

Sixty-second  
Legislative Assembly  
of North Dakota

ENGROSSED HOUSE BILL NO. 1127

Introduced by

Representative Keiser

(At the request of the Insurance Commissioner)

1 A BILL ~~for an Act to create and enact two new sections to chapter 26.1-36 of the North Dakota~~  
2 ~~Century Code, relating to health carrier external appeals and internal claims and appeals~~  
3 ~~procedures; to amend and reenact sections 26.1-03-01, 26.1-26.4-01, and 26.1-36-44 of the~~  
4 ~~North Dakota Century Code, relating to limitation on health insurance company risks, utilization~~  
5 ~~review, and independent external reviews; to provide for application; and to declare an~~  
6 ~~emergency~~for an Act to create and enact chapters 26.1-36.6, 26.1-36.7, and 26.1-36.8 of the  
7 North Dakota Century Code, relating to health carrier external review, utilization review, and  
8 grievance procedures; to amend and reenact sections 26.1-03-01, 26.1-26.4-01, and  
9 26.1-36-44 of the North Dakota Century Code, relating to limitation on health insurance  
10 company risks, utilization review, and independent external reviews; and to provide a penalty.

11 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

12 ~~— SECTION 1. AMENDMENT. Section 26.1-03-01 of the North Dakota Century Code is~~  
13 ~~amended and reenacted as follows:~~  
14 ~~— 26.1-03-01. Limitation on risks acceptable by company.~~  
15 ~~— An insurance company transacting an insurance business in this state may not expose itself~~  
16 ~~to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and~~  
17 ~~surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess~~  
18 ~~is reinsured. An insurance company offering group or individual insurance that is subject to the~~  
19 ~~lifetime or annual benefit limit restrictions of the Patient Protection and Affordable Care~~  
20 ~~Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010~~  
21 ~~[Pub. L. 111-152], is not subject to this section.~~  
22 ~~— SECTION 2. AMENDMENT. Section 26.1-26.4-01 of the North Dakota Century Code is~~  
23 ~~amended and reenacted as follows:~~

1 ~~— **26.1-26.4-01. Purpose and scope.**~~

2 ~~— This chapter applies to grandfathered health plans unless a health care insurer or utilization-~~  
3 ~~review agent determines to extend the protections of section 5 of this Act to a grandfathered-~~  
4 ~~plan. "Grandfathered health plan" has the meaning stated in the Patient Protection and~~  
5 ~~Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education~~  
6 ~~Reconciliation Act of 2010 [Pub. L. 111-152]. The purpose of this chapter is to:~~

7 ~~— 1. Promote the delivery of quality health care in a cost-effective manner;~~

8 ~~— 2. Assure that utilization review agents adhere to reasonable standards for conducting~~  
9 ~~utilization review;~~

10 ~~— 3. Foster greater coordination and cooperation between health care providers and~~  
11 ~~utilization review agents;~~

12 ~~— 4. Improve communications and knowledge of benefits among all parties concerned~~  
13 ~~before expenses are incurred; and~~

14 ~~— 5. Ensure that utilization review agents maintain the confidentiality of medical records in~~  
15 ~~accordance with applicable laws.~~

16 ~~— **SECTION 3. AMENDMENT.** Section 26.1-36-44 of the North Dakota Century Code is~~  
17 ~~amended and reenacted as follows:~~

18 ~~— **26.1-36-44. Independent external review.**~~

19 ~~— This section applies to grandfathered health plans. "Grandfathered health plan" has the~~  
20 ~~meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended~~  
21 ~~by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. Every insurance-~~  
22 ~~company, nonprofit health service corporation, and health maintenance organization that offers~~  
23 ~~an accident and health line of insurance shall establish and implement an independent external~~  
24 ~~review mechanism to review and determine whether medical care rendered under the line of~~  
25 ~~insurance was medically necessary and appropriate to the claim as submitted by the provider.~~  
26 ~~For purposes of this section, "independent external review" means a review conducted by the~~  
27 ~~North Dakota health care review, inc., another peer review organization meeting the~~  
28 ~~requirements of section 1152 of the Social Security Act, or any person designated by the~~  
29 ~~commissioner to conduct an independent external review. A determination made by the~~  
30 ~~independent external reviewer is binding on the parties. Costs associated with the independent~~  
31 ~~external review are the responsibility of the nonprevailing party. A provider may not use an~~

1 independent external review under this section unless the provider first has exhausted all  
2 internal appeal processes offered by the insurance company, nonprofit health service  
3 corporation, or health maintenance organization. The insurance commissioner shall take steps  
4 necessary to ensure compliance with this section. If federal laws or rules relating to  
5 independent external review are amended, repealed, or otherwise changed, the insurance  
6 commissioner shall adopt rules to ensure the independent external review procedure is in  
7 compliance with and substantively equivalent to the federal requirements.

8 — **SECTION 4.** A new section to chapter 26.1-36 of the North Dakota Century Code is created  
9 and enacted as follows:

10 — **External appeals procedures.**

11 — An insurance company, nonprofit health services corporation, or health maintenance  
12 organization may not deliver, issue, execute, or renew any health insurance policy, health  
13 service contract, or evidence of coverage on an individual, group, blanket, franchise, or  
14 association basis unless the policy, contract, or evidence of coverage meets the minimum  
15 requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1;  
16 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and  
17 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to  
18 ensure compliance with this section. If federal laws or rules relating to external appeals are  
19 amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to  
20 ensure the external appeals procedure is in compliance with and substantively equivalent to the  
21 federal requirements.

22 — **SECTION 5.** A new section to chapter 26.1-36 of the North Dakota Century Code is created  
23 and enacted as follows:

24 — **Internal claims and appeals procedures.**

25 — An insurance company, nonprofit health services corporation, or health maintenance  
26 organization may not deliver, issue, execute, or renew any health insurance policy, health  
27 service contract, or evidence of coverage on an individual, group, blanket, franchise, or  
28 association basis unless the policy, contract, or evidence of coverage meets the minimum  
29 requirements of 42 U.S.C. 300gg-19 and complies with 29 U.S.C. 1133, 29 CFR 2560.503-1;  
30 42 U.S.C. 300gg-19, 26 CFR 54.9815-2719T; 29 U.S.C. 1185d, 29 CFR 2590.715-2719; and  
31 26 U.S.C. 9815, 45 CFR 147.136. The insurance commissioner may take steps necessary to

~~ensure compliance with this section. If federal laws or rules relating to internal claims and appeals are amended, repealed, or otherwise changed, the insurance commissioner shall adopt rules to ensure the internal claims and appeals procedure is in compliance with and substantively equivalent to the federal requirements.~~

~~— **SECTION 6. APPLICATION.** In carrying out the requirements of this Act, the insurance commissioner shall provide regular updates to the legislative management during the 2011-12 interim. The commissioner shall submit proposed legislation to the legislative management for consideration at a special legislative session if the commissioner is required by federal law to implement any program or requirement before January 1, 2013. For any program or requirement that must be implemented between January 1, 2013, and January 1, 2014, the commissioner shall submit proposed legislation to the legislative management before October 15, 2012.~~

~~— **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.~~

**SECTION 1. AMENDMENT.** Section 26.1-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-03-01. Limitation on risks acceptable by company.**

An insurance company transacting an insurance business in this state may not expose itself to loss on any one risk or hazard to an amount exceeding ten percent of its paid-up capital and surplus if a stock company, or ten percent of its surplus if a mutual company, unless the excess is reinsured. An insurance company offering group or individual insurance that is subject to the lifetime or annual benefit limit restrictions of the Patient Protection and Affordable Care Act [Pub. L. 111-148] as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152] is not subject to this section.

**SECTION 2. AMENDMENT.** Section 26.1-26.4-01 of the North Dakota Century Code is amended and reenacted as follows:

**26.1-26.4-01. Purpose and scope.**

This chapter applies to grandfathered health plans. "Grandfathered health plan" has the meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. The purpose of this chapter is to:

1. Promote the delivery of quality health care in a cost-effective manner;

- 1       2.   Assure that utilization review agents adhere to reasonable standards for conducting
- 2           utilization review;
- 3       3.   Foster greater coordination and cooperation between health care providers and
- 4           utilization review agents;
- 5       4.   Improve communications and knowledge of benefits among all parties concerned
- 6           before expenses are incurred; and
- 7       5.   Ensure that utilization review agents maintain the confidentiality of medical records in
- 8           accordance with applicable laws.

9       **SECTION 3. AMENDMENT.** Section 26.1-36-44 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11       **26.1-36-44. Independent external review.**

12       This section applies to grandfathered health plans. "Grandfathered health plan" has the  
13 meaning stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended  
14 by the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152]. Every insurance  
15 company, nonprofit health service corporation, and health maintenance organization that offers  
16 an accident and health line of insurance shall establish and implement an independent external  
17 review mechanism to review and determine whether medical care rendered under the line of  
18 insurance was medically necessary and appropriate to the claim as submitted by the provider.  
19 For purposes of this section, "independent external review" means a review conducted by the  
20 North Dakota health care review, inc., another peer review organization meeting the  
21 requirements of section 1152 of the Social Security Act, or any person designated by the  
22 commissioner to conduct an independent external review. A determination made by the  
23 independent external reviewer is binding on the parties. Costs associated with the independent  
24 external review are the responsibility of the nonprevailing party. A provider may not use an  
25 independent external review under this section unless the provider first has exhausted all  
26 internal appeal processes offered by the insurance company, nonprofit health service  
27 corporation, or health maintenance organization.

28       **SECTION 4.** Chapter 26.1-36.6 of the North Dakota Century Code is created and enacted  
29 as follows:

30       **26.1-36.6-01. Definitions.**

31       For purposes of this chapter:

- 1       1. "Adverse determination" means:
  - 2           a. A determination by a health carrier or its designee utilization review organization  
3           that, based upon the information provided, a request for a benefit under the  
4           health carrier's health benefit plan upon application of any utilization review  
5           technique does not meet the health carrier's requirements for medical necessity,  
6           appropriateness, health care setting, level of care or effectiveness or is  
7           determined to be experimental or investigational and the requested benefit is  
8           therefore denied, reduced, or terminated or payment is not provided or made, in  
9           whole or in part, for the benefit;
  - 10          b. The denial, reduction, termination, or failure to provide or make payment, in  
11          whole or in part, for a benefit based on a determination by a health carrier or its  
12          designee utilization review organization of a covered person's eligibility to  
13          participate in the health carrier's health benefit plan;
  - 14          c. Any prospective review or retrospective review determination that denies,  
15          reduces, or terminates or fails to provide or make payment, in whole or in part, for  
16          a benefit; or
  - 17          d. A rescission of coverage determination.
- 18       2. "Ambulatory review" means utilization review of health care services performed or  
19       provided in an outpatient setting.
- 20       3. "Authorized representative" means:
  - 21           a. A person to whom a covered person has given express written consent to  
22           represent the covered person in an external review;
  - 23           b. A person authorized by law to provide substituted consent for a covered person;  
24           or
  - 25           c. A family member of the covered person or the covered person's treating health  
26           care professional only when the covered person is unable to provide consent.
- 27       4. "Best evidence" means evidence based on:
  - 28           a. Randomized clinical trials;
  - 29           b. If randomized clinical trials are not available, cohort studies or case-control  
30           studies;
  - 31           c. If subdivisions a and b are not available, case-series; or

- 1           d. If subdivisions a, b, and c are not available, expert opinion.
- 2           5. "Case-control study" means a retrospective evaluation of two groups of patients with  
3           different outcomes to determine which specific interventions the patients received.
- 4           6. "Case management" means a coordinated set of activities conducted for individual  
5           patient management of serious, complicated, protracted, or other health conditions.
- 6           7. "Case-series" means an evaluation of a series of patients with a particular outcome  
7           without the use of a control group.
- 8           8. "Certification" means a determination by a health carrier or its designee utilization  
9           review organization that an admission, availability of care, continued stay, or other  
10          health care service has been reviewed and based on the information provided satisfies  
11          the health carrier's requirements for medical necessity, appropriateness, health care  
12          setting, level of care, and effectiveness.
- 13          9. "Clinical review criteria" means the written screening procedures, decision abstracts,  
14          clinical protocols, and practice guidelines used by a health carrier to determine the  
15          necessity and appropriateness of health care services.
- 16          10. "Cohort study" means a prospective evaluation of two groups of patients with only one  
17          group of patients receiving specific interventions.
- 18          11. "Commissioner" means the insurance commissioner.
- 19          12. "Concurrent review" means utilization review conducted during a patient's hospital  
20          stay or course of treatment.
- 21          13. "Covered benefits" or "benefits" means those health care services to which a covered  
22          person is entitled under the terms of a health benefit plan.
- 23          14. "Covered person" means a policyholder, subscriber, enrollee, or other individual  
24          participating in a health benefit plan.
- 25          15. "Discharge planning" means the formal process for determining prior to discharge from  
26          a facility the coordination and management of the care that a patient receives following  
27          discharge from a facility.
- 28          16. "Disclose" means to release, transfer, or otherwise divulge protected health  
29          information to any person other than the individual who is the subject of the protected  
30          health information.

- 1        17. "Emergency medical condition" means the sudden and, at the time, unexpected onset  
2        of a health condition or illness that requires immediate medical attention if failure to  
3        provide medical attention would result in a serious impairment to bodily functions,  
4        serious dysfunction of a bodily organ or part, or would place the person's health in  
5        serious jeopardy.
- 6        18. "Emergency services" means health care items and services furnished or required to  
7        evaluate and treat an emergency medical condition.
- 8        19. "Evidence-based standard" means the conscientious, explicit, and judicious use of the  
9        current best evidence based on the overall systematic review of the research in  
10       making decisions about the care of individual patients.
- 11       20. "Expert opinion" means a belief or an interpretation by specialists with experience in a  
12       specific area about the scientific evidence pertaining to a particular service,  
13       intervention, or therapy.
- 14       21. "Facility" means an institution providing health care services or a health care setting,  
15       including hospitals and other licensed inpatient centers, ambulatory surgical or  
16       treatment centers, skilled nursing centers, residential treatment centers, diagnostic,  
17       laboratory and imaging centers, and rehabilitation and other therapeutic health  
18       settings.
- 19       22. "Final adverse determination" means an adverse determination involving a covered  
20       benefit that has been upheld by a health carrier or its designee utilization review  
21       organization at the completion of the health carrier's internal grievance process  
22       procedures as set forth in chapter 26.1-36.8.
- 23       23. "Health benefit plan" means a policy, contract, certificate, or agreement offered or  
24       issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of  
25       the costs of health care services.
- 26       24. "Health care professional" means a physician or other health care practitioner  
27       licensed, accredited, or certified to perform specified health care services consistent  
28       with state law.
- 29       25. "Health care provider" or "provider" means a health care professional or a facility.  
30       26. "Health care services" means services for the diagnosis, prevention, treatment, cure,  
31       or relief of a health condition, illness, injury, or disease.

- 1        27. "Health carrier" means an entity subject to the insurance laws and regulations of this  
2        state or subject to the jurisdiction of the commissioner that contracts or offers to  
3        contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health  
4        care services, including a sickness and accident insurance company, a health  
5        maintenance organization, a nonprofit hospital and health service corporation, or any  
6        other entity providing a plan of health insurance, health benefits, or health care  
7        services.
- 8        28. "Health information" means information or data whether oral or recorded in any form or  
9        medium and personal facts or information about events or relationships that relates to:  
10       a. The past, present, or future physical, mental, or behavioral health or condition of  
11       an individual or a member of the individual's family;  
12       b. The provision of health care services to an individual; or  
13       c. Payment for the provision of health care services to an individual.
- 14       29. "Independent review organization" means an entity that conducts independent  
15       external reviews of adverse determinations and final adverse determinations.
- 16       30. "Medical or scientific evidence" means evidence found in the following sources:  
17       a. Peer-reviewed scientific studies published in or accepted for publication by  
18       medical journals that meet nationally recognized requirements for scientific  
19       manuscripts and that submit most of their published articles for review by experts  
20       who are not part of the editorial staff;  
21       b. Peer-reviewed medical literature, including literature relating to therapies  
22       reviewed and approved by a qualified institutional review board, biomedical  
23       compendia, and other medical literature that meet the criteria of the national  
24       institutes of health's library of medicine for indexing in index medicus (MEDLINE)  
25       and elsevier science ltd. for indexing in excerpta medicus (EMBASE);  
26       c. Medical journals recognized by the secretary of health and human services under  
27       section 1861(t)(2) of the Social Security Act;  
28       d. The following standard reference compendia:  
29       (1) The American hospital formulary service-drug information;  
30       (2) Drug facts and comparisons;  
31       (3) The American dental association accepted dental therapeutics; and

1           (4) The United States pharmacopoeia-drug information;

2           e. Findings, studies, or research conducted by or under the auspices of federal  
3           government agencies and nationally recognized federal research institutes,  
4           including:

5           (1) The federal agency for health care research and quality;

6           (2) The national institutes of health;

7           (3) The national cancer institute;

8           (4) The national academy of sciences;

9           (5) The centers for medicare and medicaid services;

10          (6) The federal food and drug administration; and

11          (7) Any national board recognized by the national institutes of health for the  
12          purpose of evaluating the medical value of health care services; or

13          f. Any other medical or scientific evidence that is comparable to the sources listed  
14          in subdivisions a through e.

15    31. "Person" means an individual, a corporation, a partnership, an association, a joint  
16    venture, a joint stock company, a trust, an unincorporated organization, any similar  
17    entity, or any combination of the foregoing.

18    32. "Prospective review" means utilization review conducted prior to an admission or a  
19    course of treatment.

20    33. "Protected health information" means health information:

21          a. That identifies an individual who is the subject of the information; or

22          b. With respect to which there is a reasonable basis to believe that the information  
23          could be used to identify an individual.

24    34. "Randomized clinical trial" means a controlled, prospective study of patients that have  
25    been randomized into an experimental group and a control group at the beginning of  
26    the study with only the experimental group of patients receiving a specific intervention  
27    which includes study of the groups for variables and anticipated outcomes over time.

28    35. "Retrospective review" means a review of medical necessity conducted after services  
29    have been provided to a patient but does not include the review of a claim that is  
30    limited to an evaluation of reimbursement levels, veracity of documentation, accuracy  
31    of coding, or adjudication for payment.

