

SECTION 2: REGULATION with

- STATEMENT OF PURPOSE
 - SIGNED AND PROPERLY COMPLETED
CERTIFICATION PAGE

IMPORTANT: Read instructions on back of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

State of Connecticut
REGULATION
of

NAME OF AGENCY

Insurance Department

Concerning

SUBJECT MATTER OF REGULATION

Utilization Review, Grievances and External Appeals

Regulations Concerning Utilization Review, Grievances and External Review

SECTION -1

The Regulations of Connecticut State Agencies are amended by adding section 38a-591-1 through 38a-591-11 as follows:

(NEW) Sec. 38a-591-1. Utilization review company licenses

(a) No utilization review company shall conduct utilization review in this state unless it has been licensed by the commissioner in accordance with section 38a-591j of the Connecticut General Statutes. All requests for licensure shall be made in a manner and on a form prescribed annually by the commissioner.

(b) Applications will not be considered complete and eligible for processing until all required information is provided.

(c) The application fee must be submitted in check form made payable to the Treasurer – State of Connecticut.

(d) All licenses shall be renewed no later than October 1 annually.

(e) The annual license fee will not be pro-rated if issued for a period less than a full year.

(NEW) Sec. 38a-591-2. Compensation based on certification denials – prohibited

(a) No staff member, officer or consultant of a utilization review company or a health carrier shall receive any financial incentive based on the number of denials of certifications made.

(b) No utilization review company or health carrier shall receive any financial incentive based on the number of denials of certifications made.

(NEW) Sec. 38a-591-3. Confidentiality

(a) Each utilization review company shall comply with the provisions of this section as well as all applicable federal and state laws to protect the confidentiality of patient medical records. Each utilization review company shall:

- (1) Secure each case file by assigning case identification numbers to all utilization review requests, and use such numbers in lieu of personally identifiable information, whenever feasible.
- (2) Ensure that all paper copies of files are reasonably secured in appropriate storage facilities.
- (3) Maintain appropriate written procedures for the requesting, maintenance, and disposition of patient medical records.
- (4) Develop and maintain specifications indicating when and by whom the release of patient medical records is permitted.
- (5) Ensure that all utilization review business operations are reasonably secured during non-business hours.
- (6) Require all employees with access to patient medical records to sign a confidentiality statement, to be maintained on file by the company, in which the employee acknowledges the confidential nature of such information.
- (7) Maintain a written policy stipulating sanctions for an employee's unauthorized disclosure of patient medical records, up to and including to termination of employment.
- (8) Maintain procedures for limiting access to computer files containing patient medical records through passwords, restricted functions and computer terminal security.
- (9) Develop and maintain procedures to address the security of all patient medical records that are transferred by facsimile, which shall include:
 - (i) A statement in all facsimile transmission cover sheets that such data is confidential and is limited specifically for use by the company in making a utilization review determination; and
 - (ii) Security procedures governing the use of facsimile transmissions, specifying restricted access to such transmissions, the extent of such information that may be released, and the placement of the facsimile machine in a reasonably secured or isolated area.
- (b) Summary and aggregate data shall not be considered confidential if it does not provide sufficient information to allow identification of individual patients.

(NEW) Sec. 38a-591-4. Recordkeeping

With respect to all utilization reviews, urgent care or expedited utilization reviews, appeals of adverse determinations, and expedited appeals, each utilization review company shall maintain an audit trail, through a written control log or computer report, clearly evidencing:

- (1) the date that a request or appeal was received;
- (2) the dates and reasons for any subsequent requests for additional information required to complete any such review or appeal;
- (3) the dates of the receipt of the additional information; and
- (4) the date of notification to the provider of record or the enrollee.

(NEW) Sec. 38a-591-5. Statistical reporting to the commissioner

- (a) Each health carrier shall file annually with the commissioner, on or before March 1, a summary report of its utilization review program activities in the calendar year immediately preceding and a report that includes for each type of health benefit plan offered by the health carrier the required information set forth in subsection (e)(1)(B) of section 38a-591b of the Connecticut General Statutes.
- (b) Each health carrier shall report the information indicated in a format as specified annually by the commissioner and shall maintain source records adequate to support the accuracy of the information filed.

(NEW) Sec. 38a-591-6. Examinations

(a) The commissioner shall, at his discretion, undertake a compliance examination of any utilization review company licensed and conducting business in this state. In conducting the examination, the commissioner or his designee may examine the offices of such utilization review company, its books, records, procedures and any other information deemed to be relevant to the examination.

