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CONSUMER PROTECTION SERVICES

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**TWENTY-SECOND LEGISLATIVE REPORT  
INDEPENDENT HEALTH CARE APPEALS PROGRAM  
DEPARTMENT OF BANKING AND INSURANCE**

This is the twenty-second report to the Legislature on the managed care coverage denial appeal process. This report covers the period from January 16, 2009 through July 15, 2009.

The Health Care Quality Act, enacted on August 7, 1997, and amended on January 16, 2001, gives New Jersey residents many important consumer rights. Among the most significant is the right to appeal to an independent organization for a binding determination when a carrier denies, limits or terminates a covered service on the grounds that it is not medically necessary. The right of appeal is offered through the Independent Health Care Appeals Program (IHCAP) and is now administered by the New Jersey Department of Banking and Insurance (Department) since the transfer of the Office of Managed Care (OMC) from the New Jersey Department of Health and Senior Services to the Department. The transfer complies with an order signed on June 30, 2005 by former Acting Governor Richard J. Codey. The order went into effect August 29, 2005. The transfer was completed by October 31, 2005.

Three hundred and twenty-six (326) requests for an external appeal were filed with the Department's Office of Managed Care during the time period of this report. Of the 326 requests filed, 205 met the requirements for processing and were forwarded to an independent utilization review organization (IURO) for preliminary review, where all 205 appeals were accepted by the IUROs for full review. Reasons for rejection and subsequent return of the appeal to the appellant included, in order of prevalence: non-eligibility of the member due to federal law preemption under ERISA; failure to exhaust the carrier's internal appeal process; not a utilization management (UM) issue; appeal request not received within 60 days of the Stage 2 denial; out of state coverage; issue already resolved; failure to provide signed consent to appeal; and not a covered benefit.

Of the 205 appeals accepted by the IUROs for full review, 172 appeals have been completed and 33 are pending. Of the 172 appeals completed, the independent panel supported the carrier's decision 109 times (63%) and disagreed with the carrier's decision 63 times (37%). In the previous 6-month period, July 16, 2009 through January 15, 2009, the review panel agreed with the carrier in 61% of the cases. However, it should be noted that the overall numbers remain small, and that caution should be used in observing changes from one reporting period to the next. The most frequent categories of appeals in descending order of occurrence are: denial of inpatient hospital days; denial of chiropractic care; denial of prescription drugs; denial of behavioral health services (inpatient and outpatient); denial of outpatient rehabilitation

therapy; denial of dental services; denial of surgical services; denial of outpatient medical treatment; denial of substance abuse services (inpatient and outpatient); denial of coverage for emergency services; denial of durable medical equipment; denial based on the carrier's determination that a requested service was experimental/investigational; denial of home health services; denial of requests for referrals to out of network specialists; and denial of skilled nursing care. The first category involving hospital inpatients accounted for substantially more denials than any other category.

The medical specialties affected by the 172 appeals completed during the period covered by this report are listed in descending order of occurrence in the table below:

Medical Specialty	Total Cases
Internal Medicine	40
Psychiatry	21
Endocrinology	15
Gastroenterology	11
Pediatrics	10
Rehabilitation	9
Chiropractic	8
Cardiology	6
General Surgery	6
Orthopedics	5
Urology	5
Dental	4
Oncology	4
Plastic Surgery	3
Pulmonary	3
OB/GYN	3
Orthodontics	3
Family Practice	3
Otolaryngology	2
Oral/Maxillofacial	2
Radiology	2
Infectious Disease	2
Anesthesiology	1
Neonatology	1
Nephrology	1
Neurology	1
Pain Management	1

Two tables are attached demonstrating the number of appeals filed for each carrier. Table 1 indicates the number of appeals and outcomes from March 1997, when the HMO regulations went into effect, through July 15, 2009.

Table 2 represents the number of appeals and outcomes during the period of this report, January 16, 2009 through July 15, 2009. Carriers with no appeals have been omitted. The first column indicates the market share for each carrier. The second column provides the total number of appeals accepted for full review by the independent panel. Appeals categorized as completed are those for which the panel has communicated its determination to the carrier. Appeals that are still in the process of being reviewed by the panel are considered pending. The third column shows the independent panel's determination. If the panel determines that the carrier's determination of medical necessity was appropriate, the panel upholds the carrier's decision. However, if the panel determines that the consumer is being denied medically appropriate care, the panel disagrees with the carrier's decision and decides in favor of the consumer. If all or part of the panel's decision is in favor of the consumer, the carrier shall promptly provide coverage for the healthcare services found by the panel to be medically necessary covered services. During the period covered by this report, all carriers exhibited compliance with determinations rendered by an IURO; therefore, no penalties or sanctions were imposed.