1        36. "Second opinion" means an opportunity or requirement to obtain a clinical evaluation  
2        by a provider other than the one originally making a recommendation for a proposed  
3        health care service to assess the clinical necessity and appropriateness of the initial  
4        proposed health care service.

5        37. "Utilization review" means a set of formal techniques designed to monitor the use of,  
6        or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health  
7        care services, procedures, or settings. Techniques may include ambulatory review,  
8        prospective review, second opinion, certification, concurrent review, case  
9        management, discharge planning, or retrospective review.

10       38. "Utilization review organization" means an entity that conducts utilization review other  
11       than a health carrier performing a review for its own health benefit plans.

12       **26.1-36.6-02. Applicability and scope.**

13       1. Except as provided in subsection 2, this chapter applies to all nongrandfathered health  
14       benefit plans. "Nongrandfathered health benefit plan" means a health benefit plan that  
15       is not exempt from the requirements of the Patient Protection and Affordable Care Act  
16       [Pub. L. 111-148] and the Health Care and Education Reconciliation Act of 2010  
17       [Pub. L. 111-152] because it failed to achieve or lost grandfathered health plan status.  
18       "Grandfathered health plan" has the meaning stated in the Patient Protection and  
19       Affordable Care Act [Pub. L. 111-148], as amended by the Health Care and Education  
20       Reconciliation Act of 2010 [Pub. L. 111-152].

21       2. The provisions of this chapter do not apply to a policy or certificate that provides  
22       coverage only for a specified disease, specified accident or accident-only coverage,  
23       credit, dental, disability income, hospital indemnity, long-term care insurance, vision  
24       care or any other limited supplemental benefit, a medicare supplement policy of  
25       insurance, coverage under a plan through medicare, medicaid, or the federal  
26       employees health benefits program, any coverage issued under chapter 55 of title 10,  
27       United States Code, and any coverage issued as supplement to that coverage, any  
28       coverage issued as supplemental to liability insurance, workers' compensation or  
29       similar insurance, automobile medical-payment insurance, or any insurance under  
30       which benefits are payable with or without regard to fault, whether written on a group  
31       blanket or individual basis.

**26.1-36.6-03. Notice of right to external review.**

1. a. A health carrier shall notify a covered person in writing of the covered person's right to request an external review to be conducted pursuant to section 26.1-36.6-06, 26.1-36.6-07, or 26.1-36.6-08 and include the appropriate statements and information set forth in subdivision b at the same time the health carrier sends written notice of:
  - (1) An adverse determination upon completion of the health carrier's utilization review process set forth in chapter 26.1-36.7; and
  - (2) A final adverse determination.
- b. As part of the written notice required under subdivision a, a health carrier shall include the following or substantially equivalent language: "We have denied your request for the provision of or payment for a health care service or course of treatment. You may have the right to have our decision reviewed by health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care, or effectiveness of the health care service or treatment you requested by submitting a request for external review to the North Dakota Insurance Commissioner, 600 East Boulevard Avenue, State Capitol, Bismarck, ND 58505."
- c. The commissioner may prescribe the form and content of the notice required under this section.
2. a. The health carrier shall include in the notice required under subsection 1:
  - (1) For a notice related to an adverse determination, a statement informing the covered person that:
    - (a) If the covered person has a medical condition and the timeframe for completion of an expedited review of a grievance involving an adverse determination set forth in section 26.1-36.8-08 would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function, the covered person or the covered person's authorized representative may file a request for an expedited external review to be conducted pursuant to section 26.1-36.6-07 or 26.1-36.6-08 if the adverse determination

1 involves a denial of coverage based on a determination that the  
2 recommended or requested health care service or treatment is  
3 experimental or investigational and the covered person's treating  
4 physician certifies in writing that the recommended or requested  
5 health care service or treatment that is the subject of the adverse  
6 determination would be significantly less effective if not promptly  
7 initiated, at the same time the covered person or the covered person's  
8 authorized representative files a request for an expedited review of a  
9 grievance involving an adverse determination as set forth in section  
10 26.1-36.8-08, but that the independent review organization assigned  
11 to conduct the expedited external review will determine whether the  
12 covered person shall be required to complete the expedited review of  
13 the grievance prior to conducting the expedited external review; and

14 (b) The covered person or the covered person's authorized  
15 representative may file a grievance under the health carrier's internal  
16 grievance process as set forth in section 26.1-36.8-05, but if the  
17 health carrier has not issued a written decision to the covered person  
18 or the covered person's authorized representative within thirty days  
19 following the date the covered person or the covered person's  
20 authorized representative files the grievance with the health carrier  
21 and the covered person or the covered person's authorized  
22 representative has not requested or agreed to a delay, the covered  
23 person or the covered person's authorized representative may file a  
24 request for external review pursuant to section 26.1-36.6-04 and shall  
25 be considered to have exhausted the health carrier's internal  
26 grievance process for purposes of section 26.1-36.6-05; and

27 (2) For a notice related to a final adverse determination, a statement informing  
28 the covered person that:

29 (a) If the covered person has a medical condition and the timeframe for  
30 completion of a standard external review pursuant to section  
31 26.1-36.6-06 would seriously jeopardize the life or health of the

1 covered person or would jeopardize the covered person's ability to  
2 regain maximum function, the covered person or the covered person's  
3 authorized representative may file a request for an expedited external  
4 review pursuant to section 26.1-36.6-07; or

5 (b) If the final adverse determination concerns:

6 [1] An admission, availability of care, continued stay or health care  
7 service for which the covered person received emergency  
8 services, but has not been discharged from a facility, the covered  
9 person or the covered person's authorized representative may  
10 request an expedited external review pursuant to section  
11 26.1-36.6-07; or

12 [2] A denial of coverage based on a determination that the  
13 recommended or requested health care service or treatment is  
14 experimental or investigational, the covered person or the  
15 covered person's authorized representative may file a request for  
16 a standard external review to be conducted pursuant to section  
17 26.1-36.6-06 or if the covered person's treating physician  
18 certifies in writing that the recommended or requested health  
19 care service or treatment that is the subject of the request would  
20 be significantly less effective if not promptly initiated, the covered  
21 person or the covered person's authorized representative may  
22 request an expedited external review to be conducted under  
23 section 26.1-36.6-07.

24 b. In addition to the information to be provided pursuant to subdivision a, the health  
25 carrier shall include a copy of the description of both the standard and expedited  
26 external review procedures the health carrier is required to provide pursuant to  
27 section 26.1-36.6-15, highlighting the provisions in the external review  
28 procedures that give the covered person or the covered person's authorized  
29 representative the opportunity to submit additional information and including any  
30 forms used to process an external review.

1           c. As part of any forms provided under subdivision b, the health carrier shall include  
2           an authorization form, or other document approved by the commissioner that  
3           complies with the requirements of 45 CFR 164.508, by which the covered  
4           person, for purposes of conducting an external review under this chapter,  
5           authorizes the health carrier and the covered person's treating health care  
6           provider to disclose protected health information, including medical records,  
7           concerning the covered person that are pertinent to the external review, as  
8           provided in section 26.1-36-12.4.

9           **26.1-36.6-04. Request for external review.**

- 10          1. a. Except for a request for an expedited external review as set forth in  
11           section 26.1-36.6-07, all requests for external review shall be made in writing to  
12           the commissioner.
- 13          b. The commissioner may prescribe by the form and content of external review  
14           requests required to be submitted under this section.
- 15          2. A covered person or the covered person's authorized representative may make a  
16           request for an external review of an adverse determination or final adverse  
17           determination.

18          **26.1-36.6-05. Exhaustion of internal grievance process.**

- 19          1. a. Except as provided in subsection 2, a request for an external review pursuant to  
20           section 26.1-36.6-06, 26.1-36.6-07, or 26.1-36.6-08 shall not be made until the  
21           covered person has exhausted the health carrier's internal grievance process as  
22           set forth in chapter 26.1-36.8.
- 23          b. A covered person shall be considered to have exhausted the health carrier's  
24           internal grievance process for purposes of this section, if the covered person or  
25           the covered person's authorized representative:
- 26           (1) Has filed a grievance involving an adverse determination pursuant to  
27           section 26.1-36.8-05; and
- 28           (2) Except to the extent the covered person or the covered person's authorized  
29           representative requested or agreed to a delay, has not received a written  
30           decision on the grievance from the health carrier within thirty days following

1 the date the covered person or the covered person's authorized  
2 representative filed the grievance with the health carrier.

3 c. Notwithstanding subdivision b, a covered person or the covered person's  
4 authorized representative may not make a request for an external review of an  
5 adverse determination involving a retrospective review determination made  
6 pursuant to chapter 26.1-36.7 until the covered person has exhausted the health  
7 carrier's internal grievance process.

8 2. a. (1) At the same time a covered person or the covered person's authorized  
9 representative files a request for an expedited review of a grievance  
10 involving an adverse determination as set forth in section 26.1-36.8-08, the  
11 covered person or the covered person's authorized representative may file a  
12 request for an expedited external review of the adverse determination:

13 (a) Under section 26.1-36.6-07 if the covered person has a medical  
14 condition and the timeframe for completion of an expedited review of  
15 the grievance involving an adverse determination set forth in section  
16 26.1-36.8-08 would seriously jeopardize the life or health of the  
17 covered person or would jeopardize the covered person's ability to  
18 regain maximum function; or

19 (b) Under section 26.1-36.6-08 if the adverse determination involves a  
20 denial of coverage based on a determination that the recommended  
21 or requested health care service or treatment is experimental or  
22 investigational and the covered person's treating physician certifies in  
23 writing that the recommended or requested health care service or  
24 treatment that is the subject of the adverse determination would be  
25 significantly less effective if not promptly initiated.

26 (2) Upon receipt of a request for an expedited external review under  
27 paragraph 1, the independent review organization conducting the external  
28 review in accordance with the provisions of section 26.1-36.6-07 or  
29 26.1-36.6-08 shall determine whether the covered person shall be required  
30 to complete the expedited review process set forth in section 26.1-36.8-08  
31 before it conducts the expedited external review.

1           (3) Upon a determination made pursuant to paragraph 2 that the covered  
2           person must first complete the expedited grievance review process set forth  
3           in section 26.1-36.8-08, the independent review organization immediately  
4           shall notify the covered person and the covered person's authorized  
5           representative of this determination and that it will not proceed with the  
6           expedited external review set forth in section 26.1-36.6-07 until completion  
7           of the expedited grievance review process and the covered person's  
8           grievance at the completion of the expedited grievance review process  
9           remains unresolved.

10          b. A request for an external review of an adverse determination may be made  
11          before the covered person has exhausted the health carrier's internal grievance  
12          procedures as set forth in section 26.1-36.8-05 whenever the health carrier  
13          agrees to waive the exhaustion requirement.

14          3. If the requirement to exhaust the health carrier's internal grievance procedures is  
15          waived under subdivision a of subsection 2, the covered person or the covered  
16          person's authorized representative may file a request in writing for a standard external  
17          review as set forth in section 26.1-36.6-06 or 26.1-36.6-08.

18          **26.1-36.6-06. Standard external review.**

19          1. a. Within four months after the date of receipt of a notice of an adverse  
20          determination or final adverse determination pursuant to section 26.1-36.6-03, a  
21          covered person or the covered person's authorized representative may file a  
22          request for an external review with the commissioner.

23          b. Within one business day after the date of receipt of a request for external review  
24          pursuant to subdivision a, the commissioner shall send a copy of the request to  
25          the health carrier.

26          2. Within five business days following the date of receipt of the copy of the external  
27          review request from the commissioner under subdivision b of subsection 1, the health  
28          carrier shall complete a preliminary review of the request to determine whether:

29          a. The individual is or was a covered person in the health benefit plan at the time  
30          the health care service was requested or, in the case of a retrospective review,

- 1           was a covered person in the health benefit plan at the time the health care  
2           service was provided;
- 3           b. The health care service that is the subject of the adverse determination or the  
4           final adverse determination is a covered service under the covered person's  
5           health benefit plan, but for a determination by the health carrier that the health  
6           care service is not covered because it does not meet the health carrier's  
7           requirements for medical necessity, appropriateness, health care setting, level of  
8           care, or effectiveness;
- 9           c. The covered person has exhausted the health carrier's internal grievance  
10           process as set forth in chapter 26.1-36.8 unless the covered person is not  
11           required to exhaust the health carrier's internal grievance process pursuant to  
12           section 26.1-36.6-05; and
- 13           d. The covered person has provided all the information and forms required to  
14           process an external review, including the release form provided under section  
15           26.1-36.6-03.
- 16           3. a. Within one business day after completion of the preliminary review, the health  
17           carrier shall notify the commissioner and covered person and the covered  
18           person's authorized representative in writing whether:
- 19                   (1) The request is complete; and  
20                   (2) The request is eligible for external review.
- 21           b. If the request:
- 22                   (1) Is not complete, the health carrier shall inform the covered person and the  
23                   covered person's authorized representative and the commissioner in writing  
24                   and include in the notice what information or materials are needed to make  
25                   the request complete; or
- 26                   (2) Is not eligible for external review, the health carrier shall inform the covered  
27                   person and the covered person's authorized representative and the  
28                   commissioner in writing and include in the notice the reasons for its  
29                   ineligibility.

1           c. (1) The commissioner may specify the form for the health carrier's notice of  
2                     initial determination under this subsection and any supporting information to  
3                     be included in the notice.

4           (2) The notice of initial determination shall include a statement informing the  
5                     covered person and the covered person's authorized representative that a  
6                     health carrier's initial determination that the external review request is  
7                     ineligible for review may be appealed to the commissioner.

8           d. (1) The commissioner may determine that a request is eligible for external  
9                     review under section 26.1-36.6-06 notwithstanding a health carrier's initial  
10                    determination that the request is ineligible and require that it be referred for  
11                    external review.

12           (2) In making a determination under paragraph 1, the commissioner's decision  
13                     shall be made in accordance with the terms of the covered person's health  
14                     benefit plan and shall be subject to all applicable provisions of this chapter.

15       4. a. Whenever the commissioner receives a notice that a request is eligible for  
16                     external review following the preliminary review conducted pursuant to  
17                     subsection 3, within one business day after the date of receipt of the notice, the  
18                     commissioner shall:

19           (1) Assign an independent review organization from the list of approved  
20                     independent review organizations compiled and maintained by the  
21                     commissioner pursuant to section 26.1-36.6-10 to conduct the external  
22                     review and notify the health carrier of the name of the assigned independent  
23                     review organization; and

24           (2) Notify in writing the covered person and the covered person's authorized  
25                     representative of the request's eligibility and acceptance for external review.

26       b. In reaching a decision, the assigned independent review organization is not  
27                     bound by any decisions or conclusions reached during the health carrier's  
28                     utilization review process as set forth in chapter 26.1-36.7 or the health carrier's  
29                     internal grievance process as set forth in chapter 26.1-36.8.

30       c. The commissioner shall include in the notice provided to the covered person and  
31                     the covered person's authorized representative a statement that the covered

1 person or the covered person's authorized representative may submit in writing to  
2 the assigned independent review organization within five business days following  
3 the date of receipt of the notice provided pursuant to subdivision a additional  
4 information that the independent review organization shall consider when  
5 conducting the external review. The independent review organization is not  
6 required to, but may, accept and consider additional information submitted after  
7 five business days.

8 5. a. Within five business days after the date of receipt of the notice provided pursuant  
9 to subdivision a of subsection 4, the health carrier or its designee utilization  
10 review organization shall provide to the assigned independent review  
11 organization the documents and any information considered in making the  
12 adverse determination or final adverse determination.

13 b. Except as provided in subdivision c, failure by the health carrier or its utilization  
14 review organization to provide the documents and information within the time  
15 specified in subdivision a shall not delay the conduct of the external review.

16 c. (1) If the health carrier or its utilization review organization fails to provide the  
17 documents and information within the time specified in subdivision a, the  
18 assigned independent review organization may terminate the external  
19 review and make a decision to reverse the adverse determination or final  
20 adverse determination.

21 (2) Within one business day after making the decision under paragraph 1, the  
22 independent review organization shall notify the covered person and the  
23 covered person's authorized representative, the health carrier, and the  
24 commissioner.

25 6. a. The assigned independent review organization shall review all of the information  
26 and documents received pursuant to subsection 5 and any other information  
27 submitted in writing to the independent review organization by the covered  
28 person or the covered person's authorized representative pursuant to  
29 subdivision c of subsection 4.

