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**IDAPA 18  
TITLE 01  
CHAPTER 05**

**18.01.05 - HEALTH CARRIER EXTERNAL REVIEW**

**000. LEGAL AUTHORITY.**

This rule is promulgated and adopted pursuant to the authority vested in the director under Title 41, Chapters 2 and 59, Idaho Code. (1-1-10)T

**001. TITLE AND SCOPE.**

**01. Title.** This rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.05, "Health Carrier External Review." (1-1-10)T

**02. Scope.** This rule sets forth uniform requirements to be followed by health carriers and independent review organizations in implementing external review procedures in accordance with Title 41, Chapter 59, Idaho Code. (1-1-10)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. (1-1-10)T

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (1-1-10)T

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference. (1-1-10)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS, AND WEB SITE.**

**01. Office Hours.** The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (1-1-10)T

**02. Mailing Address.** The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (1-1-10)T

**03. Street Address.** The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (1-1-10)T

**04. Web Site Address.** The department's web address is <http://www.doi.idaho.gov>. (1-1-10)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (1-1-10)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

As used in this rule, the following terms shall have the following meanings. (1-1-10)T

**01. Covered Person.** A person as defined in Section 41-5903, Idaho Code. (1-1-10)T

**02. Director.** The director of the Idaho Department of Insurance. (1-1-10)T

**03. Health Benefit Plan.** A plan as defined in Section 41-5903, Idaho Code, and subject to Section 41-5904, Idaho Code. (1-1-10)T

**04. Health Carrier.** An entity as defined in Section 41-5903, Idaho Code. (1-1-10)T

**05. URAC.** The nationally recognized private health care accreditation organization based in Washington, D.C., that accredits independent review organizations. The web site for URAC is <http://www.urac.org>. (1-1-10)T

**011. FONT SIZE FOR PRINTED MATERIALS.**

Pertinent text of all printed materials required to be filed with the Director under Title 41, Chapter 59, Idaho Code, or required by this rule, including, but not limited to, notices, disclosure forms and contract forms, is required to be formatted using at least a ten (10) point font. (1-1-10)T

**012. -- 019. (RESERVED).**

**020. NOTICE OF RIGHT TO EXTERNAL REVIEW.**

**01. Disclosure to Covered Persons.** Each health carrier must provide a summary description of external review procedures in or attached to the policy, certificate, membership booklet, outline of coverage or other evidence of coverage the health carrier provides to covered persons. Health carriers must use the summary description in Appendix A. This form has been approved by the Director as meeting the requirements of Section 41-5916, Idaho Code, and this rule. Health carriers must submit summary description forms to the Director for review. (1-1-10)T

**02. Notice to Covered Person.** When a health carrier sends written notice to a covered person of a final adverse benefit determination for medical necessity or as investigational, the health carrier must send written notice at the same time of the covered person's right to request an external review. (1-1-10)T

**a.** The written notice of the covered person's right to request an external review must use the form set forth in Appendix B. The notice form in Appendix B has been approved by the Director as meeting the requirements of Section 41-5905, Idaho Code, and this rule. Health carriers must submit notice forms to the Director for review. (1-1-10)T

**b.** The written notice sent by the health carrier as required by this subsection must include an authorization form to disclose protected health information in compliance with the federal regulation 45 CFR section 164.508. The authorization form in Appendix C has been approved by the Director as meeting the requirements of Section 41-5905, Idaho Code, and this rule. Health carriers must submit authorization forms to the Director for review. (1-1-10)T

**021. REQUEST FOR EXTERNAL REVIEW.**

**01. Request Form.** The form for a covered person to request an external review will be available from the department and will be posted on the department's web site. (1-1-10)T

**02. Authorization Form.** The covered person's request for an external review must include the authorization form to disclose protected health information required in Subsection 020.03. The department will not act on an external review request until the department receives this form completed by the covered person or the covered person's authorized representative. (1-1-10)T

**03. Appointment of an Authorized Representative.** A covered person may name another person, including the treating health care provider, to act as the covered person's authorized representative for an external review request. (1-1-10)T

**022. HEALTH CARRIER NOTICE OF INITIAL DETERMINATION OF AN EXTERNAL REVIEW REQUEST.**

Health carriers must use the form set forth in Appendix D for notice of initial determination by a health carrier for a standard external review required by Section 41-5908, Idaho Code, and for an expedited external review required by Section 41-5909, Idaho Code. Health carriers must submit notice forms to the Director for review. (1-1-10)T

