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**IDAPA 18  
TITLE 04  
CHAPTER 01**

**18.04.01 – 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. (4-7-11)

**001. TITLE AND SCOPE.**

**01. Title.** This rule is titled Idaho Department of Insurance Rule IDAPA 18.04.01, “Health Carrier External Review.” (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**003. ADMINISTRATIVE APPEALS.**

All administrative appeals will 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.” (4-7-11)

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference. (4-7-11)

**005. OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB SITE.**

**01. Office Hours.** 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (4-7-11)

**02. Mailing Address.** P.O. Box 83720, Boise, ID 83720-0043. (4-7-11)

**03. Street Address.** 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (4-7-11)

**04. Web Site Address.** The department’s website is <http://www.doi.idaho.gov>. (4-7-11)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. (4-7-11)

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

**010. DEFINITIONS.**

As used in this rule, the following terms have the following meanings. (4-7-11)

**01. Covered Person.** A person as defined in Section 41-5903, Idaho Code. (4-7-11)

**02. Director.** The director of the Idaho Department of Insurance. (4-7-11)

**03. Health Benefit Plan.** A plan as defined in Section 41-5903, Idaho Code, and subject to Section 41-5904, Idaho Code. (4-7-11)

- 04. Health Carrier.** An entity as defined in Section 41-5903, Idaho Code. (4-7-11)
- 05. URAC.** The nationally recognized private health care accreditation organization based in Washington, D.C., that accredits independent review organizations. The website for URAC is <http://www.urac.org>. (4-7-11)
- 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. (4-7-11)
- 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 or one that in the discretion of the Director is substantially identical. This summary description in Appendix A 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. (3-29-12)
- 02. Notice to Covered Person.** When a health carrier sends written notice to a covered person of a final adverse benefit determination, the health carrier must send written notice at the same time of the covered person's right to request an external review. (3-29-12)
- a.** The written notice of the covered person's right to request an external review must use the form set forth in Appendix B or one that in the discretion of the Director is substantially identical. 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. (3-29-12)
- 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. Health carriers must submit authorization forms to the Director for review. (3-29-12)
- 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. (4-7-11)
- 02. Authorization Form.** The covered person's request for an external review must include an authorization form to disclose protected health information required in Paragraph 020.02.b. The department will not act on an external review request until the department receives the applicable form completed by the covered person or the covered person's authorized representative. (3-29-12)
- 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. (4-7-11)
- 022. HEALTH CARRIER NOTICE OF INITIAL DETERMINATION OF AN EXTERNAL REVIEW REQUEST.**  
Health carriers must use the form set forth in Appendix C or one that in the discretion of the Director is substantially identical 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. (3-29-12)

**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.(4-7-11)

**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. (4-7-11)

**03. Notice to Director.** (4-7-11)

**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. (4-7-11)

**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. (4-7-11)

**04. 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. (4-7-11)

**024. VOLUNTARY ELECTION BY ERISA PLAN ADMINISTRATOR.**

**01. Written Notice and Compliance.** If a single employer self-funded ERISA employee benefit plan administrator or designee voluntarily elects to comply with Title 41, Chapter 59, Idaho Code, the administrator or designee must: (3-29-12)

**a.** Provide timely and appropriate written notice to the Director of such election. The written notice must include the name of the administrator or designee, the contact name and title of the person to receive correspondence for the administrator or designee, that person's email address, voice and facsimile numbers, and the name of the employer or plan; (3-29-12)

**b.** Provide written notice to the plan beneficiary of any final adverse benefit determination and of the beneficiary's right to an external review pursuant to Title 41, Chapter 59, Idaho Code, as required by Subsection 020.02 of this rule; and (3-29-12)

**c.** Comply with all other provisions of Title 41, Chapter 59, Idaho Code, and this rule, as if it were a health carrier, except the administrator or designee is not required to submit for the Director's review the forms attached to this rule as appendices. (3-29-12)

**02. Single Plan Beneficiary.** The written notice to the Director required in Subsection 024.01 of this rule for a single plan beneficiary must be included with the notice of initial determination of an external review request in Section 022. The notice must include the plan beneficiary's name and identification number. The administrator or designee may not request the Director terminate an external review for a single plan beneficiary

while the review is in progress unless the administrator or designee has reversed the final adverse benefit determination and has notified the beneficiary it will pay benefits for the disputed service or supply. (3-29-12)

**03. Specific Period of Time.** The written notice to the Director required in Subsection 024.01 for a specific period of time must include the start date and end date for that period of time. The notice must be received by the Director at least thirty (30) days in advance of the date the specific period of time will begin. Any change in the start or end date for a specific period of time on file with the Director must be received in writing at least thirty (30) days in advance of the date the change will take effect. The termination of the specific period of time will not terminate an external review in progress unless the administrator or designee has reversed the final adverse benefit determination and has notified the beneficiary it will pay benefits for the disputed service or supply. (3-29-12)

**04. Effect of Election.** Any single employer self-funded ERISA employee benefit plan administrator or designee that voluntarily elects to comply with Title 41, Chapter 59, Idaho Code, and this chapter of rules, does not, solely by such election and/or compliance, waive any rights, remedies, duties, causes of action, or defenses it otherwise has under ERISA or other applicable law. (3-29-12)

**025. -- 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 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 on the health carrier. You will have the right to further review of your claim by a court, arbitrator, mediator or other dispute resolution entity only if your plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA), as more fully explained below under "Binding Nature of the External Review Decision."**

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, appropriateness, health care setting, level of care, or effectiveness 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 file for an internal urgent appeal with us and for an expedited external review with the Idaho Department of Insurance at the same time if your request

qualifies as an “urgent care request” defined below.

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 website at <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. You may file for an internal urgent appeal with us and for an expedited external review with the department at the same time.

“**Urgent care request**” means a claim relating to an admission, availability of care, continued stay or health care service for which the covered person received emergency services but has not been discharged from a facility, or 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 our intent to pay the covered benefit as soon as reasonably practicable, but not later than one business day after receiving notice of the decision.

**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 on the health carrier. You will have the right to further review of your claim reviewed by a court, arbitrator, mediator or other dispute resolution entity only if your plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA) -- see below under “Binding Nature of the External Review Decision” for more information.**

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, appropriateness, health care setting, level of care, or effectiveness 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 website at <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. You may file for an internal urgent appeal with us and for an expedited external review with the department at the same time.

**"Urgent care request"** means a claim relating to an admission, availability of care, continued stay or health care service for which the covered person received emergency services but has not been discharged from a facility, or 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 our intent

to pay the covered benefit as soon as reasonably practicable, but not later than one business day after receiving notice of the decision.

**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. **This means that if you elect to request external review of your claim, you will be bound by the decision of the independent review organization. You will not have any further opportunity for review of your claim 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 C

#### 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, appropriateness, health care setting, level of care or effectiveness, 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 for a grievance under that process; or if we waived the exhaustion requirement under that process; or if we failed to strictly follow our duties in affording a timely, full and fair opportunity for you to take advantage of that grievance process; or if the request qualifies as an urgent care request and you've simultaneously applied for an expedited internal review; 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 website is <http://www.doi.idaho.gov>.

Sincerely,

*[Health Carrier]*

C: Idaho Department of Insurance/External Review

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