30 b. Upon receipt of any information submitted by the covered person or the covered  
31 person's authorized representative pursuant to subdivision c of subsection 4, the

- 1           assigned independent review organization shall within one business day forward  
2           the information to the health carrier.
- 3       7.   a.   Upon receipt of the information, if any, required to be forwarded pursuant to  
4           subdivision b of subsection 6, the health carrier may reconsider its adverse  
5           determination or final adverse determination that is the subject of the external  
6           review.
- 7           b.   Reconsideration by the health carrier of its adverse determination or final adverse  
8           determination pursuant to subdivision a shall not delay or terminate the external  
9           review.
- 10          c.   The external review may only be terminated if the health carrier decides, upon  
11          completion of its reconsideration, to reverse its adverse determination or final  
12          adverse determination and provide coverage or payment for the health care  
13          service that is the subject of the adverse determination or final adverse  
14          determination.
- 15          d.   (1) Within one business day after making the decision to reverse its adverse  
16              determination or final adverse determination, as provided in subdivision c,  
17              the health carrier shall notify the covered person and the covered person's  
18              authorized representative, the assigned independent review organization,  
19              and the commissioner in writing of its decision.
- 20              (2) The assigned independent review organization shall terminate the external  
21              review upon receipt of the notice from the health carrier sent pursuant to  
22              paragraph 1.
- 23       8.   In addition to the documents and information provided pursuant to subsection 5, the  
24           assigned independent review organization, to the extent the information or documents  
25           are available and the independent review organization considers them appropriate,  
26           shall consider the following in reaching a decision:
- 27           a.   The covered person's medical records;
- 28           b.   The attending health care professional's recommendation;
- 29           c.   Consulting reports from appropriate health care professionals and other  
30           documents submitted by the health carrier, covered person, the covered person's  
31           authorized representative, or the covered person's treating provider;

- 1           d. The terms of coverage under the covered person's health benefit plan with the  
2           health carrier to ensure that the independent review organization's decision is not  
3           contrary to the terms of coverage under the covered person's health benefit plan  
4           with the health carrier;
- 5           e. The most appropriate practice guidelines, which shall include applicable  
6           evidence-based standards and may include any other practice guidelines  
7           developed by the federal government, national or professional medical societies,  
8           boards, and associations;
- 9           f. Any applicable clinical review criteria developed and used by the health carrier or  
10           its designee utilization review organization; and
- 11           g. The opinion of the independent review organization's clinical reviewer or  
12           reviewers after considering subdivisions a through f to the extent the information  
13           or documents are available and the clinical reviewer or reviewers consider  
14           appropriate.
- 15        9.   a. Within forty-five days after the date of receipt of the request for an external  
16           review, the assigned independent review organization shall provide written notice  
17           of its decision to uphold or reverse the adverse determination or the final adverse  
18           determination to:
- 19           (1) The covered person;
- 20           (2) If applicable, the covered person's authorized representative;
- 21           (3) The health carrier; and
- 22           (4) The commissioner.
- 23           b. The independent review organization shall include in the notice sent pursuant to  
24           subdivision a:
- 25           (1) A general description of the reason for the request for external review;
- 26           (2) The date the independent review organization received the assignment from  
27           the commissioner to conduct the external review;
- 28           (3) The date the external review was conducted;
- 29           (4) The date of its decision;
- 30           (5) The principal reason or reasons for its decision, including what applicable, if  
31           any, evidence-based standards were a basis for its decision;

1           (6) The rationale for its decision; and

2           (7) References to the evidence or documentation, including the evidence-based  
3           standards, considered in reaching its decision.

4           c. Upon receipt of a notice of a decision pursuant to subdivision a reversing the  
5           adverse determination or final adverse determination, the health carrier  
6           immediately shall approve the coverage that was the subject of the adverse  
7           determination or final adverse determination.

8           10. The assignment by the commissioner of an approved independent review organization  
9           to conduct an external review in accordance with this section shall be done on a  
10           random basis among those approved independent review organizations qualified to  
11           conduct the particular external review based on the nature of the health care service  
12           that is the subject of the adverse determination or final adverse determination and  
13           other circumstances, including conflict of interest concerns pursuant to section  
14           26.1-36.6-11.

15           **26.1-36.6-07. Expedited external review.**

16           1. Except as provided in subsection 5, a covered person or the covered person's  
17           authorized representative may make a request for an expedited external review with  
18           the commissioner at the time the covered person receives:

19           a. An adverse determination if:

20           (1) The adverse determination involves a medical condition of the covered  
21           person for which the timeframe for completion of an expedited internal  
22           review of a grievance involving an adverse determination set forth in section  
23           26.1-36.8-08 would seriously jeopardize the life or health of the covered  
24           person or would jeopardize the covered person's ability to regain maximum  
25           function; and

26           (2) The covered person or the covered person's authorized representative has  
27           filed a request for an expedited review of a grievance involving an adverse  
28           determination as set forth in section 26.1-36.8-08; or

29           b. A final adverse determination:

30           (1) If the covered person has a medical condition and the timeframe for  
31           completion of a standard external review pursuant to section 26.1-36.6-06

1 would seriously jeopardize the life or health of the covered person or would  
2 jeopardize the covered person's ability to regain maximum function; or  
3 (2) If the final adverse determination concerns an admission, availability of  
4 care, continued stay, or health care service for which the covered person  
5 received emergency services, but has not been discharged from a facility.

- 6 2. a. Upon receipt of a request for an expedited external review, the commissioner  
7 immediately shall send a copy of the request to the health carrier.  
8 b. Immediately upon receipt of the request pursuant to subdivision a, the health  
9 carrier shall determine whether the request meets the reviewability requirements  
10 set forth in section 26.1-36.6-06. The health carrier shall immediately notify the  
11 commissioner and the covered person and the covered person's authorized  
12 representative of its eligibility determination.  
13 c. (1) The commissioner may specify the form for the health carrier's notice of  
14 initial determination under this subsection and any supporting information to  
15 be included in the notice.  
16 (2) The notice of initial determination shall include a statement informing the  
17 covered person and, if applicable, the covered person's authorized  
18 representative that a health carrier's initial determination that an external  
19 review request is ineligible for review may be appealed to the commissioner.  
20 d. (1) The commissioner may determine that a request is eligible for external  
21 review under section 26.1-36.6-06 notwithstanding a health carrier's initial  
22 determination that the request is ineligible and require that it be referred for  
23 external review.  
24 (2) In making a determination under paragraph 1, the commissioner's decision  
25 shall be made in accordance with the terms of the covered person's health  
26 benefit plan and shall be subject to all applicable provisions of this chapter.  
27 e. Upon receipt of the notice that the request meets the reviewability requirements,  
28 the commissioner immediately shall assign an independent review organization  
29 to conduct the expedited external review from the list of approved independent  
30 review organizations compiled and maintained by the commissioner pursuant to

1 section 26.1-36.6-10. The commissioner shall immediately notify the health  
2 carrier of the name of the assigned independent review organization.

3 f. In reaching a decision in accordance with subsection 5, the assigned  
4 independent review organization is not bound by any decisions or conclusions  
5 reached during the health carrier's utilization review process as set forth in  
6 chapter 26.1-36.7 or the health carrier's internal grievance process as set forth in  
7 26.1-36.8.

8 3. Upon receipt of the notice from the commissioner of the name of the independent  
9 review organization assigned to conduct the expedited external review pursuant to  
10 subdivision e of subsection 2, the health carrier or its designee utilization review  
11 organization shall provide or transmit all necessary documents and information  
12 considered in making the adverse determination or final adverse determination to the  
13 assigned independent review organization electronically or by telephone or facsimile  
14 or any other available expeditious method.

15 4. In addition to the documents and information provided or transmitted pursuant to  
16 subsection 3, the assigned independent review organization, to the extent the  
17 information or documents are available and the independent review organization  
18 considers them appropriate, shall consider the following in reaching a decision:  
19 a. The covered person's pertinent medical records;  
20 b. The attending health care professional's recommendation;  
21 c. Consulting reports from appropriate health care professionals and other  
22 documents submitted by the health carrier, covered person, the covered person's  
23 authorized representative, or the covered person's treating provider;  
24 d. The terms of coverage under the covered person's health benefit plan with the  
25 health carrier to ensure that the independent review organization's decision is not  
26 contrary to the terms of coverage under the covered person's health benefit plan  
27 with the health carrier;  
28 e. The most appropriate practice guidelines, which shall include evidence-based  
29 standards, and may include any other practice guidelines developed by the  
30 federal government, national or professional medical societies, boards, and  
31 associations;

- 1           f. Any applicable clinical review criteria developed and used by the health carrier or  
2           its designee utilization review organization in making adverse determinations;  
3           and  
4           g. The opinion of the independent review organization's clinical reviewer or  
5           reviewers after considering subdivisions a through f to the extent the information  
6           and documents are available and the clinical reviewer or reviewers consider  
7           appropriate.
- 8           5. a. As expeditiously as the covered person's medical condition or circumstances  
9           requires, but in no event more than seventy-two hours after the date of receipt of  
10           the request for an expedited external review that meets the reviewability  
11           requirements set forth in section 26.1-36.6-06, the assigned independent review  
12           organization shall:
- 13                   (1) Make a decision to uphold or reverse the adverse determination or final  
14                   adverse determination; and
- 15                   (2) Notify the covered person and the covered person's authorized  
16                   representative, the health carrier, and the commissioner of the decision.
- 17           b. If the notice provided pursuant to subdivision a was not in writing, within  
18           forty-eight hours after the date of providing that notice, the assigned independent  
19           review organization shall:
- 20                   (1) Provide written confirmation of the decision to the covered person, if  
21                   applicable, the covered person's authorized representative the health  
22                   carrier, and the commissioner; and
- 23                   (2) Include the information set forth in subdivision b of subsection 9 of section  
24                   26.1-36.6-06.
- 25           c. Upon receipt of the notice of a decision pursuant to paragraph 1 reversing the  
26           adverse determination or final adverse determination, the health carrier  
27           immediately shall approve the coverage that was the subject of the adverse  
28           determination or final adverse determination.
- 29           6. An expedited external review may not be provided for retrospective adverse or final  
30           adverse determinations.

1        7. The assignment by the commissioner of an approved independent review organization  
2        to conduct an external review in accordance with this section shall be done on a  
3        random basis among those approved independent review organizations qualified to  
4        conduct the particular external review based on the nature of the health care service  
5        that is the subject of the adverse determination or final adverse determination and  
6        other circumstances, including conflict of interest concerns pursuant to subsection 4 of  
7        section 26.1-36.6-11.

8        **26.1-36.6-08. External review of experimental or investigational treatment adverse**  
9        **determinations.**

- 10        1. a. Within four months after the date of receipt of a notice of an adverse  
11        determination or final adverse determination pursuant to section 26.1-36.6-03  
12        that involves a denial of coverage based on a determination that the health care  
13        service or treatment recommended or requested is experimental or  
14        investigational, a covered person or the covered person's authorized  
15        representative may file a request for external review with the commissioner.
- 16        b. (1) A covered person or the covered person's authorized representative may  
17        make an oral request for an expedited external review of the adverse  
18        determination or final adverse determination pursuant to subdivision a if the  
19        covered person's treating physician certifies, in writing, that the  
20        recommended or requested health care service or treatment that is the  
21        subject of the request would be significantly less effective if not promptly  
22        initiated.
- 23        (2) Upon receipt of a request for an expedited external review, the  
24        commissioner immediately shall notify the health carrier.
- 25        (3) (a) Upon notice of the request for expedited external review, the health  
26        carrier immediately shall determine whether the request meets the  
27        reviewability requirements of subsection 2. The health carrier shall  
28        immediately notify the commissioner and the covered person and the  
29        covered person's authorized representative of its eligibility  
30        determination.

- 1                   (b) The commissioner may specify the form for the health carrier's notice  
2                   of initial determination under subparagraph a and any supporting  
3                   information to be included in the notice.
- 4                   (c) The notice of initial determination under subparagraph a shall include  
5                   a statement informing the covered person and the covered person's  
6                   authorized representative that a health carrier's initial determination  
7                   that the external review request is ineligible for review may be  
8                   appealed to the commissioner.
- 9                   (4) (a) The commissioner may determine that a request is eligible for  
10                   external review under subdivision b of subsection 2 notwithstanding a  
11                   health carrier's initial determination the request is ineligible and  
12                   require that it be referred for external review.
- 13                   (b) In making a determination under subparagraph a, the commissioner's  
14                   decision shall be made in accordance with the terms of the covered  
15                   person's health benefit plan and shall be subject to all applicable  
16                   provisions of this chapter.
- 17                   (5) Upon receipt of the notice that the expedited external review request meets  
18                   the reviewability requirements of subdivision b of subsection 2, the  
19                   commissioner immediately shall assign an independent review organization  
20                   to review the expedited request from the list of approved independent  
21                   review organizations compiled and maintained by the commissioner  
22                   pursuant to section 26.1-36.6-10 and notify the health carrier of the name of  
23                   the assigned independent review organization.
- 24                   (6) At the time the health carrier receives the notice of the assigned  
25                   independent review organization pursuant to paragraph 5, the health carrier  
26                   or its designee utilization review organization shall provide or transmit all  
27                   necessary documents and information considered in making the adverse  
28                   determination or final adverse determination to the assigned independent  
29                   review organization electronically or by telephone or facsimile or any other  
30                   available expeditious method.

1       2.   a.   Except for a request for an expedited external review made pursuant to  
2           subdivision b of subsection 1, within one business day after the date of receipt of  
3           the request, the commissioner receives a request for an external review, the  
4           commissioner shall notify the health carrier.

5       b.   Within five business days following the date of receipt of the notice sent pursuant  
6           to subdivision a, the health carrier shall conduct and complete a preliminary  
7           review of the request to determine whether:

8       (1)   The individual is or was a covered person in the health benefit plan at the  
9           time the health care service or treatment was recommended or requested  
10          or, in the case of a retrospective review, was a covered person in the health  
11          benefit plan at the time the health care service or treatment was provided;

12       (2)   The recommended or requested health care service or treatment that is the  
13          subject of the adverse determination or final adverse determination:

14       (a)   Is a covered benefit under the covered person's health benefit plan  
15          except for the health carrier's determination that the service or  
16          treatment is experimental or investigational for a particular medical  
17          condition; and

18       (b)   Is not explicitly listed as an excluded benefit under the covered  
19          person's health benefit plan with the health carrier;

20       (3)   The covered person's treating physician has certified that one of the  
21          following situations is applicable:

22       (a)   Standard health care services or treatments have not been effective in  
23          improving the condition of the covered person;

24       (b)   Standard health care services or treatments are not medically  
25          appropriate for the covered person; or

26       (c)   There is no available standard health care service or treatment  
27          covered by the health carrier that is more beneficial than the  
28          recommended or requested health care service or treatment  
29          described in paragraph 4;

30       (4)   The covered person's treating physician:

- 1                   (a) Has recommended a health care service or treatment that the  
2                   physician certifies, in writing, is likely to be more beneficial to the  
3                   covered person, in the physician's opinion, than any available  
4                   standard health care services or treatments; or
- 5                   (b) Who is a licensed, board-certified or board-eligible physician qualified  
6                   to practice in the area of medicine appropriate to treat the covered  
7                   person's condition, has certified in writing that scientifically valid  
8                   studies using accepted protocols demonstrate that the health care  
9                   service or treatment requested by the covered person that is the  
10                  subject of the adverse determination or final adverse determination is  
11                  likely to be more beneficial to the covered person than any available  
12                  standard health care services or treatments;
- 13                  (5) The covered person has exhausted the health carrier's internal grievance  
14                  process as set forth in chapter 26.1-36.8 unless the covered person is not  
15                  required to exhaust the health carrier's internal grievance process pursuant  
16                  to section 26.1-36.6-05; and
- 17                  (6) The covered person has provided all the information and forms required by  
18                  the commissioner that are necessary to process an external review,  
19                  including the release form provided under subsection 2 of section  
20                  26.1-36.6-03.
- 21                  3. a. Within one business day after completion of the preliminary review, the health  
22                  carrier shall notify the commissioner and the covered person and the covered  
23                  person's authorized representative in writing whether:
- 24                         (1) The request is complete; and  
25                         (2) The request is eligible for external review.
- 26                  b. If the request:
- 27                         (1) Is not complete, the health carrier shall inform in writing the commissioner  
28                         and the covered person and the covered person's authorized representative  
29                         and include in the notice what information or materials are needed to make  
30                         the request complete; or

1           (2) Is not eligible for external review, the health carrier shall inform the covered  
2           person, the covered person's authorized representative, and the  
3           commissioner in writing and include in the notice the reasons for its  
4           ineligibility.

5           c. (1) The commissioner may specify the form for the health carrier's notice of  
6           initial determination under subdivision b and any supporting information to  
7           be included in the notice.

8           (2) The notice of initial determination provided under subdivision b shall include  
9           a statement informing the covered person and the covered person's  
10          authorized representative that a health carrier's initial determination that the  
11          external review request is ineligible for review may be appealed to the  
12          commissioner.

13          d. (1) The commissioner may determine that a request is eligible for external  
14          review under subdivision b of subsection 2 notwithstanding a health carrier's  
15          initial determination that the request is ineligible and require that it be  
16          referred for external review.

17          (2) In making a determination under paragraph 1, the commissioner's decision  
18          shall be made in accordance with the terms of the covered person's health  
19          benefit plan and shall be subject to all applicable provisions of this chapter.

20          e. Whenever a request for external review is determined eligible for external review,  
21          the health carrier shall notify the commissioner and the covered person and the  
22          covered person's authorized representative.

23          4. a. Within one business day after the receipt of the notice from the health carrier that  
24          the external review request is eligible for external review pursuant to paragraph 4  
25          of subdivision b of subsection 1 or subdivision e of subsection 3, the  
26          commissioner shall:

27          (1) Assign an independent review organization to conduct the external review  
28          from the list of approved independent review organizations compiled and  
29          maintained by the commissioner pursuant to section 26.1-36.6-10 and notify  
30          the health carrier of the name of the assigned independent review  
31          organization; and

1           (2) Notify in writing the covered person and the covered person's authorized  
2           representative of the request's eligibility and acceptance for external review.

3       b. The commissioner shall include in the notice provided to the covered person and  
4       the covered person's authorized representative a statement that the covered  
5       person or the covered person's authorized representative may submit in writing to  
6       the assigned independent review organization within five business days  
7       following the date of receipt of the notice provided pursuant to subdivision a  
8       additional information that the independent review organization shall consider  
9       when conducting the external review. The independent review organization is not  
10       required to, but may, accept and consider additional information submitted after  
11       five business days.

12       c. Within one business day after the receipt of the notice of assignment to conduct  
13       the external review pursuant to subdivision a, the assigned independent review  
14       organization shall:

15           (1) Select one or more clinical reviewers, as it determines is appropriate,  
16           pursuant to subdivision d to conduct the external review; and

17           (2) Based on the opinion of the clinical reviewer, or opinions if more than one  
18           clinical reviewer has been selected to conduct the external review, make a  
19           decision to uphold or reverse the adverse determination or final adverse  
20           determination.

21       d. (1) In selecting clinical reviewers pursuant to paragraph 1 of subdivision c, the  
22       assigned independent review organization shall select physicians or other  
23       health care professionals who meet the minimum qualifications described in  
24       section 26.1-36.6-11 and, through clinical experience in the past three  
25       years, are experts in the treatment of the covered person's condition and  
26       knowledgeable about the recommended or requested health care service or  
27       treatment.

28           (2) Neither the covered person, the covered person's authorized representative,  
29           nor the health carrier may choose or control the choice of the physicians or  
30           other health care professionals to be selected to conduct the external  
31           review.

1           e. In accordance with subsection 8, each clinical reviewer shall provide a written  
2           opinion to the assigned independent review organization on whether the  
3           recommended or requested health care service or treatment should be covered.

