

Proposed

KANSAS INSURANCE DEPARTMENT

Notice of Hearing on Proposed Administrative Regulations

A public hearing will be conducted at 1:30 PM, March 22, 2017, in the third floor conference room, Kansas Insurance Department, 420 S.W. 9th, Topeka, Kansas, to consider the adoption of proposed changes in the existing rules and regulations.

The 60-day notice of the public hearing shall constitute a public comment period for purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to Diane Minear, Kansas Insurance Department, 420 S.W. 9th, Topeka, Kansas, 66612-1678, via facsimile at 785-296-7847, or via email at DMinear@ksinsurance.org. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed amendments to the regulation during the hearing.

A summary of the regulations and their economic impact follows.

K.A.R. 40-4-42d. Expedited external review. This regulation amends the current regulation relating to expedited external review of an adverse decision involving an insured's emergency medical condition.

The proposed amended regulation is not mandated by federal law.

The proposed amended regulation will not have any economic impact on other insurance companies, government agencies, regulated entities, large or small businesses, the general public, or consumers

K.A.R. 40-4-42a. Notice requirements of adverse decisions. This regulation amends the number of days, from 90 to 120, an insured has to file an external review with the Commissioner when they receive notice of a final adverse decision.

The proposed amended regulation is not mandated by federal law.

The proposed amended regulation will not have any economic impact on other insurance companies, government agencies, regulated entities, large or small businesses, the general public, or consumers

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least 5 working days in advance by contacting Diane Minear at (785) 296-7847 or via email at DMinear@ksinsurance.org. Any individual desiring a copy of this regulation and/or the policy and procedure that is being adopted by reference, if applicable, may obtain a copy from our website, www.ksinsurance.org, under the Legal Issues link or by

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KRIS W. KOBACH
SECRETARY

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contacting Diane Minear by phone at (785)296-7847 or via email at DMinear@ksinsurance.org. The charge for copies is fifty cents per page.

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40-4-42a. Notice requirements of adverse decisions. (a) A Each written notification of an adverse decision shall be printed in clear, legible type and in at least 12-point type.

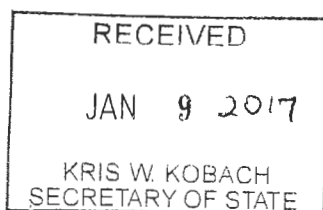
(b) The notice of adverse decision shall explain the principal reason for the adverse decision in language easily understood by a person with an eighth-grade reading level. An insurer may meet this requirement by omitting medical terminology that describes an insured's medical condition. The notice shall include the ~~proper~~ legal names of all impacted parties, and their telephone numbers, and addresses.

(c) The notice of adverse decision shall explain how an insured, as defined in ~~L. 1999, Ch. 162, Sec. 6~~ K.S.A. 40-22a13, and amendments thereto, can initiate an external review with the commissioner. If an insured is eligible for an expedited review due to an emergency medical condition as defined in ~~L. 1999, Ch. 162, Sec. 6~~ K.S.A. 40-22a13, and amendments thereto, then the notice shall explain how an insured can initiate an expedited review.

(d) The notice shall explain that an insured may file for an external review with the commissioner within 90 120 days of receipt of a final adverse decision. The notice shall also list the Kansas insurance department's toll-free number.

(e) The notice of adverse decision shall describe how the insured can request a written statement of the clinical rationale and clinical review criteria used to make the adverse decision.

~~This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, § 9 K.S.A. 2015 Supp. 40-22a16; implementing L. 1999, Ch. 162, §§ 6-9 K.S.A. 2015 Supp. 40-22a14; effective Jan. 7, 2000; amended P-~~_____.)



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40-4-42d. Expedited external review. (a) If the insured has an emergency medical condition, as defined in ~~L. 1999, Ch. 162, Sec. 6, K.S.A. 40-22a13~~ and amendments thereto, and receives an adverse decision involving that medical condition, the insured or the insured's authorized representative may make a written request for an expedited review with the commissioner at the time when the insured receives the adverse decision.

(b) ~~At the time the commissioner receives a request for an expedited external review, a preliminary determination shall immediately be completed by the commissioner to determine the following:~~

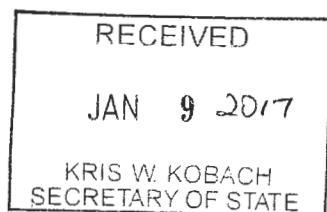
~~(1) If the individual is or was an insured in the insurance plan at the time the health care service was requested; and~~

~~(2) if the health care service that is the subject of the adverse decision reasonably appears to be a covered service under the insured's health insurance plan.~~

(c) ~~At the time the commissioner completes the preliminary determination as provided in subsection (b) of this regulation, the following actions shall immediately be taken by the commissioner~~ Each approved request shall meet the following requirements:

(1) Assign Be assigned an external review organization that has been approved pursuant to ~~L. 1999, Ch. 162, Secs. 6 and 8 K.S.A. 40-22a15~~, and amendments thereto, to conduct the review and to make a decision to uphold or reverse the adverse decision; and

(2) ~~send a copy of the request for the review~~ be made available to the insurer or health plan that made the adverse decision that is the subject of the request and notify the insured, the treating physician or health care provider, and the insurer or health plan of the name, address, and telephone number of the external review organization assigned to conduct the expedited external review.



