

R 2022-04 Statement requirement for consumer adverse benefit determination notices

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Comments due to OIC at rulescoordinator@oic.wa.gov by July 14, 2022

WAC 284-43-3070 Notice and explanation of adverse benefit determination—General requirements.

(1) A carrier must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided:

- (a) To an appellant or their authorized representative;
- (b) To the provider if the adverse benefit determination involves the preservice denial of treatment or procedure prescribed by the provider; and
- (c) Whenever an adverse benefit determination relates to a protected individual, as defined in RCW [48.43.005](#), the health carrier must follow RCW [48.43.505](#).

(2) A carrier or health plan's notice must include the following information, worded in plain language:

- (a) The specific reasons for the adverse benefit determination;
- (b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;
- (c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;
- (d) The time limits applicable to the review;

(e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination;

(f) Effective April 1, 2022, through October 31, 2022, the following statement: "Enrollees may request that a health insurer identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. Health insurers may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address."; and

(g) Effective November 1, 2022, the following statement: "You can ask a health carrier to identify the experts who were consulted about the adverse benefit determination – even if the expert's advice was not used to make the determination. The carrier is not required to identify the expert by name or provide their address. The carrier can instead provide the expert's job title and specialty, board certification status or other information related to their qualifications and also state whether or not they are employed by the carrier."

(h) When the adverse benefit determination concerns gender affirming treatment or services, a confirmation that a health care provider experienced with prescribing or delivering gender affirming treatment has reviewed the determination and confirmed that an adverse benefit determination denying or limiting the service is appropriate and provide information to confirm that the reviewing provider has clinically appropriate expertise prescribing or delivering gender affirming treatment.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a statement that such explanation is available free of charge upon request.

(4) A health carrier must not issue an adverse benefit determination concerning gender affirming services or treatment until a health care provider with experience prescribing or delivering gender affirming treatment has reviewed and confirmed the appropriateness of the adverse benefit determination.

(5) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule,

guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request.

(6) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determination, regardless of whether the document, record, or information was relied on in making the determination.

(b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(7) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(8) An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination.

(9) The notice must include language substantially similar to the following:

"If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review if you are currently receiving services or supplies under the disputed benefit. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received

during the review period. The decision at the external review level is binding unless other remedies are available under state or federal law."