4           f. In reaching an opinion, clinical reviewers are not bound by any decisions or  
5           conclusions reached during the health carrier's utilization review process as set  
6           forth in chapter 26.1-36.7 or the health carrier's internal grievance process as set  
7           forth in chapter 26.1-36.8.

8        5. a. Within five business days after the date of receipt of the notice provided pursuant  
9           to subdivision a of subsection 4, the health carrier or its designee utilization  
10          review organization shall provide to the assigned independent review  
11          organization the documents and any information considered in making the  
12          adverse determination or the final adverse determination.

13        b. Except as provided in subdivision c, failure by the health carrier or its designee  
14          utilization review organization to provide the documents and information within  
15          the time specified in subdivision a shall not delay the conduct of the external  
16          review.

17        c. (1) If the health carrier or its designee utilization review organization has failed  
18           to provide the documents and information within the time specified in  
19           subdivision a, the assigned independent review organization may terminate  
20           the external review and make a decision to reverse the adverse  
21           determination or final adverse determination.

22           (2) Immediately upon making the decision under paragraph 1, the independent  
23           review organization shall notify the covered person, the covered person's  
24           authorized representative, if applicable, the health carrier, and the  
25           commissioner.

26        6. a. Each clinical reviewer selected pursuant to subsection 4 shall review all of the  
27           information and documents received pursuant to subsection 5 and any other  
28           information submitted in writing by the covered person or the covered person's  
29           authorized representative pursuant to subdivision b of subsection 4.

30        b. Upon receipt of any information submitted by the covered person or the covered  
31          person's authorized representative pursuant to subdivision b of subsection 4,

1 within one business day after the receipt of the information, the assigned  
2 independent review organization shall forward the information to the health  
3 carrier.

- 4 7. a. Upon receipt of the information required to be forwarded pursuant to  
5 subdivision b of subsection 6, the health carrier may reconsider its adverse  
6 determination or final adverse determination that is the subject of the external  
7 review.
- 8 b. Reconsideration by the health carrier of its adverse determination or final adverse  
9 determination pursuant to subdivision a shall not delay or terminate the external  
10 review.
- 11 c. The external review may be terminated only if the health carrier decides, upon  
12 completion of its reconsideration, to reverse its adverse determination or final  
13 adverse determination and provide coverage or payment for the recommended or  
14 requested health care service or treatment that is the subject of the adverse  
15 determination or final adverse determination.
- 16 d. (1) Immediately upon making the decision to reverse its adverse determination  
17 or final adverse determination, as provided in subdivision c, the health  
18 carrier shall notify the covered person, the covered person's authorized  
19 representative, the assigned independent review organization, and the  
20 commissioner in writing of its decision.
- 21 (2) The assigned independent review organization shall terminate the external  
22 review upon receipt of the notice from the health carrier sent pursuant to  
23 paragraph 1.
- 24 8. a. Except as provided in subdivision c, within twenty days after being selected in  
25 accordance with subsection 4 to conduct the external review, each clinical  
26 reviewer shall provide an opinion to the assigned independent review  
27 organization pursuant to subsection 9 on whether the recommended or  
28 requested health care service or treatment should be covered.
- 29 b. Except for an opinion provided pursuant to subdivision c, each clinical reviewer's  
30 opinion shall be in writing and include the following information:
- 31 (1) A description of the covered person's medical condition;

1           (2) A description of the indicators relevant to determining whether there is  
2           sufficient evidence to demonstrate that the recommended or requested  
3           health care service or treatment is more likely than not to be beneficial to  
4           the covered person than any available standard health care services or  
5           treatments and the adverse risks of the recommended or requested health  
6           care service or treatment would not be substantially increased over those of  
7           available standard health care services or treatments;

8           (3) A description and analysis of any medical or scientific evidence, as that term  
9           is defined in subsection 30 of section 26.1-36.6-01, considered in reaching  
10          the opinion;

11          (4) A description and analysis of any evidence-based standard, as that term is  
12          defined in subsection 19 of section 26.1-36.6-01; and

13          (5) Information on whether the reviewer's rationale for the opinion is based on  
14          paragraph 1 or 2 of subdivision e of subsection 9.

15          c. (1) For an expedited external review, each clinical reviewer shall provide an  
16          opinion orally or in writing to the assigned independent review organization  
17          as expeditiously as the covered person's medical condition or  
18          circumstances requires, but in no event more than five calendar days after  
19          being selected in accordance with subsection 4.

20          (2) If the opinion provided pursuant to paragraph 1 was not in writing, within  
21          forty-eight hours following the date the opinion was provided, the clinical  
22          reviewer shall provide written confirmation of the opinion to the assigned  
23          independent review organization and include the information required under  
24          subdivision b.

25          9. In addition to the documents and information provided pursuant to subsection 1 or 5,  
26          each clinical reviewer selected pursuant to subsection 4, to the extent the information  
27          or documents are available and the reviewer considers appropriate, shall consider the  
28          following in reaching an opinion pursuant to subsection 8:

29          a. The covered person's pertinent medical records;

30          b. The attending physician or health care professional's recommendation;

1           c. Consulting reports from appropriate health care professionals and other  
2           documents submitted by the health carrier, covered person, the covered person's  
3           authorized representative, or the covered person's treating physician or health  
4           care professional;

5           d. The terms of coverage under the covered person's health benefit plan with the  
6           health carrier to ensure that, but for the health carrier's determination that the  
7           recommended or requested health care service or treatment that is the subject of  
8           the opinion is experimental or investigational, the reviewer's opinion is not  
9           contrary to the terms of coverage under the covered person's health benefit plan  
10           with the health carrier; and

11          e. Whether:

12           (1) The recommended or requested health care service or treatment has been  
13           approved by the federal food and drug administration, if applicable, for the  
14           condition; or

15           (2) Medical or scientific evidence or evidence-based standards demonstrate  
16           that the expected benefits of the recommended or requested health care  
17           service or treatment is more likely than not to be beneficial to the covered  
18           person than any available standard health care service or treatment and the  
19           adverse risks of the recommended or requested health care service or  
20           treatment would not be substantially increased over those of available  
21           standard health care services or treatments.

22          10. a. (1) Except as provided in paragraph 2, within twenty days after the date it  
23           receives the opinion of each clinical reviewer pursuant to subsection 9, the  
24           assigned independent review organization, in accordance with  
25           subdivision b, shall make a decision and provide written notice of the  
26           decision to:

27           (a) The covered person;

28           (b) If applicable, the covered person's authorized representative;

29           (c) The health carrier; and

30           (d) The commissioner.

1           (2) (a) For an expedited external review, within forty-eight hours after the  
2           date it receives the opinion of each clinical reviewer pursuant to  
3           subsection 9, the assigned independent review organization, in  
4           accordance with subdivision b, shall make a decision and provide  
5           notice of the decision orally or in writing to the persons listed in  
6           paragraph 1.

7           (b) If the notice provided under subparagraph b was not in writing, within  
8           forty-eight hours after the date of providing that notice, the assigned  
9           independent review organization shall provide written confirmation of  
10          the decision to the persons listed in paragraph 1 and include the  
11          information set forth in subdivision c.

12          b. (1) If a majority of the clinical reviewers recommend that the recommended or  
13          requested health care service or treatment should be covered, the  
14          independent review organization shall make a decision to reverse the health  
15          carrier's adverse determination or final adverse determination.

16          (2) If a majority of the clinical reviewers recommend that the recommended or  
17          requested health care service or treatment should not be covered, the  
18          independent review organization shall make a decision to uphold the health  
19          carrier's adverse determination or final adverse determination.

20          (3) (a) If the clinical reviewers are evenly split as to whether the  
21          recommended or requested health care service or treatment should  
22          be covered, the independent review organization shall obtain the  
23          opinion of an additional clinical reviewer in order for the independent  
24          review organization to make a decision based on the opinions of a  
25          majority of the clinical reviewers pursuant to paragraph 1 or 2.

26          (b) The additional clinical reviewer selected under subparagraph a shall  
27          use the same information to reach an opinion as the clinical reviewers  
28          who have already submitted their opinions pursuant to subsection 9.

29          (c) The selection of the additional clinical reviewer under this  
30          subparagraph shall not extend the time within which the assigned  
31          independent review organization is required to make a decision based

1 on the opinions of the clinical reviewers selected under subsection 4  
2 pursuant to subdivision a.

3 c. The independent review organization shall include in the notice provided  
4 pursuant to subdivision a:

5 (1) A general description of the reason for the request for external review;

6 (2) The written opinion of each clinical reviewer, including the recommendation  
7 of each clinical reviewer as to whether the recommended or requested  
8 health care service or treatment should be covered and the rationale for the  
9 reviewer's recommendation;

10 (3) The date the independent review organization was assigned by the  
11 commissioner to conduct the external review;

12 (4) The date the external review was conducted;

13 (5) The date of its decision;

14 (6) The principal reason or reasons for its decision; and

15 (7) The rationale for its decision.

16 d. Upon receipt of a notice of a decision pursuant to subdivision a reversing the  
17 adverse determination or final adverse determination, the health carrier  
18 immediately shall approve coverage of the recommended or requested health  
19 care service or treatment that was the subject of the adverse determination or  
20 final adverse determination.

21 11. The assignment by the commissioner of an approved independent review organization  
22 to conduct an external review in accordance with this section shall be done on a  
23 random basis among those approved independent review organizations qualified to  
24 conduct the particular external review based on the nature of the health care service  
25 that is the subject of the adverse determination or final adverse determination and  
26 other circumstances, including conflict of interest concerns pursuant to subsection 4 of  
27 section 26.1-36.6-11.

28 **26.1-36.6-09. Binding nature of external review decision.**

29 1. An external review decision is binding on the health carrier except to the extent the  
30 health carrier has other remedies available under applicable state law.

- 1        2. An external review decision is binding on the covered person except to the extent the
- 2        covered person has other remedies available under applicable federal or state law.
- 3        3. A covered person or the covered person's authorized representative may not file a
- 4        subsequent request for external review involving the same adverse determination or
- 5        final adverse determination for which the covered person has already received an
- 6        external review decision pursuant to this chapter.

7        **26.1-36.6-10. Approval of independent review organizations.**

- 8        1. The commissioner shall approve independent review organizations eligible to be
- 9        assigned to conduct external reviews under this chapter.
- 10       2. In order to be eligible for approval by the commissioner under this section to conduct
- 11       external reviews under this chapter an independent review organization:
- 12       a. Except as otherwise provided in this section, shall be accredited by a nationally
- 13       recognized private accrediting entity that the commissioner has determined has
- 14       independent review organization accreditation standards that are equivalent to or
- 15       exceed the minimum qualifications for independent review organizations
- 16       established under section 26.1-36.6-11; and
- 17       b. Shall submit an application for approval in accordance with subsection 4.
- 18       3. The commissioner shall develop an application form for initially approving and for
- 19       reapproving independent review organizations to conduct external reviews.
- 20       4. a. Any independent review organization wishing to be approved to conduct external
- 21       reviews shall submit the application form and include with the form all
- 22       documentation and information necessary for the commissioner to determine if
- 23       the independent review organization satisfies the minimum qualifications
- 24       established under section 26.1-36.6-11.
- 25       b. (1) Subject to paragraph 2, an independent review organization is eligible for
- 26       approval under this section only if it is accredited by a nationally recognized
- 27       private accrediting entity that the commissioner has determined has
- 28       independent review organization accreditation standards that are equivalent
- 29       to or exceed the minimum qualifications for independent review
- 30       organizations under section 26.1-36.6-11.

1           (2) The commissioner may approve independent review organizations that are  
2           not accredited by a nationally recognized private accrediting entity if there  
3           are no acceptable nationally recognized private accrediting entities  
4           providing independent review organization accreditation.

5           c. The commissioner shall charge a fee of one hundred dollars that independent  
6           review organizations must submit to the commissioner with an application for  
7           initial approval. The commissioner shall charge a fee of twenty-five dollars for  
8           each reapproval.

9           5. a. An approval is effective for two years, unless the commissioner determines  
10           before its expiration that the independent review organization is not satisfying the  
11           minimum qualifications established under section 26.1-36.6-11.

12           b. Whenever the commissioner determines that an independent review organization  
13           has lost its accreditation or no longer satisfies the minimum requirements  
14           established under section 26.1-36.6-11, the commissioner shall terminate the  
15           approval of the independent review organization and remove the independent  
16           review organization from the list of independent review organizations approved to  
17           conduct external reviews under this chapter that is maintained by the  
18           commissioner pursuant to subsection 6.

19           6. The commissioner shall maintain and periodically update a list of approved  
20           independent review organizations.

21           **26.1-36.6-11. Minimum qualifications for independent review organizations.**

22           1. To be approved under section 26.1-36.6-10 to conduct external reviews, an  
23           independent review organization shall have and maintain written policies and  
24           procedures that govern all aspects of both the standard external review process and  
25           the expedited external review process set forth in this chapter that include, at a  
26           minimum:

27           a. A quality assurance mechanism in place that:

28           (1) Ensures that external reviews are conducted within the specified timeframes  
29           and required notices are provided in a timely manner;

30           (2) Ensures the selection of qualified and impartial clinical reviewers to conduct  
31           external reviews on behalf of the independent review organization and

1                   suitable matching of reviewers to specific cases and that the independent  
2                   review organization employs or contracts with an adequate number of  
3                   clinical reviewers to meet this objective;

4                   (3) Ensures the confidentiality of medical and treatment records and clinical  
5                   review criteria; and

6                   (4) Ensures that any person employed by or under contract with the  
7                   independent review organization adheres to the requirements of this  
8                   chapter;

9                   b. A toll-free telephone service to receive information on a twenty-four-hour-day  
10                  seven-day-a-week basis related to external reviews that is capable of accepting,  
11                  recording, or providing appropriate instruction to incoming telephone callers  
12                  during other than normal business hours; and

13                  c. Maintain and provide to the commissioner the information set out in section  
14                  26.1-36.6-13.

15                  2. All clinical reviewers assigned by an independent review organization to conduct  
16                  external reviews must be physicians or other appropriate health care providers who  
17                  meet the following minimum qualifications:

18                  a. Be an expert in the treatment of the covered person's medical condition that is  
19                  the subject of the external review;

20                  b. Be knowledgeable about the recommended health care service or treatment  
21                  through recent or current actual clinical experience treating patients with the  
22                  same or similar medical condition of the covered person;

23                  c. Hold a nonrestricted license in a state of the United States and, for physicians, a  
24                  current certification by a recognized American medical specialty board in the area  
25                  or areas appropriate to the subject of the external review; and

26                  d. Have no history of disciplinary actions or sanctions, including loss of staff  
27                  privileges or participation restrictions, that have been taken or are pending by any  
28                  hospital, governmental agency or unit, or regulatory body that raise a substantial  
29                  question as to the clinical reviewer's physical, mental, or professional  
30                  competence or moral character.

- 1       3. In addition to the requirements set forth in subsection 1, an independent review  
2       organization may not own or control, be a subsidiary of or in any way be owned or  
3       controlled by, or exercise control with a health benefit plan, a national, state, or local  
4       trade association of health benefit plans or a national, state, or local trade association  
5       of health care providers.
- 6       4. a. In addition to the requirements set forth in subsections 1, 2, and 3, to be  
7       approved pursuant to section 26.1-36.6-10 to conduct an external review of a  
8       specified case, neither the independent review organization selected to conduct  
9       the external review nor any clinical reviewer assigned by the independent  
10       organization to conduct the external review may have a material professional,  
11       familial, or financial conflict of interest with any of the following:
- 12       (1) The health carrier that is the subject of the external review;  
13       (2) The covered person whose treatment is the subject of the external review or  
14       the covered person's authorized representative;  
15       (3) Any officer, director, or management employee of the health carrier that is  
16       the subject of the external review;  
17       (4) The health care provider, the health care provider's medical group or  
18       independent practice association recommending the health care service or  
19       treatment that is the subject of the external review;  
20       (5) The facility at which the recommended health care service or treatment  
21       would be provided; or  
22       (6) The developer or manufacturer of the principal drug, device, procedure, or  
23       other therapy being recommended for the covered person whose treatment  
24       is the subject of the external review.
- 25       b. In determining whether an independent review organization or a clinical reviewer  
26       of the independent review organization has a material professional, familial, or  
27       financial conflict of interest for purposes of subdivision a, the commissioner shall  
28       take into consideration situations in which the independent review organization  
29       to be assigned to conduct an external review of a specified case or a clinical  
30       reviewer to be assigned by the independent review organization to conduct an  
31       external review of a specified case may have an apparent professional, familial,

1 or financial relationship or connection with a person described in subdivision a,  
2 but that the characteristics of that relationship or connection are such that they  
3 are not a material professional, familial, or financial conflict of interest that results  
4 in the disapproval of the independent review organization or the clinical reviewer  
5 from conducting the external review.

6 5. a. An independent review organization that is accredited by a nationally recognized  
7 private accrediting entity that has independent review accreditation standards  
8 that the commissioner has determined are equivalent to or exceed the minimum  
9 qualifications of this section shall be presumed in compliance with this section to  
10 be eligible for approval under section 26.1-36.6-10.

11 b. The commissioner shall initially review and periodically review the independent  
12 review organization accreditation standards of a nationally recognized private  
13 accrediting entity to determine whether the entity's standards are, and continue to  
14 be, equivalent to or exceed the minimum qualifications established under this  
15 section. The commissioner may accept a review conducted by the national  
16 association for insurance commissioners for the purpose of the determination  
17 under this subdivision.

18 c. Upon request, a nationally recognized private accrediting entity shall make its  
19 current independent review organization accreditation standards available to the  
20 commissioner or the national association of insurance commissioners in order for  
21 the commissioner to determine if the entity's standards are equivalent to or  
22 exceed the minimum qualifications established under this section. The  
23 commissioner may exclude any private accrediting entity that is not reviewed by  
24 the national association of insurance commissioners.

25 6. An independent review organization shall be unbiased. An independent review  
26 organization shall establish and maintain written procedures to ensure that it is  
27 unbiased in addition to any other procedures required under this section.

