Legislative Analysis

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PATIENT'S RIGHT TO INDEPENDENT REVIEW

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House Bill 4933 as enacted
Public Act 274 of 2016
Sponsor: Rep. Tom Barrett
House Committee: Insurance
Senate Committee: Insurance
Complete to 1-30-17

BRIEF SUMMARY: This bill amended the "Patient's Right to Independent Review Act," which allows people with health insurance to request a review by an independent review organization to resolve disputes over covered benefits when they cannot be resolved by an insurer's internal grievance process. The bill amends the act by changing the appeal process for experimental procedures after a denial of coverage. Additionally, it amends the instances in which the internal grievance program may be exhausted. It also allows the reviewing entity to consider additional factors when deciding whether to allow external review by an independent review organization. Finally, it adds five definitions to the previous 27, and amends several others. The new act took effect September 29, 2016.

FISCAL IMPACT: The bill, along with other related bills, HB 4934 and 4935, would have a neutral fiscal impact on the Department of Insurance and Financial Services (DIFS). The bills would stimulate higher expenditures, within the short-term, to the extent that DIFS would prepare and publish departmental bulletins and declaratory rulings to provide guidance pertaining to the applicability and interpretation of statutory revisions to the insurance code, in addition to training relevant regulatory and enforcement staff on the aspects and effects of the revisions under the bills. However, these expenditures would be sufficiently offset with revenue generated by the annual regulatory fee determined by DIFS, subject to a statutory formula, and levied on insurers (totaling approximately $18.2 million during FY 15).

THE APPARENT PROBLEM: According to proponents of the bill, the statutory changes reflect changes in federal law under the Affordable Care Act, and will allow Michigan to continue to operate the appeals process. For more on how that appeals process works and the role of the Department of Insurance and Financial Services (DIFS), see: https://www.michigan.gov/difs/0,5269,7-303-12902_35510-263250--,00.html

THE CONTENT OF THE BILL:

Definitions (MCL 550.1903)

Several definitions for terms used throughout the bill are added or amended. For instance, in addition to "adverse determination" already included in the act, this bill adds "final adverse determination," which means an adverse determination involving a covered benefit that has been upheld by a health carrier. It also defines "evidence-based standard" as the conscientious use of current best evidence and thorough research in making decisions for

individual patients. Finally, the bill specifies the types of documents and resources that will be considered "medical or scientific evidence."

Exhausting the internal grievance process (MCL 550.1907)

This bill would allow a health provider to waive its internal grievance process and the requirement that a patient exhaust the process before seeking external review. Also, the provider may consider the process exhausted, even if the provider did not comply with it, as long as the failure to comply is minor and is unlikely to harm the covered person.

External review process (MCL 550.1911)

The most impactful change effected by this bill is the process for approving or denying requests for external review, especially in cases of experimental treatment. Currently, a patient that has applied for coverage and been issued an adverse determination or final adverse determination then has 60 days to appeal that decision to the director of the Department of Insurance and Financial Services. The bill extends that period to 120 days beginning January 1, 2017.

However, under the new rules, if the request for external review involves issues of experimental or investigational service or treatment, the director would need to complete a preliminary review to determine the following within five days:

- Whether the person requesting the procedure is covered by a health benefit plan;
- Whether the procedure would be covered if it were not determined to be experimental, or is not explicitly excluded in the benefit plan;
- Whether the patient's authorized treating provider has certified that standard care has been ineffective, would be inappropriate, or that there is no standard care more beneficial than the experimental care;
- Whether the patient's authorized treating provider has certified that the experimental care is likely to be more beneficial than standard care or that scientifically valid studies show that to be the case;
- Whether the patient has exhausted the health carrier's internal grievance program, unless it is not necessary to do so under the act; and
- Whether the patient has submitted all required information to DIFS.

When considering a request for external review for experimental care, the bill requires the reviewing entity to consider the following, in addition to the other documents listed in Section 11: (1) whether the requested health care service has been approved by the US Food and Drug Administration (FDA), if applicable; or (2) if medical or scientific evidence demonstrates that the expected benefits of the requested service are more likely to be more beneficial to the patient than those of standard health care services, and would not present substantially more risk (risk-reward determination).

Expedited external review (MCL 550.1913)

As before, in instances where the length of the expedited internal grievance process would jeopardize the patient's health or life, the patient may request an expedited external review. However, this bill would also provide that the reviewing entity may consider whether the

FDA has approved the procedure and conduct the risk-reward determination described above when deciding whether to allow an expedited external review.

Approved independent review organization (MCL 550.1919)

The bill requires that an independent review organization be accredited by a nationally recognized private accrediting organization approved the DIFS director.

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