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ADVISORY OPINION 2023-04

The following Advisory Opinion is to advise the reader of the current position of the Kentucky Department of Insurance ("Department"), on the specified issue. The Advisory Opinion is not legally binding on either the Department or the reader.

TO: ALL INSURERS AUTHORIZED TO TRANSACT BUSINESS IN KENTUCKY UNDER A HEALTH LINE OF AUTHORITY & ALL UTILIZATION REVIEW ENTITIES REGISTERED BY THE KENTUCKY DEPARTMENT OF INSURANCE TO TRANSACT BUSINESS IN KENTUCKY

FROM: SHARON P. CLARK, COMMISSIONER
KENTUCKY DEPARTMENT OF INSURANCE

RE: UTILIZATION MANAGEMENT/MEDICAL DIRECTORS

DATE: February 17, 2023

Effective Date

This advisory opinion is effective immediately.

Purpose

The purpose of this Advisory Opinion is to clarify Department of Insurance ("Department") requirements for Utilization Management and Medical Directors, pursuant to KRS 304.17A-545. The Department recently discovered that initial adverse benefit determination letters are being signed by unappointed Medical Directors; specifically, Medical Directors employed by 3rd party review entities. While companies may utilize a 3rd party's medical director pursuant to 806 KAR 17:230, it has become apparent that there is some confusion within the industry over how to comply with both KRS 304.17A-545 and 806 KAR 17:230.

Interpretation

KRS 304.17A-545 requires managed care plans to have a Kentucky-licensed medical director to sign all denial letters for managed care plans. KRS 304.17A-545(1) states that: "A managed care plan shall appoint a medical director who: [...] (d) shall sign any denial letter required under KRS 304.17A-540; and (e) Shall be responsible for the treatment of policies, protocols, quality assurance activities, and utilization management decisions of the plan."

According to 806 KAR 17:230 Section 1(6), “[m]edical director” means a person meeting the requirements of KRS 304.17A-545(1) [*this would be a person who was appointed to be a medical director by the managed care plan, per the statute*] and includes a medical director of an entity under contract and delegated to perform utilization review on behalf of a managed care plan.

The language of 806 KAR 17:230 Section 3(3), when read within the context of the entire regulation, is intended to communicate that “[a] managed care plan shall provide for an **alternative** medical director to serve if the medical director is **absent**...” (emphasis added). The appointed alternative medical director acts in the absence of the medical director who is statutorily appointed, pursuant to KRS 304.17A-545, and is not the same as the statutorily appointed medical director for a contracted entity. Only a statutorily appointed medical director can perform the functions outlined in KRS 304.17A-545 on a regular, day-to-day basis. The alternative medical director may serve only during the limited timeframe(s) during which the statutorily appointed medical director is absent.

The managed care plan contract shall contain a provision designating the medical director and alternative medical director roles to the utilization review entity to comply with all regulatory requirements. A utilization review (UR) entity must provide the Department with the HIPMC-MD-1 form identifying the Kentucky licensed medical director and the Kentucky licensed alternate medical director. The UR entity’s contract with the managed care plan client must also state that the medical director of the UR entity will be signing the denial letters.

More than one medical director may be appointed to serve at the same time. If multiple medical directors (or alternative medical directors) are appointed to serve simultaneously, an addendum to the MD-1 form should be submitted to provide the additional medical directors’ information.

If registered Private Review Agent (PRA) entities have clients that offer managed care plans, the PRA must have a Kentucky-licensed medical director to sign any denial letters to comply with KRS 304.17A-545. If an insurer utilizes a PRA for utilization review services for managed care plans, the insurer must appoint the Kentucky-licensed medical director of the delegated PRA to comply with KRS 304.17A-545. The PRA would be responsible for: (1) obtaining this appointment from the insurer; and (2) submitting a copy of the contract between the UR entity and the insurer with its Utilization Review Registration Application. The contract should verify that the insurer has delegated and appointed the UR entity’s Kentucky-licensed medical director to serve as the managed care plan’s medical director for UR activities and the signing of denial letters. The PRA would also be required to submit a new verification whenever there is a change in appointment status.

Utilization Review entities are responsible for staying up to date on all statutory and regulatory changes via the Department’s website or by signing up for RegWatch via <https://secure.kentucky.gov/regwatch/>. The Utilization Review Program of the Health and Life Insurance and Managed Care Division of the Department does not notify companies of these changes on an individual basis.

This Advisory Opinion is intended to serve as notice to all insurers authorized to transact business in Kentucky under a health line of authority, and all Utilization Review entities registered by the Department, of the Department’s interpretation of KRS 304.17A-545(1) and 806 KAR 17:230.

Licensees and registered entities are charged with notifying their agents and employees of the Department's interpretation. The Department does not provide legal advice to insurers or entities. This advisory opinion is not new law but is the Department's interpretation of existing law. The position provided herein has been offered to clarify the Department's regulatory authority pursuant to KRS 304.2-100.

Questions regarding this advisory opinion should be directed to the Utilization Review Program of the Health and Life Insurance and Managed Care Division, Phone (502) 564-6088; TTY (800) 648-6056; Fax: (502) 564-2728; or Email: DOI.UtilizationReview@ky.gov.



Sharon P. Clark, Commissioner
Kentucky Department of Insurance
On this 17th day of February 2023