28 **26.1-36.6-12. Hold harmless for independent review organizations.**

29 No independent review organization or clinical reviewer working on behalf of an  
30 independent review organization or an employee, agent, or contractor of an independent review  
31 organization shall be liable in damages to any person for any opinions rendered or acts or

1 omissions performed within the scope of the organization's or person's duties under the law  
2 during or upon completion of an external review conducted pursuant to this chapter unless the  
3 opinion was rendered or act or omission performed in bad faith or involved gross negligence.

4 **26.1-36.6-13. External review reporting requirements.**

- 5 1. a. An independent review organization assigned pursuant to section 26.1-36.6-06,  
6 26.1-36.6-07, or 26.1-36.6-08 to conduct an external review shall maintain written  
7 records in the aggregate by state and by health carrier on all requests for  
8 external review for which it conducted an external review during a calendar year  
9 and upon request submit a report to the commissioner as required under  
10 subdivision b.
- 11 b. Each independent review organization required to maintain written records on all  
12 requests for external review pursuant to subdivision a for which it was assigned  
13 to conduct an external review shall submit to the commissioner, upon request, a  
14 report in the format specified by the commissioner.
- 15 c. The report shall include in the aggregate by state and for each health carrier:
- 16 (1) The total number of requests for external review;
- 17 (2) The number of requests for external review resolved and, of those resolved,  
18 the number resolved upholding the adverse determination or final adverse  
19 determination and the number resolved reversing the adverse determination  
20 or final adverse determination;
- 21 (3) The average length of time for resolution;
- 22 (4) A summary of the types of coverages or cases for which an external review  
23 was sought, as provided in the format required by the commissioner;
- 24 (5) The number of external reviews pursuant to subsection 7 of section  
25 26.1-36.6-06 that were terminated as the result of a reconsideration by the  
26 health carrier of its adverse determination or final adverse determination  
27 after the receipt of additional information from the covered person or the  
28 covered person's authorized representative; and
- 29 (6) Any other information the commissioner may request or require.
- 30 d. The independent review organization shall retain the written records required  
31 pursuant to this subsection for at least three years.

- 1       2.   a.   Each health carrier shall maintain written records in the aggregate, by state and  
2           for each type of health benefit plan offered by the health carrier on all requests for  
3           external review that the health carrier receives notice of from the commissioner  
4           pursuant to this chapter.
- 5       b.   Each health carrier required to maintain written records on all requests for  
6           external review pursuant to subdivision a shall submit to the commissioner, upon  
7           request, a report in the format specified by the commissioner.
- 8       c.   The report shall include in the aggregate, by state, and by type of health benefit  
9           plan:
- 10           (1) The total number of requests for external review;  
11           (2) From the total number of requests for external review reported under  
12           paragraph 1, the number of requests determined eligible for a full external  
13           review; and
- 14           (3) Any other information the commissioner may request or require.
- 15       d.   The health carrier shall retain the written records required pursuant to this  
16           subsection for at least three years.

17       **26.1-36.6-14. Funding of external review.**

18       The health carrier against which a request for a standard external review or an expedited  
19 external review is filed shall pay the cost of the independent review organization for conducting  
20 the external review.

21       **26.1-36.6-15. Disclosure requirements.**

- 22       1.   a.   Each health carrier shall include a description of the external review procedures  
23           in or attached to the policy, certificate, membership booklet, outline of coverage,  
24           or other evidence of coverage it provides to covered persons.
- 25       b.   The disclosure required by subdivision a shall be in a format prescribed by the  
26           commissioner.
- 27       2.   The description required under subsection 1 shall include a statement that informs the  
28           covered person of the right of the covered person to file a request for an external  
29           review of an adverse determination or final adverse determination with the  
30           commissioner. The statement may explain that external review is available when the  
31           adverse determination or final adverse determination involves an issue of medical

1 necessity, appropriateness, health care setting, level of care, or effectiveness. The  
2 statement shall include the telephone number and address of the commissioner.

3 3. In addition to subsection 2, the statement shall inform the covered person that when  
4 filing a request for an external review the covered person will be required to authorize  
5 the release of any medical records of the covered person that may be required to be  
6 reviewed for the purpose of reaching a decision on the external review.

7 **26.1-36.6-16. Rulemaking.**

8 The commissioner may adopt rules to carry out the provisions of this chapter.

9 **26.1-36.6-17. Confidentiality.**

10 Any protected health information that the commissioner receives pursuant to this chapter is  
11 confidential.

12 **SECTION 5.** Chapter 26.1-36.7 of the North Dakota Century Code is created and enacted  
13 as follows:

14 **26.1-36.7-01. Definitions.**

15 As used in this chapter:

16 1. "Adverse determination" means:

- 17 a. A determination by a health carrier or its designee utilization review organization  
18 that, based upon the information provided, a request for a benefit under the  
19 health carrier's health benefit plan upon application of any utilization review  
20 technique does not meet the health carrier's requirements for medical necessity,  
21 appropriateness, health care setting, level of care, or effectiveness or is  
22 determined to be experimental or investigational and the requested benefit is  
23 therefore denied, reduced, or terminated or payment is not provided or made, in  
24 whole or in part, for the benefit;
- 25 b. The denial, reduction, termination, or failure to provide or make payment, in  
26 whole or in part, for a benefit based on a determination by a health carrier or its  
27 designee utilization review organization of a covered person's eligibility to  
28 participate in the health carrier's health benefit plan;
- 29 c. Any prospective review or retrospective review determination that denies,  
30 reduces, or terminates or fails to provide or make payment, in whole or in part, for  
31 a benefit; or

- 1           d. A rescission of coverage determination.
- 2           2. "Ambulatory review" means utilization review of health care services performed or
- 3           provided in an outpatient setting.
- 4           3. "Authorized representative" means:
- 5           a. A person to whom a covered person has given express written consent to
- 6           represent the covered person for purposes of this chapter;
- 7           b. A person authorized by law to provide substituted consent for a covered person;
- 8           c. A family member of the covered person or the covered person's treating health
- 9           care professional when the covered person is unable to provide consent;
- 10          d. A health care professional when the covered person's health benefit plan requires
- 11          that a request for a benefit under the plan be initiated by the health care
- 12          professional; or
- 13          e. In the case of an urgent care request, a health care professional with knowledge
- 14          of the covered person's medical condition.
- 15          4. "Case management" means a coordinated set of activities conducted for individual
- 16          patient management of serious, complicated, protracted, or other health conditions.
- 17          5. "Certification" means a determination by a health carrier or its designee utilization
- 18          review organization that a request for a benefit under the health carrier's health benefit
- 19          plan has been reviewed and based on the information provided satisfies the health
- 20          carrier's requirements for medical necessity, appropriateness, health care setting, level
- 21          of care, and effectiveness.
- 22          6. "Clinical peer" means a physician or other health care professional who holds a
- 23          nonrestricted license in a state of the United States and in the same or similar
- 24          specialty as typically manages the medical condition, procedure, or treatment under
- 25          review.
- 26          7. "Clinical review criteria" means the written screening procedures, decision abstracts,
- 27          clinical protocols, and practice guidelines used by the health carrier to determine the
- 28          medical necessity and appropriateness of health care services.
- 29          8. "Commissioner" means the insurance commissioner.

- 1        9.    "Concurrent review" means utilization review conducted during a patient's stay or  
2        course of treatment in a facility, the office of a health care professional, or other  
3        inpatient or outpatient health care setting.
- 4        10.   "Covered benefits" or "benefits" means those health care services to which a covered  
5        person is entitled under the terms of a health benefit plan.
- 6        11.   "Covered person" means a policyholder, subscriber, enrollee, or other individual  
7        participating in a health benefit plan.
- 8        12.   "Discharge planning" means the formal process for determining prior to discharge from  
9        a facility the coordination and management of the care that a patient receives following  
10       discharge from a facility.
- 11       13.   "Emergency medical condition" means a medical condition manifesting itself by acute  
12       symptoms of sufficient severity, including severe pain, such that a prudent layperson,  
13       who possesses an average knowledge of health and medicine, could reasonably  
14       expect that the absence of immediate medical attention would result in serious  
15       impairment to bodily functions or serious dysfunction of a bodily organ or part or would  
16       place the person's health or, with respect to a pregnant woman, the health of the  
17       woman or her unborn child, in serious jeopardy.
- 18       14.   "Emergency services" means, with respect to an emergency medical condition:  
19       a.    A medical screening examination that is within the capability of the emergency  
20       department of a hospital, including ancillary services routinely available to the  
21       emergency department to evaluate such emergency medical condition; and  
22       b.    Such further medical examination and treatment, to the extent they are within the  
23       capability of the staff and facilities available at a hospital, to stabilize a patient.
- 24       15.   "Facility" means an institution providing health care services or a health care setting,  
25       including hospitals and other licensed inpatient centers, ambulatory surgical, or  
26       treatment centers, skilled nursing centers, residential treatment centers, diagnostic,  
27       laboratory and imaging centers, and rehabilitation and other therapeutic health  
28       settings.
- 29       16.   a.    "Health benefit plan" means a policy, contract, certificate, or agreement entered  
30       into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for,  
31       or reimburse any of the costs of health care services.

- 1           b. "Health benefit plan" includes short-term and catastrophic health insurance  
2           policies and a policy that pays on a cost-incurred basis, except as otherwise  
3           specifically exempted in this definition.
- 4           c. "Health benefit plan" does not include:
- 5           (1) Coverage only for accident or disability income insurance, or any  
6           combination thereof;
- 7           (2) Coverage issued as a supplement to liability insurance;
- 8           (3) Liability insurance, including general liability insurance and automobile  
9           liability insurance;
- 10          (4) Workers' compensation or similar insurance;
- 11          (5) Automobile medical payment insurance;
- 12          (6) Credit-only insurance;
- 13          (7) Coverage for onsite medical clinics; and
- 14          (8) Other similar insurance coverage, specified in federal regulations issued  
15          pursuant to the Health Insurance Portability and Accountability Act of 1996  
16          [Pub. L. 104-191], under which benefits for medical care are secondary or  
17          incidental to other insurance benefits.
- 18          d. "Health benefit plan" does not include the following benefits if they are provided  
19          under a separate policy, certificate, or contract of insurance or are otherwise not  
20          an integral part of the plan:
- 21          (1) Limited scope dental or vision benefits;
- 22          (2) Benefits for long-term care, nursing home care, home health care,  
23          community-based care, or any combination thereof; or
- 24          (3) Other similar, limited benefits specified in federal regulations issued  
25          pursuant to the Health Insurance Portability and Accountability Act of 1996  
26          [Pub. L. 104-191].
- 27          e. "Health benefit plan" does not include the following benefits if the benefits are  
28          provided under a separate policy, certificate, or contract of insurance, there is no  
29          coordination between the provision of the benefits and any exclusion of benefits  
30          under any group health plan maintained by the same plan sponsor, and the  
31          benefits are paid with respect to an event without regard to whether benefits are

1           provided with respect to such an event under any group health plan maintained  
2           by the same plan sponsor:

3           (1) Coverage only for a specified disease or illness; or

4           (2) Hospital indemnity or other fixed indemnity insurance.

5       f. "Health benefit plan" does not include the following if offered as a separate policy,  
6       certificate, or contract of insurance:

7           (1) Medicare supplemental health insurance as defined under section 1882(g)  
8           (1) of the Social Security Act;

9           (2) Coverage supplemental to the coverage provided under chapter 55 of  
10          title 10, United States Code (civilian health and medical program of the  
11          uniformed services (CHAMPUS)); or

12          (3) Similar supplemental coverage provided to coverage under a group health  
13          plan.

14       17. "Health care professional" means a physician or other health care practitioner  
15       licensed, accredited, or certified to perform specified health care services consistent  
16       with state law.

17       18. "Health care provider" or "provider" means a health care professional or a facility.

18       19. "Health care services" means services for the diagnosis, prevention, treatment, cure,  
19       or relief of a health condition, illness, injury, or disease.

20       20. "Health carrier" means an entity subject to the insurance laws and regulations of this  
21       state, or subject to the jurisdiction of the commissioner that contracts or offers to  
22       contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health  
23       care services, including a sickness and accident insurance company, a health  
24       maintenance organization, a nonprofit hospital and health service corporation, or any  
25       other entity providing a plan of health insurance, health benefits, or health care  
26       services.

27       21. "Managed care plan" means a health benefit plan that either requires a covered  
28       person to use, or creates incentives, including financial incentives, for a covered  
29       person to use health care providers managed, owned, under contract with, or  
30       employed by the health carrier.

- 1        22. "Network" means the group of participating providers providing services to a managed  
2        care plan.
- 3        23. "Participating provider" means a provider who under a contract with the health carrier  
4        or with its contractor or subcontractor has agreed to provide health care services to  
5        covered persons with an expectation of receiving payment other than coinsurance,  
6        copayments, or deductibles, directly or indirectly from the health carrier.
- 7        24. "Person" means an individual, a corporation, a partnership, an association, a joint  
8        venture, a joint stock company, a trust, an unincorporated organization, any similar  
9        entity, or any combination of the foregoing.
- 10       25. "Prospective review" means utilization review conducted prior to an admission or the  
11       provision of a health care service or a course of treatment in accordance with a health  
12       carrier's requirement that the health care service or course of treatment, in whole or in  
13       part, be approved prior to its provision.
- 14       26. "Rescission" means a cancellation or discontinuance of coverage under a health  
15       benefit plan that has a retroactive effect. Rescission does not include a cancellation or  
16       discontinuance of coverage under a health benefit plan if:
- 17       a.    The cancellation or discontinuance of coverage has only a prospective effect; or  
18       b.    The cancellation or discontinuance of coverage is effective retroactively to the  
19       extent it is attributable to a failure to timely pay required premiums or  
20       contributions toward the cost of coverage.
- 21       27. a. "Retrospective review" means any review of a request for a benefit that is not a  
22       prospective review request.
- 23       b.    "Retrospective review" does not include the review of a claim that is limited to  
24       veracity of documentation or accuracy of coding.
- 25       28. "Second opinion" means an opportunity or requirement to obtain a clinical evaluation  
26       by a provider other than the one originally making a recommendation for a proposed  
27       health care service to assess the medical necessity and appropriateness of the initial  
28       proposed health care service.
- 29       29. "Stabilized" means, with respect to an emergency medical condition, that no material  
30       deterioration of the condition is likely, within reasonable medical probability, to result

1 from or occur during the transfer of the individual from a facility or, with respect to a  
2 pregnant woman, the woman has delivered, including the placenta.

3 30. a. "Urgent care request" means a request for a health care service or course of  
4 treatment with respect to which the time periods for making a nonurgent care  
5 request determination:

6 (1) Could seriously jeopardize the life or health of the covered person or the  
7 ability of the covered person to regain maximum function; or

8 (2) In the opinion of a physician with knowledge of the covered person's  
9 medical condition, would subject the covered person to severe pain that  
10 cannot be adequately managed without the health care service or treatment  
11 that is the subject of the request.

12 b. (1) Except as provided in paragraph 2, in determining whether a request is to  
13 be treated as an urgent care request, an individual acting on behalf of the  
14 health carrier shall apply the judgment of a prudent layperson who  
15 possesses an average knowledge of health and medicine.

16 (2) Any request that a physician with knowledge of the covered person's  
17 medical condition determines is an urgent care request within the meaning  
18 of subdivision a must be treated as an urgent care request.

19 31. "Utilization review" means a set of formal techniques designed to monitor the use of or  
20 evaluate the medical necessity, appropriateness, efficacy, or efficiency of health care  
21 services, procedures, or settings. Techniques may include ambulatory review,  
22 prospective review, second opinion, certification, concurrent review, case  
23 management, discharge planning, or retrospective review.

24 32. "Utilization review organization" means an entity that conducts utilization review other  
25 than a health carrier performing utilization review for its own health benefit plans.

26 **26.1-36.7-02. Applicability and scope.**

27 This chapter shall apply to a health carrier offering health benefit plans that provides or  
28 performs utilization review services, to any designee of the health carrier or utilization review  
29 organization that performs utilization review functions on the carrier's behalf, and to a health  
30 carrier or its designee utilization review organization that provides or performs prospective  
31 review or retrospective review benefit determinations regarding coverage provided under a

1 nongrandfathered health benefit plan. For purposes of this chapter, "nongrandfathered health  
2 benefit plan" means a health benefit plan that is not exempt from the requirements of the  
3 Patient Protection and Affordable Care Act [Pub. L. 111-148] and the Health Care and Education  
4 Reconciliation Act of 2010 [Pub. L. 111-152] because it failed to achieve or lost grandfathered  
5 health plan status. For purposes of this chapter, "grandfathered health plan" has the meaning  
6 stated in the Patient Protection and Affordable Care Act [Pub. L. 111-148], as amended by the  
7 Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152].

8 **26.1-36.7-03. Corporate oversight of utilization review program.**

9 A health carrier shall be responsible for monitoring all utilization review activities carried out  
10 by or on behalf of the health carrier and for ensuring that all requirements of this chapter and  
11 applicable rules are met. The health carrier also shall ensure that appropriate personnel have  
12 operational responsibility for the conduct of the health carrier's utilization review program.

13 **26.1-36.7-04. Contracting.**

14 Whenever a health carrier contracts to have a utilization review organization or other entity  
15 perform the utilization review functions required by this chapter or applicable rules, the  
16 commissioner shall hold the health carrier responsible for monitoring the activities of the  
17 utilization review organization or entity with which the health carrier contracts and for ensuring  
18 that the requirements of this chapter and applicable rules are met.

19 **26.1-36.7-05. Scope and content of utilization review program.**

- 20 1. a. A health carrier that requires a request for benefits under the covered person's  
21 health benefit plan to be subjected to utilization review shall implement a written  
22 utilization review program that describes all review activities and procedures,  
23 both delegated and nondelegated for:
- 24 (1) The filing of benefit requests;
  - 25 (2) The notification of utilization review and benefit determinations; and
  - 26 (3) The review of adverse determinations in accordance with chapter 26.1-36.8.
- 27 b. The program document shall describe the following:
- 28 (1) Procedures to evaluate the medical necessity, appropriateness, efficacy, or  
29 efficiency of health care services;
  - 30 (2) Data sources and clinical review criteria used in decisionmaking;

- 1                   (3) Mechanisms to ensure consistent application of clinical review criteria and  
2                   compatible decisions;
- 3                   (4) Data collection processes and analytical methods used in assessing  
4                   utilization of health care services;
- 5                   (5) Provisions for assuring confidentiality of clinical and proprietary information;
- 6                   (6) The organizational structure, such as a utilization review committee, quality  
7                   assurance, or other committee, that periodically assesses utilization review  
8                   activities and reports to the health carrier's governing body; and
- 9                   (7) The staff position functionally responsible for day-to-day program  
10                  management.