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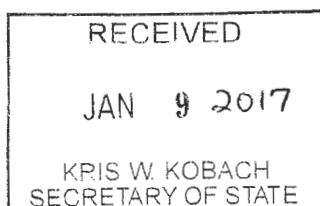
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~~(d)(c)~~ In reaching a decision, the assigned external review organization shall not be bound by any decision or conclusions reached during the insurer's utilization review process as set forth specified in K.S.A. 40-22a01 and L. 1999, Ch. 162, Secs. 6 through 9 K.S.A. 40-22a14, 40-22a15, and 40-22a16, and amendments thereto, or the insurer's internal grievance process.

~~(e)(d)~~ At the time When the insurer receives the notice pursuant to ~~paragraph (c)(2)~~, the insurer or its designee utilization review organization shall provide or transmit all necessary documents and information that were considered in making the adverse decision to the assigned external review organization by electronic means, by telephone or facsimile, or by any other available expeditious method by 5:00 p.m. central standard time of the next business day after receiving notice ~~pursuant to paragraph (c)(2) of this regulation.~~

~~(f)(e)~~ In addition to the documents and information provided or transmitted ~~pursuant to subsection (e) of this regulation~~ and to the extent that the information or documents are available, the assigned external review organization shall consider the following in reaching a decision:

- (1) The insured's pertinent medical records;
- (2) the attending health care professional's recommendation;
- (3) consulting reports from appropriate health care professionals and any other documents submitted by the insurer, the insured, the insured's authorized representative, or the insured's treating provider;



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(4) the terms of the coverage under the insured's insurance plan with the insurer, to ensure that the external review organization's decision is not contrary to the terms of coverage under the insured's health benefit plan with the insurer;

(5) the most appropriate practice guidelines, including generally accepted practice guidelines, evidence-based practice guidelines, and any other practice guidelines developed by the federal government and national or professional medical societies, boards, and associations; and

(6) any applicable clinical review criteria developed and used by the insurer or its designee utilization review organization in making adverse decisions.

~~(g)~~(f)(1) As expeditiously as the insured's medical condition or circumstances require, but not more than ~~seven~~ three business days after the date of receipt of the request for an expedited external review, the assigned external review organization shall perform the following:

(A) Make a decision to uphold or reverse the adverse decision; and

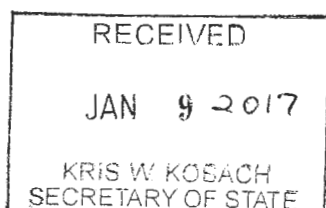
(B) notify the insured or the insured's authorized representative, the insurer, and the commissioner of the decision.

(2) If the notice ~~provided pursuant to paragraph (g)(1) of this regulation~~ was not in writing, within two days after the date of providing that notice, the assigned external review organization shall perform the following:

(A) Provide written confirmation of the decision to the insured or the insured's authorized representative, the insurer, and the commissioner; and

(B) include the information ~~set forth~~ specified in K.A.R. 40-4-42c(h).

(h) An expedited external review shall not be provided for retrospective adverse decisions.



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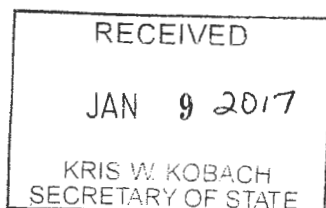
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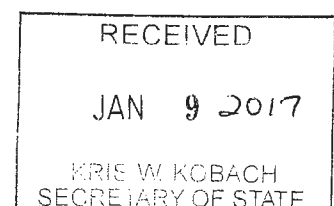
ECONOMIC IMPACT STATEMENT
Proposed Kansas Administrative Regulation 40-4-42a

Pursuant to K.S.A. 77-416(b) the Kansas Insurance Department submits the following statement of the economic impact of proposed regulation K.A.R. 40-4-42a:

(1) K.A.R. 40-4-42a is being proposed to amend the current regulation relating to notice requirements of adverse decisions. The regulation amends the number of days, from 90 to 120, an insured has to file for an external review with the commissioner when they receive notice of a final adverse decision.

(2) The proposed amended regulation is not mandated by federal law.

(3) The proposed amended regulation will not have any economic impact on other insurance companies, government agencies, regulated entities, large or small businesses, the general public, or consumers.



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ECONOMIC IMPACT STATEMENT
Proposed Kansas Administrative Regulation 40-4-42d

Pursuant to K.S.A. 77-416(b) the Kansas Insurance Department submits the following statement of the economic impact of proposed regulation K.A.R. 40-4-42d:

(1) K.A.R. 40-4-42d is being proposed to amend the current regulation relating to expedited external review of an adverse decision involving an insured's emergency medical condition.

(2) The proposed amended regulation is not mandated by federal law.

(3) The proposed amended regulation will not have any adverse economic impact on other insurance companies, government agencies, regulated entities, large or small businesses, the general public, or consumers.

