would include but not be limited to the occurrence of any change to the independent review organization's accreditation to perform external reviews and related services by a national accrediting organization.
- (2) The superintendent or designee may conduct periodic examinations and random audits pursuant to sections 3901.011 and 3901.04 of the Revised Code once an independent review organization has been accredited, to verify compliance

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with the standards specified in this rule and the Revised Code. These examinations and audits shall be at the expense of the independent review organization. All documents shall be available for inspection at the time of any examination or audit at the administrative offices of the independent review organization. Independent review organizations shall maintain all records concerning external reviews for at least three years after conclusion of each external review.

- (3) The superintendent or designee shall have authority to investigate complaints made regarding independent review organizations by covered persons, any authorized representatives, health plan issuers, and health care providers.

(L) Experts

The superintendent may retain third parties, at the expense of the independent review organization, to execute the powers granted to the superintendent including, but not limited to, periodic examinations and random audits.

(M) Termination

- (1) An accredited independent review organization may request termination of its accreditation by written or electronic notice to the superintendent at least thirty days prior to the effective date of the termination. No termination of an independent review organization under paragraph (M)(1) of this rule shall be effective until all pending external reviews assigned to that independent review organization have been completed.
- (2) The superintendent may immediately revoke accreditation upon receipt of information, including, but not limited to, information filed under paragraph (K) of this rule, if the information is such that the superintendent would not have accredited the independent review organization if that information had been part of the initial application.

(N) Prohibited practices

- (1) An independent review organization shall not, with respect to external review activities, permit or provide compensation or anything of value to its employees, agents, or contractors that, directly or indirectly, encourages the affirmation or reversal of an adverse determination.
- (2) An independent review organization shall not, with respect to external review activities, accept compensation, other than payment for the cost of the review,

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or anything of value from any party.

- (3) No agreement or contract between an independent review organization and a health plan issuer shall contain any provisions that violate this rule or the Revised Code.
- (4) An independent review organization shall not, with respect to external review activities, permit or provide compensation or anything of value to a health plan issuer.
- (5) Failure of an independent review organization or health plan issuer to comply with any provision of this rule or the Revised Code ~~shall be~~ is an unfair and deceptive trade practice under sections 3901.19 to 3901.26 of the Revised Code.

(O) Payment

The cost of an external review shall be borne by the health plan issuer. No covered person ~~shall be~~ is required to pay for any part of the cost of the review.

(P) Severability

~~If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair, or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall continue in full force and effect. If any portion of this rule or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rule or related rules which can be given effect without the invalid portion or application, and to this end the provisions of this rule are severable.~~