§4304. Utilization review

The following requirements apply to health plans doing business in this State that require prior authorization by the plan of health care services or otherwise subject payment of health care services to review for clinical necessity, appropriateness, efficacy or efficiency. A carrier offering or renewing a health plan subject to this section that contracts with other entities to perform utilization review on the carrier's behalf is responsible for ensuring compliance with this section and chapter 34. [PL 2007, c. 199, Pt. B, §12 (AMD).]

1. Requirements for medical review or utilization review practices. A carrier must appoint a medical director who is responsible for reviewing and approving the carrier's policies governing the clinical aspects of coverage determinations by any health plan that it offers or renews. A carrier's medical review or utilization review practices must be governed by the standard of medically necessary health care as defined in this chapter. [PL 2007, c. 199, Pt. B, §13 (AMD).]

2. Prior authorization of nonemergency services. Except for a request in exigent circumstances as described in section 4311, subsection 1-A, paragraph B, a request by a provider for prior authorization of a nonemergency service must be answered by a carrier within 72 hours or 2 business days, whichever is less, in accordance with this subsection.

A. Both the provider and the enrollee on whose behalf the authorization was requested must be notified by the carrier of its determination. [PL 2019, c. 273, §1 (NEW).]

B. If the carrier responds to a request by a provider for prior authorization with a request for additional information, the carrier shall make a decision within 72 hours or 2 business days, whichever is less, after receiving the requested information. [PL 2019, c. 273, §1 (NEW).]

C. If the carrier responds that outside consultation is necessary before making a decision, the carrier shall make a decision within 72 hours or 2 business days, whichever is less, from the time of the carrier's initial response. [PL 2019, c. 273, §1 (NEW).]

D. The prior authorization standards used by a carrier must be clear and readily available. A provider must make best efforts to provide all information necessary to evaluate a request, and the carrier must make best efforts to limit requests for additional information. [PL 2019, c. 273, §1 (NEW).]

If a carrier does not grant or deny a request for prior authorization within the time frames required under this subsection, the request for prior authorization by the provider is granted. [PL 2019, c. 273, §1 (AMD).]

2-A. Prior authorization of medication-assisted treatment for opioid use disorder. A carrier may not require prior authorization for medication-assisted treatment for opioid use disorder for the prescription of at least one drug for each therapeutic class of medication used in medication-assisted treatment, except that a carrier may not impose any prior authorization requirements on a pregnant woman for medication-assisted treatment for opioid use disorder. For the purposes of this subsection, "medication-assisted treatment" means an evidence-based practice that combines pharmacological interventions with substance use disorder counseling. [PL 2019, c. 273, §2 (NEW).]

2-B. Electronic transmission of prior authorization requests. Beginning no later than January 1, 2020, if a health plan provides coverage for prescription drugs, the carrier must accept and respond to prior authorization requests in accordance with subsection 2 through a secure electronic transmission using standards adopted by a national council for prescription drug programs for electronic prescribing transactions. For the purposes of this subsection, transmission of a facsimile through a proprietary payer portal or by use of an electronic form is not considered electronic transmission.
3. **Background information; affirmative duty of provider.** A provider has an affirmative duty to submit to the carrier the background information necessary for the carrier to complete its review and render a decision within the time period required in subsection 2. If the provider needs additional time to submit that required information, the provider must inform the carrier in a timely manner. Nothing in this section requires a provider to submit confidential information without a signed consent from the enrollee.

4. **Revocation of prior authorization.** When prior approval for a service or other covered item is granted, a carrier may not retrospectively deny coverage or payment for the originally approved service unless fraudulent or materially incorrect information was provided at the time prior approval for the service was granted.

5. **Emergency services.** When conducting utilization review or making a benefit determination for emergency services, a carrier shall provide benefits for emergency services consistent with the requirements of this subsection and any applicable bureau rule.

   A. Before a carrier denies benefits or reduces payment for an emergency service based on a determination of the absence of an emergency medical condition or a determination that a lower level of care was needed, the carrier shall conduct a utilization review done by a board-certified emergency physician who is licensed in this State, including a review of the enrollee's medical record related to the emergency medical condition subject to dispute. If a carrier requests records related to a potential denial of or payment reduction for an enrollee's benefits when emergency services were furnished to an enrollee, a provider has an affirmative duty to respond to the carrier in a timely manner. This paragraph does not apply when a reduction in payment is made by a carrier based on a contractually agreed upon adjustment for health care service.

6. **Notice.** A notice issued by a carrier or its contracted utilization review entity in response to a request by or on behalf of an insured or enrollee for authorization of medical services that advises that the requested service has been determined to be medically necessary must also advise whether the service is covered under the policy or contract under which the insured or enrollee is covered. Nothing in this subsection requires a carrier to provide coverage for services performed when the insured or enrollee is no longer covered by the health plan.

7. **Requirements for an appeal of adverse health care treatment decision.** An appeal of a carrier's adverse health care treatment decision must be conducted by a clinical peer. The clinical peer may not have been involved in making the initial adverse health care treatment decision unless additional information not previously considered during the initial review is provided on appeal. For the purposes of this subsection, "adverse health care treatment decision" does not include a carrier's rescission determination or a carrier's determination of initial coverage eligibility for coverage.
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