11       2.   a.   A health carrier shall file an annual summary report of its utilization review  
12           program activities with the commissioner in the format approved by the  
13           commissioner.

14       b.   (1) In addition to the summary report, a health carrier shall maintain records for  
15           a minimum of six years of all benefit requests and claims and notices  
16           associated with utilization review and benefit determinations made in  
17           accordance with sections 26.1-36.7-07 and 26.1-36.7-08.

18           (2) The health carrier shall make the records available for examination by  
19           covered persons and the commissioner and appropriate federal oversight  
20           agencies upon request.

21       **26.1-36.7-06. Operational requirements.**

22       1.   A utilization review program shall use documented clinical review criteria that are  
23           based on sound clinical evidence and are evaluated periodically to assure ongoing  
24           efficacy. A health carrier may develop its own clinical review criteria or it may purchase  
25           or license clinical review criteria from qualified vendors. A health carrier shall make  
26           available its clinical review criteria upon request to the commissioner.

27       2.   Qualified health care professionals shall administer the utilization review program and  
28           oversee utilization review decisions. A clinical peer shall evaluate the clinical  
29           appropriateness of adverse determinations.

- 1       3. a. A health carrier shall issue utilization review and benefit determinations in a  
2       timely manner pursuant to the requirements of sections 26.1-36.7-07 and  
3       26.1-36.7-08.
- 4       b. (1) Whenever a health carrier fails to strictly adhere to the requirements of  
5       sections 26.1-36.7-07 or 26.1-36.7-08 with respect to making utilization  
6       review and benefit determinations of a benefit request or claim, the covered  
7       person shall be deemed to have exhausted the provisions of this chapter  
8       and may take action under paragraph 2 regardless of whether the health  
9       carrier asserts that it substantially complied with the requirements of  
10       sections 26.1-36.7-07 or 26.1-36.7-08, as applicable, or that any error it  
11       committed was de minimis.
- 12       (2) (a) A covered person may file a request for external review in accordance  
13       with the procedures outlined in chapter 26.1-36.6.
- 14       (b) In addition, a covered person is entitled to pursue any available  
15       remedies under state or federal law on the basis that the health carrier  
16       failed to provide a reasonable internal claims and appeals process  
17       that would yield a decision on the merits of the claim.
- 18       4. A health carrier shall have a process to ensure that utilization reviewers apply clinical  
19       review criteria consistently in conducting utilization review.
- 20       5. A health carrier shall routinely assess the effectiveness and efficiency of its utilization  
21       review program.
- 22       6. A health carrier's data systems shall be sufficient to support utilization review program  
23       activities and to generate management reports to enable the health carrier to monitor  
24       and manage health care services effectively.
- 25       7. If a health carrier delegates any utilization review activities to a utilization review  
26       organization, the health carrier shall maintain adequate oversight, which must include:
- 27       a. A written description of the utilization review organization's activities and  
28       responsibilities, including reporting requirements;
- 29       b. Evidence of formal approval of the utilization review organization program by the  
30       health carrier; and

1           c. A process by which the health carrier evaluates the performance of the utilization  
2           review organization.

3           8. The health carrier shall coordinate the utilization review program with other medical  
4           management activity conducted by the carrier, such as quality assurance,  
5           credentialing, provider contracting, data reporting, grievance procedures, processes  
6           for assessing member satisfaction, and risk management.

7           9. A health carrier shall provide covered persons and participating providers with access  
8           to its review staff by a toll-free number or collect call telephone line.

9           10. When conducting utilization review, the health carrier shall collect only the information  
10           necessary, including pertinent clinical information, to make the utilization review or  
11           benefit determination.

12          11. a. In conducting utilization review, the health carrier shall ensure that the review is  
13           conducted in a manner to ensure the independence and impartiality of the  
14           individuals involved in making the utilization review or benefit determination.

15          b. In ensuring the independence and impartiality of individuals involved in making  
16           the utilization review or benefit determination, the health carrier may not make  
17           decisions regarding hiring, compensation, termination, promotion, or other similar  
18           matters based upon the likelihood that the individual will support the denial of  
19           benefits.

20          **26.1-36.7-07. Procedures for standard utilization review and benefit determinations.**

21          1. A health carrier shall maintain written procedures pursuant to this section for making  
22           standard utilization review and benefit determinations on requests submitted to the  
23           health carrier by covered persons or their authorized representatives for benefits and  
24           for notifying covered persons and their authorized representatives of its determinations  
25           with respect to these requests within the specified timeframes required under this  
26           section.

27          2. a. (1) Subject to paragraph 2, for prospective review determinations, a health  
28           carrier shall make the determination and notify the covered person or the  
29           covered person's authorized representative of the determination, whether  
30           the carrier certifies the provision of the benefit or not, within a reasonable  
31           period of time appropriate to the covered person's medical condition but in

1 no event later than fifteen days after the date the health carrier receives the  
2 request.

3 Whenever the determination is an adverse determination, the health  
4 carrier shall make the notification of the adverse determination in  
5 accordance with subsection 6.

6 (2) The time period for making a determination and notifying the covered  
7 person or the covered person's authorized representative of the  
8 determination pursuant to paragraph 1 may be extended one time by the  
9 health carrier for up to fifteen days, provided the health carrier:

10 (a) Determines that an extension is necessary due to matters beyond the  
11 health carrier's control; and

12 (b) Notifies the covered person or the covered person's authorized  
13 representative, prior to the expiration of the initial fifteen-day time  
14 period, of the circumstances requiring the extension of time and the  
15 date by which the health carrier expects to make a determination.

16 (3) If the extension under paragraph 2 is necessary due to the failure of the  
17 covered person or the covered person's authorized representative to submit  
18 information necessary to reach a determination on the request, the notice of  
19 extension shall:

20 (a) Specifically describe the required information necessary to complete  
21 the request; and

22 (b) Give the covered person or the covered person's authorized  
23 representative at least forty-five days from the date of receipt of the  
24 notice to provide the specified information.

25 b. (1) Whenever the health carrier receives a prospective review request from a  
26 covered person or the covered person's authorized representative that fails  
27 to meet the health carrier's filing procedures, the health carrier shall notify  
28 the covered person or the covered person's authorized representative of  
29 this failure and provide in the notice information on the proper procedures to  
30 be followed for filing a request.



- 1       4. a. (1) For retrospective review determinations, a health carrier shall make the  
2             determination within a reasonable period of time but in no event later than  
3             thirty days after the date of receiving the benefit request.
- 4             (2) If the determination is an adverse determination, the health carrier shall  
5             provide notice of the adverse determination to the covered person or the  
6             covered person's authorized representative in accordance with  
7             subsection 6.
- 8       b. (1) The time period for making a determination and notifying the covered  
9             person or the covered person's authorized representative of the  
10            determination pursuant to subdivision a may be extended one time by the  
11            health carrier for up to fifteen days, provided the health carrier:
- 12            (a) Determines that an extension is necessary due to matters beyond the  
13            health carrier's control; and
- 14            (b) Notifies the covered person or the covered person's authorized  
15            representative prior to the expiration of the initial thirty-day time period  
16            of the circumstances requiring the extension of time and the date by  
17            which the health carrier expects to make a determination.
- 18       (2) If the extension under paragraph 1 is necessary due to the failure of the  
19            covered person or the covered person's authorized representative to submit  
20            information necessary to reach a determination on the request, the notice of  
21            extension shall:
- 22            (a) Specifically describe the required information necessary to complete  
23            the request; and
- 24            (b) Give the covered person or the covered person's authorized  
25            representative at least forty-five days from the date of receipt of the  
26            notice to provide the specified information.
- 27       5. a. For purposes of calculating the time periods within which a determination is  
28            required to be made under subsections 2 and 4, the time period within which the  
29            determination is required to be made shall begin on the date the request is  
30            received by the health carrier in accordance with the health carrier's procedures  
31            established pursuant to section 26.1-36.7-05 for filing a request without regard to

1 whether all of the information necessary to make the determination accompanies  
2 the filing.

3 b. (1) If the time period for making the determination under subsection 2 or 4 is  
4 extended due to the covered person's or the covered person's authorized  
5 representative's failure to submit the information necessary to make the  
6 determination, the time period for making the determination shall be tolled  
7 from the date on which the health carrier sends the notification of the  
8 extension to the covered person or the covered person's authorized  
9 representative until the earlier of:

10 (a) The date on which the covered person or the covered person's  
11 authorized representative responds to the request for additional  
12 information; or

13 (b) The date on which the specified information was to have been  
14 submitted.

15 (2) If the covered person or the covered person's authorized representative fails  
16 to submit the information before the end of the period of the extension, as  
17 specified in subsection 2 or 4, the health carrier may deny the certification of  
18 the requested benefit.

19 6. a. A notification of an adverse determination under this section shall, in a manner  
20 calculated to be understood by the covered person, set forth:

21 (1) Information sufficient to identify the benefit request or claim involved,  
22 including the date of service, if applicable, the health care provider, the  
23 claim amount, if applicable, the diagnosis code and its corresponding  
24 meaning and the treatment code and its corresponding meaning;

25 (2) The specific reasons or reasons for the adverse determination, including the  
26 denial code and its corresponding meaning, as well as a description of the  
27 health carrier's standard, if any, that was used in denying the benefit request  
28 or claim;

29 (3) Reference to the specific plan provisions on which the determination is  
30 based;

- 1           (4) A description of any additional material or information necessary for the  
2           covered person to perfect the benefit request, including an explanation of  
3           why the material or information is necessary to perfect the request;
- 4           (5) A description of the health carrier's grievance procedures established  
5           pursuant to chapter 26.1-36.8, including any time limits applicable to those  
6           procedures;
- 7           (6) If the health carrier relied upon an internal rule, guideline, protocol, or other  
8           similar criterion to make the adverse determination, either the specific rule,  
9           guideline, protocol, or other similar criterion or a statement that a specific  
10          rule, guideline, protocol, or other similar criterion was relied upon to make  
11          the adverse determination and that a copy of the rule, guideline, protocol, or  
12          other similar criterion will be provided free of charge to the covered person  
13          upon request;
- 14          (7) If the adverse determination is based on a medical necessity or  
15          experimental or investigational treatment or similar exclusion or limit, either  
16          an explanation of the scientific or clinical judgment for making the  
17          determination, applying the terms of the health benefit plan to the covered  
18          person's medical circumstances or a statement that an explanation will be  
19          provided to the covered person free of charge upon request;
- 20          (8) A copy of the rule, guideline, protocol, or other similar criterion relied upon in  
21          making the adverse determination; or
- 22          (9) The written statement of the scientific or clinical rationale for the adverse  
23          determination; and
- 24          (10) A statement explaining the availability of and the right of the covered  
25          person, as appropriate, to contact the commissioner's office or  
26          ombudsman's office at any time for assistance or, upon completion of the  
27          health carrier's grievance procedure process as provided under chapter  
28          26.1-36.8, to file a civil suit in a court of competent jurisdiction. The  
29          statement shall include contact information for the commissioner's office or  
30          ombudsman's office.

- 1           b. (1) A health carrier shall provide the notice required under this section in a  
2           culturally and linguistically appropriate manner if required in accordance  
3           with federal regulations.
- 4           (2) If a health carrier is required to provide the notice required under this  
5           section in a culturally and linguistically appropriate manner in accordance  
6           with federal regulations, the health carrier shall:
- 7           (a) Include a statement in the English version of the notice, prominently  
8           displayed in the non-English language, offering the provision of the  
9           notice in the non-English language;
- 10           (b) Once a utilization review or benefit determination request has been  
11           made by a covered person, provide all subsequent notices to the  
12           covered person in the non-English language; and
- 13           (c) To the extent the health carrier maintains a consumer assistance  
14           process, such as a telephone hotline that answers questions or  
15           provides assistance with filing claims and appeals, the health carrier  
16           shall provide this assistance in the non-English language.
- 17           c. If the adverse determination is a rescission, the health carrier shall provide in the  
18           advance notice of the rescission determination required to be provided under  
19           applicable state or federal law or regulation related to the advance notice  
20           requirement of a proposed rescission, in addition to any applicable disclosures  
21           required under subdivision a:
- 22           (1) Clear identification of the alleged fraudulent act, practice, or omission or the  
23           intentional misrepresentation of a material fact;
- 24           (2) An explanation as to why the act, practice, or omission was fraudulent or  
25           was an intentional misrepresentation of a material fact;
- 26           (3) Notice that the covered person or the covered person's authorized  
27           representative, prior to the date the advance notice of the proposed  
28           rescission ends, may immediately file a grievance to request a review of the  
29           adverse determination to rescind coverage pursuant to chapter 26.1-36.8;

1           (4) A description of the health carrier's grievance procedures established  
2           pursuant to chapter 26.1-36.8, including any time limits applicable to those  
3           procedures; and

4           (5) The date when the advance notice ends and the date back to which the  
5           coverage will be retroactively rescinded.

6           d. A health carrier may provide the notice required under this section in writing or  
7           electronically.

8           **26.1-36.7-08. Procedures for expedited utilization review and benefit determinations.**

9           1. a. A health carrier shall establish written procedures in accordance with this section  
10           for receiving benefit requests from covered persons or their authorized  
11           representatives and for making and notifying covered persons or their authorized  
12           representatives of expedited utilization review and benefit determinations with  
13           respect to urgent care requests and concurrent review urgent care requests.

14           b. (1) As part of the procedures required under subdivision a, a health carrier shall  
15           provide that in the case of a failure by a covered person or the covered  
16           person's authorized representative to follow the health carrier's procedures  
17           for filing an urgent care request the covered person or the covered person's  
18           authorized representative shall be notified of the failure and the proper  
19           procedures to be following for filing the request.

20           (2) A health carrier shall provide the notice required under paragraph 1:

21           (a) To the covered person or the covered person's authorized  
22           representative as soon as possible but not later than twenty-four  
23           hours after receipt of the request; and

24           (b) Orally unless the covered person or the covered person's authorized  
25           representative requests the notice in writing.

26           (3) The provisions of this paragraph apply only in the case of a failure that:

27           (a) Is a communication by a covered person or the covered person's  
28           authorized representative that is received by a person or  
29           organizational unit of the health carrier responsible for handling  
30           benefit matters; and

1                   (b) Is a communication that refers to a specific covered person, a specific  
2                   medical condition or symptom, and a specific health care service,  
3                   treatment, or provider for which approval is being requested.

4       2. a. (1) For an urgent care request, unless the covered person or the covered  
5           person's authorized representative has failed to provide sufficient  
6           information for the health carrier to determine whether, or to what extent, the  
7           benefits requested are covered benefits or payable under the health  
8           carrier's health benefit plan, the health carrier shall notify the covered  
9           person or the covered person's authorized representative of the health  
10          carrier's determination with respect to the request, whether the  
11          determination is an adverse determination as soon as possible taking into  
12          account the medical condition of the covered person but in no event later  
13          than twenty-four hours after the receipt of the request by the health carrier.

14          (2) If the health carrier's determination is an adverse determination, the health  
15          carrier shall provide notice of the adverse determination in accordance with  
16          subsection 5.

17       b. (1) If the covered person or the covered person's authorized representative has  
18           failed to provide sufficient information for the health carrier to make a  
19           determination, the health carrier shall notify the covered person or the  
20           covered person's authorized representative either orally or, if requested by  
21           the covered person or the covered person's authorized representative, in  
22           writing of this failure and state what specific information is needed as soon  
23           as possible but in no event later than twenty-four hours after receipt of the  
24           request.

25          (2) The health carrier shall provide the covered person or the covered person's  
26          authorized representative a reasonable period of time to submit the  
27          necessary information taking into account the circumstances but in no event  
28          less than forty-eight hours after notifying the covered person or the covered  
29          person's authorized representative of the failure to submit sufficient  
30          information, as provided in paragraph 1.

1           (3) The health carrier shall notify the covered person or the covered person's  
2           authorized representative of its determination with respect to the urgent care  
3           request as soon as possible but in no event more than forty-eight hours  
4           after the earlier of:

5           (a) The health carrier's receipt of the requested specified information; or

6           (b) The end of the period provided for the covered person or the covered  
7           person's authorized representative to submit the requested specified  
8           information.

9           (4) If the covered person or the covered person's authorized representative fails  
10          to submit the information before the end of the period of the extension, as  
11          specified in paragraph 2, the health carrier may deny the certification of the  
12          requested benefit.

13          (5) If the health carrier's determination is an adverse determination, the health  
14          carrier shall provide notice of the adverse determination in accordance with  
15          subsection 5.

16      3.   a. For concurrent review urgent care requests involving a request by the covered  
17          person or the covered person's authorized representative to extend the course of  
18          treatment beyond the initial period of time or the number of treatments, if the  
19          request is made at least twenty-four hours prior to the expiration of the prescribed  
20          period of time or number of treatments, the health carrier shall make a  
21          determination with respect to the request and notify the covered person or the  
22          covered person's authorized representative of the determination, whether it is an  
23          adverse determination or not, as soon as possible taking into account the  
24          covered person's medical condition but in no event more than twenty-four hours  
25          after the health carrier's receipt of the request.

26          b. If the health carrier's determination is an adverse determination, the health carrier  
27          shall provide notice of the adverse determination in accordance with  
28          subsection 5.

29      4. For purposes of calculating the time periods within which a determination is required to  
30          be made under subsection 2 or 3, the time period within which the determination is  
31          required to be made shall begin on the date the request is filed with the health carrier

1 in accordance with the health carrier's procedures established pursuant to section  
2 26.1-36.7-05 for filing a request without regard to whether all of the information  
3 necessary to make the determination accompanies the filing.