(b) Upon completing the compliance examination, the commissioner or his designee shall issue a report of the examination. The report shall include any corrective or remedial actions deemed necessary to be taken by the utilization review company in order to assure compliance with the requirements of Connecticut law.

(NEW) Sec. 38a-591-7. Grievance Procedures

(a) Each health carrier shall file with the commissioner a copy of the written procedures, including all forms used to process requests, for (1) the review of grievances of adverse determinations that were based, in whole or in part, on medical necessity, (2) the expedited review of grievances of adverse determinations of urgent care requests, including concurrent review urgent care requests involving an admission, availability of care, continued stay or health care service for a covered person who has received emergency services but has not been discharged from a facility, and (3) notifying covered persons or covered persons' authorized representatives of such adverse determinations.

(b) Each health carrier shall file with the commissioner an initial copy of such procedures, including all forms used to process requests no later than June 2012 and any subsequent material modifications to such procedures no later than one month following implementation of the modification.

(NEW) Sec. 38a-591-8. Notice to enrollees

(a) Each health carrier required to submit notices to a covered person or the covered person's authorized representative pursuant to section 38a-591d of the Connecticut General Statutes, including adverse determinations that involve a rescission, shall include with the Notice of Adverse Determination a description of the health carrier's procedures for initiating an internal grievance of an adverse determination including the procedures for an expedited request. Such notification shall also include the procedures for filing an external review or an expedited external review.

b) Each health carrier required to submit notices to a covered person or the covered person's authorized representative pursuant to section 38a-591e of the Connecticut General Statutes shall include with the Notice of a Grievance Decision that upholds the Adverse Determination a description of the health carrier's procedures for initiating any remaining internal grievance rights including the procedures for an expedited request. If the Notice of a Grievance Decision that upholds the Adverse Determination is the final adverse determination, or if the notice is issued due to the health carrier's failure to strictly adhere to the requirements of section 38a-591e(f)(1) of the Connecticut General Statutes, the notice must also include a statement that all internal appeals have been exhausted. Such notice shall include the procedure for filing an external review or an expedited external review, as well as a copy of the external review application and consumer guide. The external review application and consumer guide containing the procedure and application to appeal to the commissioner pursuant to section 38a-591g of the Connecticut General Statutes shall be made available to the health carrier by the commissioner for use with this notification requirement. A copy of the external review application and consumer guide shall also be made available from the health carrier to the covered person or the covered person's authorized representative, upon request.

(c) For purposes of triggering any internal or external review periods, notice shall be deemed to have been given to the covered person or the covered person's authorized representative three (3) calendar days after the notice is put into the possession of the postal service.

(NEW) Sec. 38a-591-9. Rescission Notice

Group health plans, or health insurance issuers offering group or individual health insurance coverage, shall provide advance written notice, consistent with 45 C.F.R. 136, to each individual market participant, primary subscriber who would be affected before coverage may be rescinded regardless of whether the rescission applies to an entire group or only to an individual within the group. Rescissions and eligibility denials shall be considered to be adverse determinations for purposes of internal and external claim review.

(NEW) Sec. 38a-591-10. Independent review organizations

(a) The commissioner shall enter into agreements for external review services with as many independent review organizations as he deems necessary. The agreements shall set forth all terms which the commissioner deems necessary to assure a full and fair review of appeals. Selection of an independent review organization shall include, but not be limited to the criteria set forth in section 38a-5911 of the Connecticut General Statutes and be in accordance with all applicable state contracting laws.

(b) After entering into an agreement with the commissioner, the independent review organization shall report changes in its ownership, or its operational or administrative status to the commissioner not later than thirty (30) days after the effective date of such change. If the commissioner determines that the reported change(s) may negatively impact the effectiveness or objectivity of the independent review organization, the commissioner reserves the right to terminate the agreement.

(NEW) Sec. 38a-591-11. Severability

If any provision of sections 38a-591-1 to 38a-591-11, inclusive, of the regulations of Connecticut State Agencies or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the provisions of said regulations, and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 2

Section 38a-226-1 to section 38a-226-10, inclusive, of the Regulations of Connecticut State Agencies are repealed.

SECTION 3

Section 38a-478m-1 of the Regulations of Connecticut State Agencies is repealed.

SECTION 4

Section 38a-478n-1 to section 38a-478n-5, inclusive, of the Regulations of Connecticut State Agencies are repealed.

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

To promulgate regulations relating to utilization review, grievances and external appeals that conform to federal and state statutes.

