

II: Medical necessity decisions and appeals of medical necessity denials

I. Key issues to consider regarding a health insurer's initial adverse medical necessity decisions and your appeal rights:

- What criteria does the health insurer use to determine medical necessity? To what extent are those criteria based on cost?
- Do the medical necessity criteria comply with any definitions of "medical necessity" adopted by your state? *Some states define "medical necessity" for health insurers. For more information, see the laws organized under the category "medical necessity-definition" in the Managed Care Contract Legal Database (Database).*
- Has the health insurer adequately described how it makes medical necessity decisions? For example:
 - How quickly must the health insurer decide whether a proposed health care item or service is medically necessary?
 - If the insurer initially decides that a service is not medically necessary, how do you appeal that decision?
 - How quickly must the insurer decide the appeal?
 - Under what circumstances can you speed up the review and/or the appeal process?
- Does the insurer's medical necessity review and appeals processes comply with your state's laws and federal laws?

II. State and federal regulations and AMA model legislation.

Most states have passed laws regulating health insurers' medical necessity review and appeal processes. Any insurance plan in your state will have to comply with these laws. Also, an insurer's review and appeals processes will need to comply with extensive requirements under a claims procedure regulation that the U.S. Department of Labor has adopted under the Employee Retirement Income Security Act (ERISA). (The few states that have not enacted their own laws have simply chosen to incorporate the ERISA claims procedure regulation). Medicare Advantage insurers also must adhere to specific medical necessity review and appeal requirements. In some cases, a failure to comply with state legal or federal requirements can result in an item or service being covered automatically or subject to automatic appeal.

Consult these laws in the Database to see if the health insurer is following the law. You can find relevant state laws under the following categories:

- State Medical Necessity Decisions-Deadlines
- State Medical Necessity Appeals-Deadlines
- Medical Necessity-Definition
- U.R. Criteria



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You can find the ERISA claims procedure regulation in the Database under the categories “ERISA-Med. Nec. Decisions-deadlines” and “ERISA-Med. Nec. Appeals appeals-Deadlines.” You can see the Medicare Advantage requirements under “Med. Adv.-Med. Nec. Decisions-Deadlines,” and “Med. Adv.-Med. Nec. Appeals-Deadlines.”

The AMA Advocacy Resource Center has also developed model legislation entitled “Ensuring Transparency in Prior Authorization Act.” Many states have recently enacted laws based on this model legislation. You can find this model bill in the Database under the general category “ARC Advocacy Resources,” under the categories “State Medical Necessity Decisions-Deadlines,” and “State Medical Necessity Appeals-Deadlines.”