This report indicates a slight decrease in the number of appeals filed by consumers over the previous 6-month period (330 compared to 326). Nevertheless, the number of requests that ultimately went forward to a full review increased (205 compared to 189). The total number of appeals filed, however, continues to remain small considering the large number of residents (over 2.9 million) enrolled in HMOs and other managed care plans in New Jersey, as reflected in the calendar year table below:

	External Appeal Requests Filed with OMC that Met Processing Requirements	External Appeals Accepted By IUROs for Full Reviews
CY 1997	27	25
CY 1998	122	104
CY 1999	174	144
CY 2000	174	133
CY 2001	303	273
CY 2002	260	233
CY 2003	342	318
CY 2004	337	314
CY 2005	358	343
CY 2006	354	340
CY 2007	306	299
CY 2008	359	355

## **How the Appeal System Works**

It is important to remember that consumers are required to exhaust their carrier's internal appeal process before submitting an appeal for consideration by an independent panel. Under New Jersey law, all carriers must have an internal appeal process that meets standards set by the Department. This requirement was established to provide an incentive for carriers to resolve most disputes internally, with only unresolved issues rising to the level of the external appeal process.

During the period covered by this report, all external appeal case reviews were conducted by panels convened by the Island Peer Review Organization (IPRO) and Permedion, Inc. These panels, consisting of medical professionals, including specialty physicians appropriate to the area under review, examine cases on the basis of medical records and other documents, generally accepted practice guidelines and applicable clinical protocols. The cost of the review is paid by the carrier and ranged from approximately \$750 to \$916 for this reporting period. Consumers pay a \$25 filing fee for an external appeal, which can be reduced to \$2 in cases of financial hardship. During the period of this report, there were only eight cases of financial hardship.

Consumers are given up to 60 days from the date of a carrier's denial of a coverage request to file an external appeal. Under routine circumstances, a decision must be rendered by the external appeals panel within 30 business days after receiving all documents necessary to complete the review, but the panel can act within a matter of hours, if necessary.

## **Consumer Education**

By New Jersey law, consumers who are denied coverage based on lack of medical necessity for an otherwise covered medical procedure or service must be given an appeal form that includes instructions on how to file an appeal. On the few occasions when the Department has learned that a carrier has failed to notify its member of the right to appeal, the Department has taken prompt corrective action.

Consumers are also informed about their rights, including the right to appeal, in an HMO Report Card. The twelfth HMO Report Card was made available to the public in the fall of 2008. Consumers can also access information regarding the external appeal process through the Department's website, [www.njdobi.org](http://www.njdobi.org).

In addition to the appeals system, the OMC operates a hotline (1-888-393-1062) for consumers to register complaints about their carriers. During the period of this report, January 16, 2009 through July 15, 2009, the OMC handled 2,102 telephone inquiries and complaints and 1,591 written complaints. These complaints involve issues such as access to care, quality of care, and denial of coverage issues.

**Table 1**

**New Jersey Department of Banking and Insurance  
Independent Health Care Appeals Program  
March 15, 1997 – July 15, 2009**

Carrier	Market Share*	Total Appeals		Panel Determination	
		Pending	Completed	Disagree With Plan	Agree With Plan
Aetna Health	16.3%	3	535	231	304
AmeriChoice**		0	57	21	36
Amerigroup	3.5%	1	73	45	28
AmeriHealth	4.2%	1	180	78	102
Atlanticare***		0	2	0	2
Cigna	2.8%	1	197	104	93
First Option***		0	28	9	19
Guardian		0	11	6	5
Health Net	4.0%	3	426	167	259
HIP***		0	4	3	1
Horizon	49.1%	20	1001	391	610
MetLife Dental		0	2	1	1
Nippon Life Insurance		0	1	0	1
NYL Care***		0	27	12	15
Great West***		0	1	0	1
Oxford**		3	464	178	286
Prudential***		0	40	16	24
Trustmark		0	1	0	1
United**		0	30	8	22
University	1.8%	1	20	12	8
WellChoice		0	14	8	6
Total		33	3,114	1,290	1,824

\* Source: Department of Banking and Insurance (Commercial and Department of Human Services Program enrollees as of March 31, 2009)

\*\* AmeriChoice, Oxford and United are all owned by UnitedHealth Group. The combined market share is 16.9%.

\*\*\* Inactive HMOs

**Table 2**

**New Jersey Department of Banking and Insurance  
Independent Health Care Appeals Program  
January 16, 2009 – July 15, 2009**

		Total Appeals		Panel Determination	
Carrier	Market Share*	Pending	Completed	Disagree With Plan	Agree With Plan
Aetna Health	16.3%	3	21	7	14
AmeriChoice**		0	1	0	1
Amerigroup	3.5%	1	3	1	2
AmeriHealth	4.2%	1	6	2	4
Cigna	2.8%	1	3	1	2
Health Net	4.0%	3	29	11	18
Horizon	49.1%	20	86	31	55
Oxford**		3	21	9	12
University	1.8%	1	1	0	1
United**		0	1	0	1
Total		33	172	62	110

\* Source: Department of Banking and Insurance (Commercial and Department of Human Services Program enrollees as of March 31, 2009)

\*\* AmeriChoice, Oxford and United are all owned by UnitedHealth Group. The combined Market share is 16.9%.