4 5. a. A notification of an adverse determination under this section shall in a manner  
5 calculated to be understood by the covered person set forth:

6 (1) Information sufficient to identify the benefit request or claim involved,  
7 including the date of service, if applicable, the health care provider, the  
8 claim amount, if applicable, the diagnosis code and its corresponding  
9 meaning, and the treatment code and its corresponding meaning;

10 (2) The specific reasons or reasons for the adverse determination, including the  
11 denial code and its corresponding meaning, as well as a description of the  
12 health carrier's standard, if any, that was used in denying the benefit request  
13 or claim;

14 (3) Reference to the specific plan provisions on which the determination is  
15 based;

16 (4) A description of any additional material or information necessary for the  
17 covered person to complete the request, including an explanation of why the  
18 material or information is necessary to complete the request;

19 (5) A description of the health carrier's internal review procedures established  
20 pursuant to chapter 26.1-36.8, including any time limits applicable to those  
21 procedures;

22 (6) A description of the health carrier's expedited review procedures established  
23 pursuant to section 26.1-36.8-08;

24 (7) If the health carrier relied upon an internal rule, guideline, protocol, or other  
25 similar criterion to make the adverse determination, either the specific rule,  
26 guideline, protocol, or other similar criterion or a statement that a specific  
27 rule, guideline, protocol, or other similar criterion was relied upon to make  
28 the adverse determination and that a copy of the rule, guideline, protocol, or  
29 other similar criterion will be provided free of charge to the covered person  
30 upon request;

1           (8) If the adverse determination is based on a medical necessity or  
2           experimental or investigational treatment or similar exclusion or limit, either  
3           an explanation of the scientific or clinical judgment for making the  
4           determination applying the terms of the health benefit plan to the covered  
5           person's medical circumstances or a statement that an explanation will be  
6           provided to the covered person free of charge upon request;

7           (9) If applicable, instructions for requesting:

8           (a) A copy of the rule, guideline, protocol, or other similar criterion relied  
9           upon in making the adverse determination in accordance with  
10           paragraph 7; or

11           (b) The written statement of the scientific or clinical rationale for the  
12           adverse determination in accordance with paragraph 8; and

13           (10) A statement explaining the availability of and right of the covered person to  
14           contact the commissioner's office or ombudsman's office at any time for  
15           assistance or, upon completion of the health carrier's grievance procedure  
16           process as provided under chapter 26.1-36.8, to file a civil suit in a court of  
17           competent jurisdiction. The statement shall include contact information for  
18           the commissioner's office or ombudsman's office.

19           b. (1) A health carrier shall provide the notice required under this section in a  
20           culturally and linguistically appropriate manner if required in accordance  
21           with federal regulations.

22           (2) If a health carrier is required to provide the notice required under this  
23           section in a culturally and linguistically appropriate manner in accordance  
24           with federal regulations, the health carrier shall:

25           (a) Include a statement in the English version of the notice, prominently  
26           displayed in the non-English language, offering the provision of the  
27           notice in the non-English language;

28           (b) Once a utilization review or benefit determination request has been  
29           made by a covered person, provide all subsequent notices to the  
30           covered person in the non-English language; and

1                   (c) To the extent the health carrier maintains a consumer assistance  
2                   process, such as a telephone hotline that answers questions or  
3                   provides assistance with filing claims and appeals, the health carrier  
4                   shall provide this assistance in the non-English language.

5           c. If the adverse determination is a rescission, the health carrier shall provide, in  
6           addition to any applicable disclosures required:

7           (1) Clear identification of the alleged fraudulent act, practice, or omission or the  
8           intentional misrepresentation of material fact;

9           (2) An explanation as to why the act, practice, or omission was fraudulent or  
10           was an intentional misrepresentation of a material fact;

11           (3) The date the health carrier made the decision to rescind the coverage; and

12           (4) The date when the advance notice of the health carrier's decision to rescind  
13           the coverage ends.

14           d. (1) A health carrier may provide the notice required under this section orally, in  
15           writing, or electronically.

16           (2) If notice of the adverse determination is provided orally, the health carrier  
17           shall provide written or electronic notice of the adverse determination within  
18           three days following the oral notification.

19           **26.1-36.7-09. Emergency services.**

20           1. When conducting utilization review or making a benefit determination for emergency  
21           services, a health carrier that provides benefits for services in an emergency  
22           department of a hospital shall follow the provisions of this section.

23           2. A health carrier shall cover emergency services to screen and stabilize a covered  
24           person in the following manner:

25           a. Without the need for prior authorization of such services if a prudent layperson  
26           would have reasonably believed that an emergency medical condition existed  
27           even if the emergency services are provided on an out-of-network basis;

28           b. Shall cover emergency services whether the health care provider furnishing the  
29           services is a participating provider with respect to such services;

30           c. If the emergency services are provided out of network, without imposing any  
31           administrative requirement or limitation on coverage that is more restrictive than

- 1           the requirements or limitations that apply to emergency services received from  
2           network providers;
- 3           d. If the emergency services are provided out of network, by complying with the  
4           cost-sharing requirements of subsection 3; and
- 5           e. Without regard to any other term or condition of coverage, other than:
- 6               (1) The exclusion of or coordination of benefits;
- 7               (2) An affiliation or waiting period as permitted under section 2704 of the Public  
8               Health Service Act; or
- 9               (3) Applicable cost-sharing, as provided in subsection three.
- 10          3. a. For in-network emergency services, coverage of emergency services shall be  
11           subject to applicable copayments, coinsurance, and deductibles.
- 12          b. (1) For out-of-network emergency services, any cost-sharing requirement  
13           expressed as a copayment amount or coinsurance rate imposed with  
14           respect to a covered person cannot exceed the cost-sharing requirement  
15           imposed with respect to a covered person if the services were provided in  
16           network.
- 17           (2) Notwithstanding paragraph 1, a covered person may be required to pay, in  
18           addition to the in-network cost-sharing, the excess of the amount the  
19           out-of-network provider charges over the amount the health carrier is  
20           required to pay under this subparagraph.
- 21           (3) A health carrier complies with the requirements of this paragraph if it  
22           provides payment of emergency services provided by an out-of-network  
23           provider in an amount not less than the greatest of the following:
- 24               (a) The amount negotiated with in-network providers for emergency  
25               services, excluding any in-network copayment or coinsurance  
26               imposed with respect to the covered person;
- 27               (b) The amount of the emergency service calculated using the same  
28               method the plan uses to determine payments for out-of-network  
29               services, but using the in-network cost-sharing provisions instead of  
30               the out-of-town network cost-sharing provisions; or

- 1                   (c) The amount that would be paid under medicare for the emergency  
2                   services, excluding any in-network copayment or coinsurance  
3                   requirements.
- 4                   (4) (a) For capitated or other health benefit plans that do not have a  
5                   negotiated per service amount for in-network providers,  
6                   subparagraph a of paragraph 3 does not apply.
- 7                   (b) If a health benefit plan has more than one negotiated amount for  
8                   in-network providers for a particular emergency service, the amount in  
9                   subparagraph a of paragraph 3 is the median of these negotiated  
10                  amounts.
- 11                  c. (1) Any cost-sharing requirement other than a copayment or coinsurance  
12                  requirement, such as a deductible or out-of-pocket maximum, may be  
13                  imposed with respect to emergency services provided out of network if the  
14                  cost-sharing requirement generally applies to out of network benefits.
- 15                  (2) A deductible may be imposed with respect to out of network emergency  
16                  services only as part of a deductible that generally applies to out of network  
17                  benefits.
- 18                  (3) If an out-of-pocket maximum generally applies to out of network benefits,  
19                  that out-of-network maximum must apply to out of network emergency  
20                  services.
- 21                  4. For immediately required postevaluation or poststabilization services, a health carrier  
22                  shall provide access to a designated representative twenty-four hours a day seven  
23                  days a week to facilitate review.

24                  **26.1-36.7-10. Confidentiality requirements.**

25                  A health carrier shall annually certify in writing to the commissioner that the utilization  
26                  review program of the health carrier or its designee complies with all applicable state and  
27                  federal law establishing confidentiality and reporting requirements.

28                  **26.1-36.7-11. Disclosure requirements.**

- 29                  1. In the certificate of coverage or member handbook provided to covered persons, a  
30                  health carrier shall include a clear and comprehensive description of its utilization  
31                  review procedures, including the procedures for obtaining review of adverse

1 determinations and a statement of rights and responsibilities of covered persons with  
2 respect to those procedures.

3 2. A health carrier shall include a summary of its utilization review and benefit  
4 determination procedures in materials intended for prospective covered persons.

5 3. A health carrier shall print on its membership cards a toll-free telephone number to call  
6 for utilization review and benefit decisions.

7 **26.1-36.7-12. Rules.**

8 The commissioner may adopt rules to carry out the provisions of this chapter.

9 **26.1-36.7-13. Penalties.**

10 The commissioner may assess a penalty against a health carrier that violates this chapter  
11 of not more than ten thousand dollars for each violation. The fine may be recovered in an action  
12 brought in the name of the state. In addition to imposing a monetary penalty, the commissioner  
13 may also cancel, revoke, or refuse to renew the certificate of authority of a health carrier that  
14 has violated this chapter.

15 **SECTION 6.** Chapter 26.1-36.8 of the North Dakota Century Code is created and enacted  
16 as follows:

17 **26.1-36.8-01. Definitions.**

18 As used in this chapter:

19 1. "Adverse determination" means:

20 a. A determination by a health carrier or its designee utilization review organization  
21 that, based upon the information provided, a request for a benefit under the  
22 health carrier's health benefit plan upon application of any utilization review  
23 technique does not meet the health carrier's requirements for medical necessity,  
24 appropriateness, health care setting, level of care, or effectiveness or is  
25 determined to be experimental or investigational and the requested benefit is  
26 therefore denied, reduced, or terminated or payment is not provided or made, in  
27 whole or in part, for the benefit;

28 b. The denial, reduction, termination, or failure to provide or make payment, in  
29 whole or in part, for a benefit based on a determination by a health carrier or its  
30 designee utilization review organization of a covered person's eligibility to  
31 participate in the health carrier's health benefit plan;

- 1           c. Any prospective review or retrospective review determination that denies,  
2           reduces, or terminates or fails to provide or make payment, in whole or in part, for  
3           a benefit; or
- 4           d. A rescission of coverage determination.
- 5           2. "Ambulatory review" means utilization review of health care services performed or  
6           provided in an outpatient setting.
- 7           3. "Authorized representative" means:
- 8           a. A person to whom a covered person has given express written consent to  
9           represent the covered person for purposes of this chapter;
- 10           b. A person authorized by law to provide substituted consent for a covered person;
- 11           c. A family member of the covered person or the covered person's treating health  
12           care professional when the covered person is unable to provide consent;
- 13           d. A health care professional when the covered person's health benefit plan requires  
14           that a request for a benefit under the plan be initiated by the health care  
15           professional; or
- 16           e. In the case of an urgent care request, a health care professional with knowledge  
17           of the covered person's medical condition.
- 18           4. "Case management" means a coordinated set of activities conducted for individual  
19           patient management of serious, complicated, protracted, or other health conditions.
- 20           5. "Certification" means a determination by a health carrier or its designee utilization  
21           review organization that a request for a benefit under the health carrier's health benefit  
22           plan has been reviewed and based on the information provided satisfies the health  
23           carrier's requirements for medical necessity, appropriateness, health care setting, level  
24           of care, and effectiveness.
- 25           6. "Clinical peer" means a physician or other health care professional who holds a  
26           nonrestricted license in a state of the United States and in the same or similar  
27           specialty as typically manages the medical condition, procedure, or treatment under  
28           review.
- 29           7. "Clinical review criteria" means the written screening procedures, decision abstracts,  
30           clinical protocols, and practice guidelines used by the health carrier to determine the  
31           medical necessity and appropriateness of health care services.

- 1        8. "Closed plan" means a managed care plan that requires covered persons to use  
2        participating providers under the terms of the managed care plan.
- 3        9. "Commissioner" means the insurance commissioner.
- 4        10. "Concurrent review" means utilization review conducted during a patient's stay or  
5        course of treatment in a facility, the office of a health care professional, or other  
6        inpatient or outpatient health care setting.
- 7        11. "Covered benefits" or "benefits" means those health care services to which a covered  
8        person is entitled under the terms of a health benefit plan.
- 9        12. "Covered person" means a policyholder, subscriber, enrollee, or other individual  
10       participating in a health benefit plan.
- 11       13. "Discharge planning" means the formal process for determining, prior to discharge  
12       from a facility, the coordination and management of the care that a patient receives  
13       following discharge from a facility.
- 14       14. "Emergency medical condition" means a medical condition manifesting itself by acute  
15       symptoms of sufficient severity, including severe pain, such that a prudent layperson,  
16       who possesses an average knowledge of health and medicine, could reasonably  
17       expect that the absence of immediate medical attention would result in serious  
18       impairment to bodily functions, serious dysfunction of a bodily organ or part, or would  
19       place the person's health or, with respect to a pregnant woman, the health of the  
20       woman or her unborn child, in serious jeopardy.
- 21       15. "Emergency services" means, with respect to an emergency medical condition:  
22       a. A medical screening examination that is within the capability of the emergency  
23       department of a hospital, including ancillary services routinely available to the  
24       emergency department to evaluate such emergency medical condition; and  
25       b. Such further medical examination and treatment, to the extent they are within the  
26       capability of the staff and facilities available at a hospital, to stabilize a patient.
- 27       16. "Facility" means an institution providing health care services or a health care setting,  
28       including hospitals and other licensed inpatient centers, ambulatory surgical or  
29       treatment centers, skilled nursing centers, residential treatment centers, diagnostic,  
30       laboratory and imaging centers, and rehabilitation and other therapeutic health  
31       settings.

- 1        17. "Final adverse determination" means an adverse determination that has been upheld  
2        by the health carrier at the completion of the internal appeals process applicable under  
3        section 26.1-36.8-05 or 26.1-36.8-08 or an adverse determination that with respect to  
4        which the internal appeals process has been deemed exhausted in accordance with  
5        section 26.1-36.8-04.
- 6        18. "Grievance" means a written complaint or oral complaint if the complaint involves an  
7        urgent care request submitted by or on behalf of a covered person regarding:  
8        a. Availability, delivery, or quality of health care services, including a complaint  
9        regarding an adverse determination made pursuant to utilization review;  
10       b. Claims payment, handling, or reimbursement for health care services; or  
11       c. Matters pertaining to the contractual relationship between a covered person and  
12       a health carrier.
- 13       19. a. "Health benefit plan" means a policy, contract, certificate, or agreement offered or  
14       issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse  
15       any of the costs of health care services.  
16       b. "Health benefit plan" includes short-term and catastrophic health insurance  
17       policies, and a policy that pays on a cost-incurred basis, except as otherwise  
18       specifically exempted in this definition.  
19       c. "Health benefit plan" does not include:  
20       (1) Coverage only for accident or disability income insurance, or any  
21       combination thereof;  
22       (2) Coverage issued as a supplement to liability insurance;  
23       (3) Liability insurance, including general liability insurance and automobile  
24       liability insurance;  
25       (4) Workers' compensation or similar insurance;  
26       (5) Automobile medical payment insurance;  
27       (6) Credit-only insurance;  
28       (7) Coverage for onsite medical clinics; and  
29       (8) Other similar insurance coverage, specified in federal regulations issued  
30       pursuant to the Health Insurance Portability and Accountability Act of 1996.

1                    [Pub. L. 104-191], under which benefits for medical care are secondary or  
2                    incidental to other insurance benefits.

3            d. "Health benefit plan" does not include the following benefits if they are provided  
4                    under a separate policy, certificate, or contract of insurance or are otherwise not  
5                    an integral part of the plan:

6                    (1) Limited scope dental or vision benefits;

7                    (2) Benefits for long-term care, nursing home care, home health care,  
8                    community-based care, or any combination thereof; or

9                    (3) Other similar, limited benefits specified in federal regulations issued  
10                    pursuant to the Health Insurance Portability and Accountability Act of 1996  
11                    [Pub. L. 104-191].

12            e. "Health benefit plan" does not include the following benefits if the benefits are  
13                    provided under a separate policy, certificate, or contract of insurance, there is no  
14                    coordination between the provision of the benefits and any exclusion of benefits  
15                    under any group health plan maintained by the same plan sponsor, and the  
16                    benefits are paid with respect to an event without regard to whether benefits are  
17                    provided with respect to such an event under any group health plan maintained  
18                    by the same plan sponsor:

19                    (1) Coverage only for a specified disease or illness; or

20                    (2) Hospital indemnity or other fixed indemnity insurance.

21            f. "Health benefit plan" does not include the following if offered as a separate policy,  
22                    certificate, or contract of insurance:

23                    (1) Medicare supplemental health insurance as defined under section 1882(g)  
24                    (1) of the Social Security Act;

25                    (2) Coverage supplemental to the coverage provided under chapter 55 of  
26                    title 10, United States Code (civilian health and medical program of the  
27                    uniformed services (CHAMPUS)); or

28                    (3) Similar supplemental coverage provided to coverage under a group health  
29                    plan.

- 1        20. "Health care professional" means a physician or other health care practitioner  
2        licensed, accredited, or certified to perform specified health care services consistent  
3        with state law.
- 4        21. "Health care provider" or "provider" means a health care professional or a facility.
- 5        22. "Health care services" means services for the diagnosis, prevention, treatment, cure,  
6        or relief of a health condition, illness, injury, or disease.
- 7        23. "Health carrier" means an entity subject to the insurance laws and administrative rules  
8        of this state, or subject to the jurisdiction of the commissioner, that contracts or offers  
9        to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of  
10       health care services, including a sickness and accident insurance company, a health  
11       maintenance organization, a nonprofit hospital and health service corporation, or any  
12       other entity providing a plan of health insurance, health benefits, or health care  
13       services.
- 14       24. "Health indemnity plan" means a health benefit plan that is not a managed care plan.
- 15       25. a. "Managed care plan" means a health benefit plan that requires a covered person  
16       to use, or creates incentives, including financial incentives, for a covered person  
17       to use health care providers managed, owned, under contract with, or employed  
18       by the health carrier.
- 19       b. "Managed care plan" includes:  
20       (1) A closed plan, as defined in subsection 8; and  
21       (2) An open plan, as defined in subsection 27.
- 22       26. "Network" means the group of participating providers providing services to a managed  
23       care plan.
- 24       27. "Open plan" means a managed care plan other than a closed plan that provides  
25       incentives, including financial incentives, for covered persons to use participating  
26       providers under the terms of the managed care plan.
- 27       28. "Participating provider" means a provider who under a contract with the health carrier  
28       or with its contractor or subcontractor has agreed to provide health care services to  
29       covered persons with an expectation of receiving payment, other than coinsurance,  
30       copayments or deductibles, directly or indirectly from the health carrier.