A. The problems, issues or circumstances that the regulation proposes to address. The statutes for utilization review, grievances and external reviews were repealed and replaced to conform to federal health care reform requirements. The regulations promulgated under those prior statutes were repealed by implication (although we are including the repeal in this regulation making) and we are promulgating new regulations under the new authority and to support the newly enacted statute.

B. A summary of the main provisions of the regulation. The regulation provides the processes used to address utilization review, internal and external health insurance claim appeals

C. The legal effects of the regulation, including all ways that the regulation would change existing regulations or other laws. R.C.S.A. §§38a-226-1 et seq; 38a-478m-1; 38a-478n-1 et seq. are being repealed.

D. Impact on small businesses
As required by Conn. Gen. Stat. § 4-168a as amended by Public Act 09-19, the Insurance Department considered the impact of the proposed amended regulations on small business, and in doing so, determined that the preparation of a regulatory flexibility analysis, as contemplated by this statute, was not needed. The amendments reflect activities to be undertaken by insurers, managed care organizations, and utilization review companies to support an individual's external appeal. The organizations are not considered to be small businesses under the statutory definition.

CERTIFICATION

This certification statement must be completed in full, including items 3 and 4, if they are applicable.

- 1) I hereby certify that the above (check one) Regulations Emergency Regulations
- 2) are (check all that apply) adopted amended repealed by this agency pursuant to the following authority(ies): (complete all that apply)

a. Connecticut General Statutes section(s) 38a-591i.

b. Public Act Number(s) _____.
(Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)

- 3) And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the **Connecticut Law Journal** on 2/7/12;
(Insert date of notice publication if publication was required by CGS Section 4-168.)

- 4) And that a public hearing regarding the proposed regulations was held on _____;
(Insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)

- 5) And that said regulations are EFFECTIVE (check one, and complete as applicable)

When filed with the Secretary of the State

OR on (insert date) _____

DATE 3/13/12	SIGNED (Head of Board, Agency or Commission) <i>[Signature]</i>	OFFICIAL TITLE, DULY AUTHORIZED Commissioner
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APPROVED by the Attorney General as to legal sufficiency in accordance with CGS Section 4-169, as amended

DATE 3/21/12	SIGNED (Attorney General or AG's designated representative) <i>[Signature]</i> Joseph Rubin	OFFICIAL TITLE, DULY AUTHORIZED Assoc Atty Gen
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Proposed regulations are DEEMED APPROVED by the Attorney General in accordance with CGS Section 4-169, as amended, if the attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.

(For Regulation Review Committee Use ONLY)

- Approved Rejected without prejudice
- Approved with technical corrections Disapproved in part, (Indicate Section Numbers disapproved only)
- Deemed approved pursuant to CGS Section 4-170(c)

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED (Administrator, Legislative Regulation Review Committee)
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Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

DATE	SIGNED (Secretary of the State)	BY
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(For Secretary of the State Use ONLY)

GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)
2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Sections 4-168 and 4-170 as amended by Public Act 11-150, Sections 18 and 19.)
3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)
4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)
5. Existing language to be deleted must be enclosed in brackets []. (See CGS 4-170(b).)
6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)
7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)
8. The Certification Statement portion of the form must be completed, including all applicable information regarding *Connecticut Law Journal* notice publication date(s) and public hearing(s). (See more specific instructions below.)
9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: <http://www.cga.ct.gov/rr/>.
10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the statement)

1. Indicate whether the regulation is a regular or an emergency regulation adopted under the provisions of CGS Section 4-168(f).
2.
 - a) Indicate whether the regulations contains newly adopted sections, amendments to existing sections, and/or repeals existing sections. Check all cases that apply.
 - b) Indicate the specific legal authority that authorizes or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.
3. Except for emergency regulations adopted under CGS 4-168(f), and technical amendments to an existing regulation adopted under CGS 4-168(g), an agency must publish notice of its intent to adopt a regulation in the *Connecticut Law Journal*. Enter the date of notice publication.
4. CGS Section 4-168(a)(7) prescribes requirements for the holding of an agency public hearing regarding proposed regulations. Enter the date(s) of the hearing(s) held under that section, if any; also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law.
5. As applicable, enter the effective date of the regulation here, or indicate that it is effective upon filing with the Secretary of the State. Please note the information below.

Regulations are effective upon filing with the Secretary of the State or at a later specified date. See CGS Section 4-172(b) which provides that each regulation is effective upon filing, or, if a later date is required by statute or specified in the regulation, the later date is the effective date. An effective date may not precede the effective date of the public act requiring or permitting the regulation. Emergency regulations are effective immediately upon filing with the Secretary of the State, or at a stated date less than twenty days thereafter.