

Technical Advisory regarding 28 Pa. Code § 9.707

(Relating to External Grievance Process for MA MCOs)

Section 2162 of Act 68 of 1998, amending the Insurance Company Law of 1921 (40 P.S. § 991.2162), and its associated regulations at 28 Pa. Code §§ 9.707 and 9.708, requires Managed Care Plans to establish and maintain an external grievance process. This notice relates exclusively to the external grievance process with respect to Medical Assistance and Children's Health Insurance Program Managed Care Organizations (collectively, MA MCOs). The external grievance process for commercial insurance is preempted by the Affordable Care Act. See Department Notice 2014-11 (44 Pa. B. 6175, Sept. 27, 2014) and a joint Notice issued by the Department of Health and Insurance Department related to External Review under the Affordable Care Act, 41 Pa. B. 7041, Dec. 31, 2011.

Pursuant to the above-cited regulations, upon receipt of notice that an MA MCO has received an external grievance request, the Bureau of Managed Care (BMC) will, within two business days:

- assign the case a number and select an External Review Organization (ERO);
- notify the member, MA MCO, and ERO of the assignment; and
- provide information about the ERO to the member.

As a result of the COVID-19 Public Health Emergency, on March 17, 2020, the BMC delegated the responsibilities of selecting an ERO and providing notice to members to the MA MCOs. On July 1, 2021, the BMC resumed the role of assigning each case a case number and ERO.

Effective **July 1, 2022**, the BMC will resume the responsibility of providing notice of the assignment to the member and ERO using the BMC's ERO Assignment Notice, included as Attachment A.

MA MCOs will retain the responsibility of providing the member, the member's representative, and/or the member's healthcare provider with the list of documents the MA MCO will be forwarding to the ERO.

In conjunction with the Department of Human Services, a new notice template has been drafted to satisfy this requirement, included as Attachment B. BMC expects the MA MCO to provide a verifiable record that the notification has been provided to the member. This best practice will help ensure that notifications are being timely sent and that members are being informed of the progress of their external grievance request. Upon sending this notice to the member, MCOs are expected to upload a copy to the SharePoint case file.

Effective **July 1, 2022**, BMC will also be implementing a new ERO Assignment Request Form, included as Attachment C.

The process for external grievance reviews for MA MCOs will follow what is illustrated in Attachment D, which creates a visual process map of the process set forth in the statutory and regulatory provisions.

Attachment A

[COPY OF BMC ERO ASSIGNMENT NOTICE TEMPLATE]

Attachment B

[COPY OF NOTICE INFORMING MEMBER OF DOCUMENTS SUBMITTED TO ERO]

Attachment C

[COPY OF ERO ASSIGNMENT REQUEST FORM]

Attachment D

[Process effective July 1, 2022]

ATTACHMENT A

[Date Letter Mailed]

Member Name

Address

City, State Zip

Member ID: *****

Subject: External Review Assignment to **[ERO]**

ERO Tracking Number: **[assigned by BMC]**

Dear **[Member Name]**:

The Pennsylvania Insurance Department's Bureau of Managed Care has assigned **[ERO Name]** to conduct the External Review of your Grievance about **[briefly identify subject of grievance]**. **[ERO Name]** will determine if this service is medically necessary under your coverage. A certified or licensed doctor employed by **[ERO Name]** will make a final decision within 60 days of your request for External Review. The decision will be based on a review of documents provided by **[MCO name]** (see documents listed below) and any additional information you provide.

You may send additional information about your Grievance to [ERO Name], but please note it must be sent within 15 days of when you receive this notice. For example, you may provide a letter that explains why the denied service is medically necessary. You may also send medical records or letters from your doctors, friends, or family members. **To make sure it is included in the review, any information you send to the ERO should be sent by [20 days from date on BMC ERO Assignment Letter].**

Send your additional information to:

[ERO Name, contact, address, fax, phone, email]

[ERO Name] is an independent organization certified to conduct external reviews by the Bureau of Managed Care. **[MCO Name]** was not involved in selecting **[ERO Name]** to review your Grievance. If you would like more information about **[ERO Name]**, contact the Bureau of Managed Care at:

Pennsylvania Insurance Department
Bureau of Managed Care
1311 Strawberry Square / Harrisburg, PA 17120
Phone: (717) 787-4192
Toll-free: 1-888-466-2787

ATTACHMENT A

Fax: 717.787.8555

If you believe **[ERO Name]** has a conflict of interest (i.e., cannot fairly review your Grievance), please contact the Bureau of Managed Care within seven business days of the date on this letter.

If you have any questions about this process, please contact:

[MCO contact]

Sincerely,

[signature line]

cc: **[Participant Representative, if any]**
[Provider, if provider filed the request for external review]

[Date Letter Mailed]

[Member Name]

[Address]

[City, State Zip]

Member ID #:

Subject: External Grievance Review for **[Member Name]**

PID Case #:

Dear **[Member]**,

The Pennsylvania Insurance Department (PID), Bureau of Managed Care has assigned **[ERO Name]** to conduct the External Review of your Grievance about **[briefly identify subject of grievance]**. Your case number for this external grievance review is **[PID Case Number]**. Please include this case number on any communications you may send to PID, **[MCO Name]**, or **[ERO Name]**.

You may send information about your Grievance to **[ERO Name]**. For example, you may provide a letter that explains why the denied service is medically necessary. You may also send medical records or letters from your doctors, friends, or family members. To make sure it is included in the review, any information you send to the ERO should be sent by **[20 days from date on BMC ERO Assignment Letter]**.

Send your additional information to:

[ERO Name, contact, address, fax, phone, email]

[MCO Name] is required to inform you of the documents that have been submitted to **[ERO Name]** for review.

[MCO Name] has sent the following documents to **[ERO Name]**:

- **[MCO Name]**'s decision
- **[Supporting information – including documents identified in 28 Pa. Code § 9.707(b)(5)]**
- **[Summary of applicable issues in easily understood language and format that meets a 6th grade reading level]**
- **[Contractual language supporting denial]**.
- NOTE: The definition of “medical necessity” used by **[MCO Name]** is: **[provide medically necessary definition used in internal grievance review – this should be copied directly from the plan documents]**. For more information about what is considered medically necessary, please see your Handbook.

ATTACHMENT B

If you have any further questions, please contact **[MCO Representative]** at **[Contact Information]**.

Sincerely,

[Signature Line]

cc: **[Member Representative, if designated]**
[Provider, if provider filed the request for external review]

[NONDISCRIMINATION NOTICE/LEP/LANGUAGE ACCESS INFORMATION HERE]

Sincerely,

[signature line]

cc: **[Participant Representative, if any]**
[Provider, if provider filed the request for external review]

ATTACHMENT C

MCO Name			
Request Type	<input type="checkbox"/> Standard	<input type="checkbox"/> Expedited	
Service Denied			
Specialist Requested			
Date of Member Request			
Translation Needed	<input type="checkbox"/> Yes <input type="checkbox"/> No	Language:	
Contact information for primary external grievance coordinator:			
Name			
Title			
Phone			
Email			
Contact information for alternate external grievance coordinator:			
Name			
Title			
Phone			
Email			
The following member has requested an external grievance review:			
Name			
Plan ID			
Address			
Phone			
Email (if available)			
Member Representative if applicable			
Name			
Address			
Phone			
Email			
Provider if filing on behalf of member			
Name			
Address			
Phone			
Email			
Please provide file names for the following documents and upload them to Sharepoint			

For BMC Use			
Case #			
ERO			
Date assigned		Date due	
BMC Notice Sent			
MCO Notice Sent			

ATTACHMENT D