**023. APPROVAL OF INDEPENDENT REVIEW ORGANIZATIONS.**

**01. Accreditation.** An independent review organization must be accredited by a nationally recognized private accrediting entity in order for the independent review organization to be approved to perform reviews under Title 41, Chapter 59, Idaho Code, and this rule. As of the effective date of this rule, URAC is the only such entity. The Director may later designate other such entities that meet the department's standards set by law and this rule. (1-1-10)T

**02. Application Required for Registration.** Independent review organizations must apply to the department and pay the applicable fees as set forth at IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges," to be registered to perform external reviews. The application for registration is posted on the department's web site. The application must include the independent review organization's schedule of costs and fees for performing external reviews. (1-1-10)T

**03. Comment Period on Applications.** If the Director receives written comments during the forty-two (42) day comment period on an application or reapplication by an independent review organization, the Director may choose to provide those comments to the independent review organization in any approval or denial of the application or reapplication. (1-1-10)T

**04. Renewal.** Registration as an independent review organization shall continue until two (2) years from the date of approval of the most recent registration except as provided in Subsections 023.05 and 023.06 below. Registration may be renewed by payment of the applicable renewal fee as set forth at IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges." (1-1-10)T

**05. Notice to Director.** (1-1-10)T

**a.** An independent review organization must notify the Director in writing within thirty (30) days of the date the independent review organization is no longer accredited by a nationally recognized private accrediting entity or no longer satisfies the minimum requirements established under Title 41, Chapter 59, Idaho Code and this rule. (1-1-10)T

**b.** Any change in the independent review organization's schedule of costs and fees for performing external reviews must be submitted to the Director at least sixty (60) days before the effective date of the change. No such change may be applied to an external review being performed by the independent review organization at the time the change would otherwise take effect. (1-1-10)T

**06. Termination of Approval.** The Director may immediately terminate approval of an independent review organization if the independent review organization is no longer accredited by a nationally recognized private accrediting entity or if the independent review organization no longer satisfies the requirements of Title 41, Chapter 59, Idaho Code and this rule. Notice of termination will be in writing to the independent review organization and such organization will be deleted from the list of organizations approved to perform external reviews. If the independent review organization is performing an external review at the time of termination, the independent review organization must cease performing that review and immediately forward all information and documentation to the Director. (1-1-10)T

**024. ANNUAL REPORTING REQUIREMENTS.**

All independent review organizations and health carriers must file with the Director, on or before March 1st of each year, an annual statement on the form available from the Department of Insurance and posted on the department's web site. An annual report is required regardless of whether any external review requests were sent to the independent review organization or health carrier during the year. (1-1-10)T

**025. -- 029. (RESERVED).**

**030. EFFECTIVE DATE -- EXISTING HEALTH BENEFIT PLANS -- GROUNDS FOR DISAPPROVAL.**

**01. Effective Date of Rule.** This rule is applicable to every health benefit plan issued or renewed on and after January 1, 2010. (1-1-10)T

**02. Health Benefit Plan Compliance.** A health benefit plan issued before the effective date of this rule must be brought into compliance with this rule by the anniversary date or renewal date of the plan following the effective date of this rule. (1-1-10)T

**03. Grounds for Disapproval.** Any health benefit plan containing terms inconsistent with the provisions of this rule is misleading, inequitable and unfairly prejudicial to the covered person and the insurance-buying public. In addition to any other sanction or remedy afforded by Title 41, Idaho Code, the use of provisions inconsistent with this rule in a health benefit plan will be grounds for the Director to disapprove the health benefit plan in accordance with Section 41-1813, Idaho Code. (1-1-10)T

**031. -- 999. (RESERVED).**

**APPENDICES:**

- A Health Carrier Disclosures - "Your Right to an Independent External Review"
- B Health Carrier Notice - "Notice of Your Right to an Independent External Review"
- C Authorization for Release of Medical Records
- D Health Carrier's Notice of Initial Determination

**Appendix A**

The summary description below provides an acceptable format approved by the director as meeting the requirements of Idaho Code Section 41-5916. A health carrier may change the terms "you, your" to "covered person" and "we, our" to the health carrier's name, or similar references consistent with the health carrier's typical terminology.

