



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes **No** **If Yes, explain:**

Purpose:

This proposed rule adds language requiring carriers to use the Commissioner's on-line database in assigning IROs and adds a new paragraph to both WAC 284-43-550 and WAC 284-43-630, requiring each carrier and health plan to submit final IRO decision determination information to the Office of the Insurance Commissioner's on-line database within 3 days of receipt of the IRO's final decision. Decision information shall be submitted to the database in accordance with data requirements set forth by the OIC.

Insurance Commissioner Matter No. R 2015-12

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 284-43-550 and WAC 284-43-630

Suspended:

Statutory authority for adoption: RCW 48.02.060 and RCW 48.43.530

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 15-21-045 on October 16, 2015.

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted: November 25, 2015

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 25, 2015

TIME: 2:31 PM

WSR 15-24-072

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>2</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	2	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	2	Repealed	_____

WAC 284-43-550 External review of adverse benefit determinations. When the internal review of an adverse benefit determination is final, or is deemed exhausted, the appellant may request an external independent review of the final internal adverse benefit determination. Carriers and health plans must inform appellants of their right to external independent review, and explain the process to exercise that right. If the appellant requests an external independent review of a final internal adverse determination, the carrier or health plan must cooperatively participate in that review.

(1) Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or that the requested service or supply is not efficacious or otherwise unjustified under evidence-based medical criteria. The carrier may not establish a minimum dollar amount restriction as a predicate for an appellant to seek external independent review.

(2) Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner, and must select reviewing IROs in the rotational manner described in the rotational registry system, using the commissioner's online data base. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(3) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers, are available on the insurance commissioner's web site (www.insurance.wa.gov).

(4) In addition to the requirements set forth in RCW 48.43.535, the carrier and health plan must:

(a) Make available to the appellant and to any provider acting on behalf of the appellant all materials provided to an IRO reviewing the carrier's determination;

(b) Provide IRO review without imposing any cost to the appellant or their provider;

(c) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan; and

(d) Within one day of selecting the IRO, notify the appellant of the name of the IRO and its contact information. This requirement is intended to comply with the federal standard that appellants receive notice of the IRO's identity and contact information within one day of assignment. The notice from the carrier must explain that the IRO will accept additional information in writing from the appellant for up to five business days after it receives the assignment. The IRO must consider this information when conducting its review.

(5) A carrier may waive a requirement that internal appeals must be exhausted before an appellant may proceed to an independent review of an adverse determination.

(6) Upon receipt of the information provided by the appellant to the IRO pursuant to RCW 48.43.535 and this section, a carrier may re-

verse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant.

(7) Carriers must report to the commissioner each assignment made to an IRO not later than one business day after an assignment is made. Information regarding the enrollee's personal health may not be provided with the report.

(8) Each carrier and health plan must submit final independent review organization (IRO) decision determination information to the office of the insurance commissioner's online data base within three business days of receipt of the IRO's final decision. Data elements and procedures for submission are located on the office of the insurance commissioner's web site.

(9) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.

AMENDATORY SECTION (Amending WSR 08-07-101, filed 3/19/08, effective 4/19/08)

WAC 284-43-630 Independent review of adverse determinations.

Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner.

(1) Using the commissioner's online data base, carriers must select reviewing IROs in the rotational manner described in the rotational registry system. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(2) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers are set forth on the insurance commissioner's web site (www.insurance.wa.gov).

(3) In addition to the requirements set forth in RCW 48.43.535(4), carriers must:

(a) Make available to the covered person and to any provider acting on behalf of the covered person all materials provided to an independent review organization reviewing the carrier's determination; and

(b) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan.

(4) Carriers must report to the commissioner each assignment made to an IRO not later than three business days after an assignment is made. Information regarding the enrollee's personal health should not be provided with the report.

(5) Each carrier and health plan must submit final IRO decision determination information to the office of the insurance commissioner's online data base within three business days of receipt of the IRO's final decision. Data elements and procedures for submission are located on the office of the insurance commissioner's web site.

(6) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.