**YOUR RIGHT TO AN INDEPENDENT EXTERNAL REVIEW**

**Please read this notice carefully. It describes a procedure for review of a disputed health claim by a qualified professional who has no affiliation with your health plan. If you request an independent external review of your claim, the decision made by the independent reviewer will be binding and final. Except in limited circumstances, you will have no further right to have your claim reviewed by a court, arbitrator, mediator or other dispute resolution entity.**

If we issue a final adverse benefit determination of your request to provide or pay for a health care service or supply, you may have the right to have our decision reviewed by health care professionals who have no association with us. You have this right only if our denial decision involved:

- The medical necessity of your health care service or supply, or
- Our determination your health care service or supply was investigational.

You must first exhaust our internal grievance and appeal process. Exhaustion of that process includes completing all levels of appeal, or unless you requested or agreed to a delay, our failure to respond to a standard appeal within 35 days in writing or to an urgent appeal within three business days of the date you filed your appeal. We may also agree to waive the exhaustion requirement for an external review request.

You may submit a written request for an external review to:

Idaho Department of Insurance  
ATTN: External Review  
700 W State St., 3<sup>rd</sup> Floor  
Boise ID 83720-0043

For more information and for an external review request form:

- See the department's web site, [www.doi.idaho.gov](http://www.doi.idaho.gov), or
- Call the department's telephone number, (208) 334-4250, or toll-free in Idaho, 1-800-721-3272.

You may represent yourself in your request or you may name another person, including your treating health care provider, to act as your authorized representative for your request. If you want someone else to represent you, you must include a signed "Appointment of an Authorized Representative" form with your request.

Your written external review request to the Department of Insurance must include a completed form authorizing the release of any of your medical records the independent review organization may require to reach a decision on the external review, including any judicial review of the external review decision pursuant to ERISA, if applicable. The department will not act on an external review request without your completed authorization form.

If your request qualifies for external review, our final adverse benefit determination will be reviewed by an independent review organization selected by the department. We will pay the costs of the review.

**Standard External Review Request:** You must file your written external review request with the department within four months after the date we issue a final notice of denial.

1. Within seven days after the department receives your request, the department will send a copy to us.
2. Within 14 days after we receive your request from the department, we will review your request for eligibility. Within five business days after we complete that review, we will notify you and the department in writing if your request is eligible or what additional information is needed. If we deny your eligibility for review, you may appeal that determination to the department.
3. If your request is eligible for review, the department will assign an independent review organization to your review within seven days of receipt of our notice. The department will also notify you in writing.
4. Within seven days of the date you receive the department's notice of assignment to an independent review organization, you may submit any additional information in writing to the independent review organization that you want the organization to consider in its review.
5. The independent review organization must provide written notice of its decision to you, to us and to the department within 42 days after receipt of an external review request.

**Expedited External Review Request:** You may file a written "urgent care request" with the department for an expedited external review of a pre-service or concurrent service denial.

**"Urgent care request"** means any pre-service or concurrent care claim for medical care or treatment for which application of the time periods for making a regular external review determination:

1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function;
2. In the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the disputed care or treatment; or
3. The treatment would be significantly less effective if not promptly initiated.

The department will send your request to us. We will determine, no later than the second full business day, if your request is eligible for review. We will notify you and the department no later than one business day after our decision if your request is eligible. If we deny your eligibility for review, you may appeal that determination to the department.

If your request is eligible for review, the department will assign an independent review organization to your review upon receipt of our notice. The department will also notify you. The independent review organization must provide

notice of its decision to you, to us and to the department within 72 hours after the date of receipt of the external review request. The independent review organization must provide written confirmation of its decision within 48 hours of notice of its decision. If the decision reverses our denial, we will notify you and the department of the approval of coverage as soon as reasonably practicable, but not later than one business day after making the determination.

**Binding Nature of the External Review Decision:** If your plan is subject to federal ERISA laws (generally, any plan offered through an employer to its employees), the external review decision by the independent review organization will be final and binding on us. You may have additional review rights provided under federal ERISA laws.

If your plan is not subject to ERISA requirements, the external review decision by the independent review organization will be final and binding on both you and us. **This means that if you elect to request external review, you will be bound by the decision of the independent review organization. You will not have any further opportunity for review of our denial after the independent review organization issues its final decision.** If you choose not to use the external review process, other options for resolving a disputed claim may include mediation, arbitration or filing an action in court.

Under Idaho law, the independent review organization is immune from any claim relating to its opinion rendered or acts or omissions performed within the scope of its duties unless performed in bad faith or involving gross negligence.

### **Appendix B**

The notice below provides an acceptable format approved by the director as meeting the requirements of Idaho Code Section 41-5905. A health carrier may change the terms “you, your” to “covered person” and “we, our” to the health carrier’s name, or similar references consistent with the health carrier’s typical terminology.

### **NOTICE OF YOUR RIGHT TO AN INDEPENDENT EXTERNAL REVIEW**

**Please read this notice carefully. It describes a procedure for review of a disputed health claim by a qualified professional who has no affiliation with your health plan. If you request an independent external review of your claim, the decision made by the independent reviewer will be binding and final. Except in limited circumstances, you will have no further right to have your claim reviewed by a court, arbitrator, mediator or other dispute resolution entity.**

We have denied your request to provide or pay for a health care service or supply. You may have the right to have our decision reviewed by health care professionals who have no association with us. You have this right only if our denial decision involved:

- The medical necessity of your health care service or supply, or
- Our determination your health care service or supply was investigational.

**No later than four months from the date of this denial,** you may submit a written request for an external review to:

Idaho Department of Insurance  
ATTN: External Review  
700 W State St., 3<sup>rd</sup> Floor  
Boise ID 83720-0043

For more information and for an external review request form:

- See the department’s web site, [www.doi.idaho.gov](http://www.doi.idaho.gov), or
- Call the department’s telephone number, (208) 334-4250, or toll-free in Idaho, 1-800-721-3272.

You may represent yourself in your request or you may name another person, including your treating health care provider, to act as your authorized representative for your request. If you want someone else to represent you, you

must include a signed “Appointment of an Authorized Representative” form with your request.

Your written external review request to the Department of Insurance must include a completed form authorizing the release of any of your medical records the independent review organization may require for review to reach a decision on the external review. The department will not act on an external review request without your completed authorization form.

If your request qualifies for external review, our decision will be reviewed by an independent review organization selected by the department. We will pay the costs of the review.

**Standard External Review Request:** You must file your written external review request with the department **within four months** after the date we issued this notice of denial.

1. Within seven days after the department receives your request, the department will send a copy to us.
2. Within 14 days after we receive your request from the department, we will review your request for eligibility. Within five business days after we complete that review, we will notify you and the department in writing if your request is eligible or what additional information is needed. If we deny your eligibility for review, you may appeal that determination to the department.
3. If your request is eligible for review, the department will assign an independent review organization to your review within seven days of receipt of our notice. The department will also notify you in writing.
4. Within seven days of the date you receive the department’s notice of assignment to an independent review organization, you may submit any additional information in writing to the independent review organization that you want the organization to consider in its review.
5. The independent review organization must provide written notice of its decision to you, to us and to the department within 42 days after receipt of an external review request.

**Expedited External Review Request:** You may file a written “urgent care request” with the department for an expedited external review of a pre-service or concurrent service denial.

“**Urgent care request**” means any pre-service or concurrent care claim for medical care or treatment for which application of the time periods for making a regular external review determination:

1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function;
2. In the opinion of the treating health care professional with knowledge of the covered person’s medical condition, would subject the covered person to severe pain that cannot be adequately managed without the disputed care or treatment; or
3. The treatment would be significantly less effective if not promptly initiated.

The department will send your request to us. We will determine, no later than the second full business day, if your request is eligible for review. We will notify you and the department no later than one business day after our decision if your request is eligible. If we deny your eligibility for review, you may appeal that determination to the department.

If your request is eligible for review, the department will assign an independent review organization to your review upon receipt of our notice. The department will also notify you. The independent review organization must provide notice of its decision to you, to us and to the department within 72 hours after the date of receipt of the external review request. The independent review organization must provide written confirmation of its decision within 48 hours of notice of its decision. If the decision reverses our denial, we will notify you and the department of the approval of coverage as soon as reasonably practicable, but not later than one business day after making the determination.

**Binding Nature of the External Review Decision:** *[NOTE TO HEALTH CARRIERS: The carrier must include one of the applicable paragraphs below for the covered person’s health benefit plan.]*

*[Your plan is subject to federal ERISA laws (generally, any plan offered through an employer to its employees). The external review decision by the independent review organization will be final and binding on the health insurer, but you may have additional review rights provided under federal ERISA laws.]*

*[The external review decision by the independent review organization will be final and binding on both you and us.]*





**Appendix C-2**



**AUTHORIZATION FOR RELEASE OF DRUG OR ALCOHOL ABUSE RECORDS AND PSYCHOTHERAPY NOTES**

I have requested an external review pursuant to Idaho Code Section 41-5906. In order to obtain that review, I understand that I must sign below to authorize my health carrier, whose decision is the subject of this request, and its subcontractors and all applicable medical providers, to release all information relating to the decision to be reviewed including, but not limited to, my files and medical record information, which may include mental health information to the Idaho Department of Insurance (DOI). I authorize the DOI to provide or to instruct the health carrier and/or its subcontractors and providers to provide such information to the independent review organization (IRO) assigned by the DOI to perform the external review. I acknowledge that information to be used or disclosed as a result of this authorization may include records that are protected by federal and/or state laws applicable to substance abuse and psychotherapy. I SPECIFICALLY AUTHORIZE THE RELEASE OF CONFIDENTIAL INFORMATION RELATING TO PSYCHOTHERAPY, DRUG AND/OR ALCOHOL ABUSE. The recipient of drug and/or alcohol abuse and psychotherapy information disclosed as a result of this authorization will need my further written authorization to re-disclose this information.

I, \_\_\_\_\_, hereby reaffirm my request for an external review. I attest that the information provided in this request is true and accurate to the best of my knowledge. I authorize my health carrier, its subcontractors and agents, and my health care providers to release all relevant medical or treatment records to the independent review organization (IRO) and the Idaho Department of Insurance (DOI). I SPECIFICALLY AUTHORIZE THE RELEASE OF CONFIDENTIAL INFORMATION RELATING TO PSYCHOTHERAPY, DRUG AND/OR ALCOHOL ABUSE. I understand the IRO will use this information to make a determination on my external review and the information will be kept confidential and not be released to anyone else. This release is valid for one year unless it expires sooner upon the IRO rendering a final decision or upon revocation. I understand that the decision of the IRO may be binding and that neither the DOI nor the IRO may authorize services in excess of those covered by my health plan.

I acknowledge that I may revoke this authorization at any time. My revocation will be effective upon receipt, but will not affect actions already taken on the basis of the authorization. In any event, this authorization expires upon the IRO rendering a final decision regarding this external review.

\_\_\_\_\_  
Signature of Covered Person (or authorized representative)\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
\*(Parent, Guardian, Conservator or Other - Please Specify)

\_\_\_\_\_  
Printed Name of Authorized Representative

\*Parent (if patient is under 18 years old), guardian (if other than patient), conservator, attorney or other. If other than parent of minor, attach a written authorization to represent patient.

Return to:

**Idaho Dept of Insurance**  
**PO Box 83720**  
**Boise, ID 83720-0043**

**Appendix D**

**HEALTH CARRIER'S NOTICE OF INITIAL DETERMINATION**

*[Date]*

*[Covered Person/Authorized Representative]*

*[Address]*

RE: Initial Determination of Your Request for an External Review

We completed our preliminary review of your request for an external review sent to us by the Idaho Department of Insurance. As part of our review, we considered:

1. Eligibility of the covered person under the health benefit plan at the time the health care service was requested, or, for a post-service review, the health care service was performed;
2. If the health care service is a covered service under the health benefit plan, except for our determination the health care service does not meet our requirements for medical necessity or the service or supply is investigational;
3. If the covered person has exhausted our internal grievance process, or if we failed to provide a timely determination to a grievance under that process or if we waived the exhaustion requirement under that process; and
4. All information and forms required to process an external review, including your signed authorization to disclose protected health information.

*[If the request is complete and eligible for review:*

We determined your request is complete and eligible for external review. We sent a copy of this notice to the Idaho Department of Insurance. The Department of Insurance will assign an independent review organization to perform the review and will notify you of the name of that organization.]

*[OR if the request is not complete:*

We have determined your request is not complete. In order to complete your request, you must provide the following: *(Provide details of what information or materials are needed to make the request complete.)*

*[OR if the request is not eligible for external review:*

We have determined your request is not eligible for external review. Your request is ineligible for the following reasons: *(Provide details of the reasons for denial.)*

If you disagree with our initial determination that your request is ineligible, you may file a written appeal with the Director of the Idaho Department of Insurance within 30 days of the date of this notice. Your appeal must include adequate detail and documentation to show proof of your eligibility. The Director may determine a request is eligible based on the terms and conditions of the covered person's health benefit plan and the applicable provision of Idaho Code, Title 41, Chapter 59.]

*[Include the following for all notices:]*

For further information, please contact the Idaho Department of Insurance, (208) 334-4250, or toll-free, 1-800-721-3272. The department's fax number is (208) 334-4398. The department's web site is: [www.doi.idaho.gov](http://www.doi.idaho.gov)

Sincerely,

*[Health Carrier]*

C: Idaho Department of Insurance/External Review

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