- 1        29. "Person" means an individual, a corporation, a partnership, an association, a joint  
2        venture, a joint stock company, a trust, an unincorporated organization, any similar  
3        entity, or any combination of the foregoing.
- 4        30. "Prospective review" means utilization review conducted prior to an admission or the  
5        provision of a health care service or a course of treatment in accordance with a health  
6        carrier's requirement that the health care service or course of treatment, in whole or in  
7        part, be approved prior to its provision.
- 8        31. "Rescission" means a cancellation or discontinuance of coverage under a health  
9        benefit plan that has a retroactive effect. Rescission does not include a cancellation or  
10       discontinuance of coverage under a health benefit plan if:
- 11       a. The cancellation or discontinuance of coverage has only a prospective effect; or  
12       b. The cancellation or discontinuance of coverage is effective retroactively to the  
13       extent it is attributable to a failure to timely pay required premiums or  
14       contributions toward the cost of coverage.
- 15       32. a. "Retrospective review" means any review of a request for a benefit that is not a  
16       prospective review request.
- 17       b. "Retrospective review" does not include the review of a claim that is limited to  
18       veracity of documentation or accuracy of coding.
- 19       33. "Second opinion" means an opportunity or requirement to obtain a clinical evaluation  
20       by a provider other than the one originally making a recommendation for a proposed  
21       health care service to assess the medical necessity and appropriateness of the initial  
22       proposed health care service.
- 23       34. "Stabilized" means, with respect to an emergency medical condition, that no material  
24       deterioration of the condition is likely, within reasonable medical probability, to result  
25       from or occur during the transfer of the individual from a facility or, with respect to a  
26       pregnant woman, the woman has delivered, including the placenta.
- 27       35. a. "Urgent care request" means a request for a health care service or course of  
28       treatment with respect to which the time periods for making nonurgent care  
29       request determination:
- 30       (1) Could seriously jeopardize the life or health of the covered person or the  
31       ability of the covered person to regain maximum function; or

1           (2) In the opinion of a physician with knowledge of the covered person's  
2           medical condition, would subject the covered person to severe pain that  
3           cannot be adequately managed without the health care service or treatment  
4           that is the subject of the request.

5           b. (1) Except as provided in paragraph 2, in determining whether a request is to  
6           be treated as an urgent care request, an individual acting on behalf of the  
7           health carrier shall apply the judgment of a prudent layperson who  
8           possesses an average knowledge of health and medicine.

9           (2) Any request that a physician with knowledge of the covered person's  
10           medical condition determines is an urgent care request within the meaning  
11           of subdivision a must be treated as an urgent care request.

12       36. "Utilization review" means a set of formal techniques designed to monitor the use of or  
13       evaluate the medical necessity, appropriateness, efficacy, or efficiency of health care  
14       services, procedures, providers, or facilities. Techniques may include ambulatory  
15       review, prospective review, second opinion, certification, concurrent review, case  
16       management, discharge planning, or retrospective review.

17       37. "Utilization review organization" means an entity that conducts utilization review, other  
18       than a health carrier performing utilization review for its own health benefit plans.

19       **26.1-36.8-02. Applicability and scope.**

20       Except as otherwise specified, this chapter applies to all health carriers offering a  
21       nongrandfathered health benefit plan. "Nongrandfathered health benefit plan" means a health  
22       benefit plan that is not exempt from the requirements of the Patient Protection and Affordable  
23       Care Act [Pub. L. 111-148] and the Health Care and Education Reconciliation Act of 2010  
24       [Pub. L. 111-152] because it failed to achieve or lost grandfathered health plan status.  
25       "Grandfathered health plan" has the meaning stated in the Patient Protection and Affordable  
26       Care Act [Pub. L. 111-148], as amended by the Health Care and Education Reconciliation Act of  
27       2010 [Pub. L. 111-152].

28       **26.1-36.8-03. Grievance reporting and recordkeeping requirements.**

29       1. a. A health carrier shall maintain a written register to document all grievances  
30       received, including the notices and claims associated with the grievances, during  
31       a calendar year.



- 1 (c) The total number of grievances;  
2 (d) The number of grievances for which a covered person requested an  
3 additional voluntary grievance review pursuant to section  
4 26.1-36.8-07;  
5 (e) The number of grievances resolved at each level and their resolution;  
6 (f) The number of grievances appealed to the commissioner of which the  
7 health carrier has been informed;  
8 (g) The number of grievances referred to alternative dispute resolution  
9 procedures or resulting in litigation; and  
10 (h) A synopsis of actions being taken to correct problems identified.

11 **26.1-36.8-04. Grievance review procedures.**

- 12 1. a. Except as specified in section 26.1-36.8-08, a health carrier shall use written  
13 procedures for receiving and resolving grievances from covered persons, as  
14 provided in sections 26.1-36.8-05, 26.1-36.8-06, and 26.1-36.8-07.  
15 b. (1) Whenever a health carrier fails to strictly adhere to the requirements of  
16 section 26.1-36.8-05 or 26.1-36.8-08 with respect to receiving and resolving  
17 grievances involving an adverse determination, the covered person shall be  
18 deemed to have exhausted the provisions of this chapter and may take  
19 action under paragraph 2 regardless of whether the health carrier asserts  
20 that it substantially complied with the requirements of section 26.1-36.8-05  
21 or 26.1-36.8-08, as applicable, or that any error it committed was  
22 de minimis.  
23 (2) (a) A covered person may file a request for external review in accordance  
24 with the procedures outlined in chapter 26.1-36.6.  
25 (b) In addition, a covered person is entitled to pursue any available  
26 remedies under state or federal law on the basis that the health carrier  
27 failed to provide a reasonable internal claims and appeals process  
28 that would yield a decision on the merits of the claim.  
29 2. a. A health carrier shall file with the commissioner a copy of the procedures required  
30 under subsection 1, including all forms used to process requests made pursuant  
31 to sections 26.1-36.8-05, 26.1-36.8-06, and 26.1-36.8-07. A health carrier shall

- 1           file with the commissioner any subsequent material modifications to the  
2           documents.
- 3           b. The commissioner may disapprove a filing received in accordance with  
4           subdivision a that fails to comply with this chapter or applicable rules.
- 5           3. In addition to subsection 2, a health carrier shall file annually with the commissioner as  
6           part of its annual report required by section 26.1-36.8-03 a certificate of compliance  
7           stating that the health carrier has established and maintains for each of its health  
8           benefit plans grievance procedures that fully comply with the provisions of this chapter.
- 9           4. A description of the grievance procedures required under this section shall be set forth  
10           in or attached to the policy, certificate, membership booklet, outline of coverage, or  
11           other evidence of coverage provided to covered persons.
- 12           5. The grievance procedure documents shall include a statement of a covered person's  
13           right to contact the commissioner's office or ombudsman's office for assistance at any  
14           time. The statement shall include the telephone number and address of the  
15           commissioner's or ombudsman's office.
- 16           **26.1-36.8-05. First-level reviews of grievances involving an adverse determination.**
- 17           1. Within one hundred eighty days after the date of receipt of a notice of an adverse  
18           determination sent pursuant to chapter 26.1-36.7, a covered person or the covered  
19           person's authorized representative may file a grievance with the health carrier  
20           requesting a first-level review of the adverse determination.
- 21           2. a. The health carrier shall provide the covered person with the name, address, and  
22           telephone number of a person or organizational unit designated to coordinate the  
23           first-level review on behalf of the health carrier.
- 24           b. (1) In providing for a first-level review under this section, the health carrier shall  
25           ensure that the review is conducted in a manner under this section to  
26           ensure the independence and impartiality of the individuals involved in  
27           making the first-level review decision.
- 28           (2) In ensuring the independence and impartiality of individuals involved in  
29           making the first-level review decision, the health carrier shall not make  
30           decisions related to such individuals regarding hiring, compensation,

1 termination, promotion, or other similar matters based upon the likelihood  
2 that the individual will support the denial of benefits.

- 3 3. a. (1) In the case of an adverse determination involving utilization review, the  
4 health carrier shall designate an appropriate clinical peer or peers of the  
5 same or similar specialty as would typically manage the case being  
6 reviewed to review the adverse determination. The clinical peer may not  
7 have been involved in the initial adverse determination.
- 8 (2) In designating an appropriate clinical peer or peers pursuant to paragraph 1,  
9 the health carrier shall ensure that if more than one clinical peer is involved  
10 in the review a majority of the individuals reviewing the adverse  
11 determination are health care professionals who have appropriate expertise.

- 12 b. In conducting a review under this section, the reviewer or reviewers shall take  
13 into consideration all comments, documents, records, and other information  
14 regarding the request for services submitted by the covered person or the  
15 covered person's authorized representative without regard to whether the  
16 information was submitted or considered in making the initial adverse  
17 determination.

- 18 4. a. (1) A covered person does not have the right to attend or to have a  
19 representative in attendance at the first-level review but the covered person  
20 or the covered person's authorized representative is entitled to:
- 21 (a) Submit written comments, documents, records, and other material  
22 relating to the request for benefits for the reviewer or reviewers to  
23 consider when conducting the review; and
- 24 (b) Receive from the health carrier upon request and free of charge  
25 reasonable access to and copies of all documents, records, and other  
26 information relevant to the covered person's request for benefits.
- 27 (2) For purposes of subparagraph b of paragraph 1, a document, record, or  
28 other information shall be considered relevant to a covered person's request  
29 for benefits if the document, record, or other information:
- 30 (a) Was relied upon in making the benefit determination;

1                   (b) Was submitted, considered, or generated in the course of making the  
2                   adverse determination, without regard to whether the document,  
3                   record, or other information was relied upon in making the benefit  
4                   determination;

5                   (c) Demonstrates that in making the benefit determination the health  
6                   carrier or its designated representatives consistently applied required  
7                   administrative procedures and safeguards with respect to the covered  
8                   person as other similarly situated covered persons; or

9                   (d) Constitutes a statement of policy or guidance with respect to the  
10                  health benefit plan concerning the denied health care service or  
11                  treatment for the covered person's diagnosis without regard to  
12                  whether the advice or statement was relied upon in making the benefit  
13                  determination.

14                  b. The health carrier shall make the provisions of subdivision a known to the  
15                  covered person or the covered person's authorized representative within three  
16                  working days after the date of receipt of the grievance.

17                  5. For purposes of calculating the time periods within which a determination is required to  
18                  be made and notice provided under subsection 6, the time period shall begin on the  
19                  date the grievance requesting the review is filed with the health carrier in accordance  
20                  with the health carrier's procedures established pursuant to section 26.1-36.8-04 for  
21                  filing a request without regard to whether all of the information necessary to make the  
22                  determination accompanies the filing.

23                  6. a. A health carrier shall notify and issue a decision in writing or electronically to the  
24                  covered person or the covered person's authorized representative within the  
25                  timeframes provided in subdivision b or c.

26                  b. With respect to a grievance requesting a first-level review of an adverse  
27                  determination involving a prospective review request, the health carrier shall  
28                  notify and issue a decision within a reasonable period of time that is appropriate  
29                  given the covered person's medical condition but no later than thirty days after  
30                  the date of the health carrier's receipt of the grievance requesting the first-level  
31                  review made pursuant to subsection 1.

1           c. With respect to a grievance requesting a first-level review of an adverse  
2           determination involving a retrospective review request, the health carrier shall  
3           notify and issue a decision within a reasonable period of time but no later than  
4           sixty days after the date of the health carrier's receipt of the grievance requesting  
5           the first-level review made pursuant to subsection 1.

6           7. a. Prior to issuing a decision in accordance with the timeframes provided in  
7           subsection 6, the health carrier shall provide free of charge to the covered  
8           person, or the covered person's authorized representative, any new or additional  
9           evidence, relied upon or generated by the health carrier, or at the direction of the  
10           health carrier, in connection with the grievance sufficiently in advance of the date  
11           the decision is required to be provided to permit the covered person, or the  
12           covered person's authorized representative, a reasonable opportunity to respond  
13           prior to that date.

14           b. Before the health carrier issues or provides notice of a final adverse  
15           determination in accordance with the timeframes provided in subsection 6 that is  
16           based on new or additional rationale, the health carrier shall provide the new or  
17           additional rationale to the covered person, or the covered person's authorized  
18           representative, free of charge as soon as possible and sufficiently in advance of  
19           the date the notice of final adverse determination is to be provided to permit the  
20           covered person, or the covered person's authorized representative a reasonable  
21           opportunity to respond prior to that date.

22           8. The decision issued pursuant to subsection 6 shall set forth in a manner calculated to  
23           be understood by the covered person or the covered person's authorized  
24           representative:

25           a. The titles and qualifying credentials of the reviewers participating in the first-level  
26           review process;

27           b. Information sufficient to identify the claim involved with respect to the grievance,  
28           including the date of service, the health care provider, if applicable, the claim  
29           amount, the diagnosis code and its corresponding meaning, and the treatment  
30           code and its corresponding meaning;

31           c. A statement of the reviewers' understanding of the covered person's grievance;

- 1           d. The reviewers' decision in clear terms and the contract basis or medical rationale  
2           in sufficient detail for the covered person to respond further to the health carrier's  
3           position;
- 4           e. A reference to the evidence or documentation used as the basis for the decision;
- 5           f. For a first-level review decision issued pursuant to subsection 6 that upholds the  
6           grievance:
- 7           (1) The specific reason or reasons for the final adverse determination, including  
8           the denial code and its corresponding meaning, as well as a description of  
9           the health carrier's standard, if any, that was used in reaching the denial;
- 10          (2) The reference to the specific plan provisions on which the determination is  
11          based;
- 12          (3) A statement that the covered person is entitled to receive upon request and  
13          free of charge reasonable access to and copies of all documents, records,  
14          and other information relevant, as the term relevant is defined in  
15          subdivision a of subsection 4 to the covered person's benefit request;
- 16          (4) If the health carrier relied upon an internal rule, guideline, protocol, or other  
17          similar criterion to make the final adverse determination, either the specific  
18          rule, guideline, protocol, or other similar criterion or a statement that a  
19          specific rule, guideline, protocol, or other similar criterion was relied upon to  
20          make the final adverse determination and that a copy of the rule, guideline,  
21          protocol, or other similar criterion will be provided free of charge to the  
22          covered person upon request;
- 23          (5) If the final adverse determination is based on a medical necessity or  
24          experimental or investigational treatment or similar exclusion or limit either  
25          an explanation of the scientific or clinical judgment for making the  
26          determination applying the terms of the health benefit plan to the covered  
27          person's medical circumstances or a statement that an explanation will be  
28          provided to the covered person free of charge upon request; and
- 29          (6) If applicable, instructions for requesting:

- 1                   (a) A copy of the rule, guideline, protocol, or other similar criterion relied  
2                   upon in making the final adverse determination, as provided in  
3                   paragraph 4; and
- 4                   (b) The written statement of the scientific or clinical rationale for the  
5                   determination, as provided in paragraph 5;
- 6           g. If applicable, a statement indicating:
- 7                   (1) A description of the process to obtain an additional voluntary review of the  
8                   first-level review decision if the covered person wishes to request a  
9                   voluntary review pursuant to section 26.1-36.8-07;
- 10                  (2) The written procedures governing the voluntary review, including any  
11                  required timeframe for the review;
- 12                  (3) A description of the procedures for obtaining an independent external review  
13                  of the final adverse determination pursuant to chapter 26.1-36.6 if the  
14                  covered person decides not to file for an additional voluntary review of the  
15                  first-level review decision involving an adverse determination; and
- 16                  (4) The covered person's right to bring a civil action in a court of competent  
17                  jurisdiction;
- 18           h. If applicable, the following statement: "You and your plan may have other  
19                  voluntary alternative dispute resolution options, such as mediation. One way to  
20                  find out what may be available is to contact your state Insurance Commissioner.";  
21                  and
- 22           i. Notice of the covered person's right to contact the commissioner's office or  
23                  ombudsman's office for assistance with respect to any claim, grievance, or  
24                  appeal at any time, including the telephone number and address of the  
25                  commissioner's office or ombudsman's office.
- 26           9. a. A health carrier shall provide the notice required under subsection 8 in a culturally  
27                  and linguistically appropriate manner if required in accordance with federal  
28                  regulations.
- 29                  b. If a health carrier is required to provide the notice required under this subsection  
30                  in a culturally and linguistically appropriate manner in accordance with federal  
31                  regulations, the health carrier shall:

- 1           (1) Include a statement in the English version of the notice, prominently  
2           displayed in the non-English language, offering the provision of the notice in  
3           the non-English language;
- 4           (2) Once a utilization review or benefit determination request has been made by  
5           a covered person, provide all subsequent notices to the covered person in  
6           the non-English language; and
- 7           (3) To the extent the health carrier maintains a consumer assistance process,  
8           such as a telephone hotline that answers questions or provides assistance  
9           with filing claims and appeals, the health carrier shall provide this assistance  
10           in the non-English language.

11       **26.1-36.8-06. Standard reviews of grievances not involving an adverse determination.**

- 12       1. A health carrier shall establish written procedures for a standard review of a grievance  
13       that does not involve an adverse determination.
- 14       2. a. The procedures shall permit a covered person or the covered person's authorized  
15       representative to file a grievance that does not involve an adverse determination  
16       with the health carrier under this section.
- 17       b. (1) A covered person does not have the right to attend or to have a  
18       representative in attendance at the standard review but the covered person  
19       or the covered person's authorized representative is entitled to submit  
20       written material for the person or persons designated by the carrier pursuant  
21       to subsection 3 to consider when conducting the review.
- 22       (2) The health carrier shall make the provisions of paragraph 1 known to the  
23       covered person or the covered person's authorized representative within  
24       three working days after the date of receiving the grievance.
- 25       3. a. Upon receipt of the grievance, a health carrier shall designate a person or  
26       persons to conduct the standard review of the grievance.
- 27       b. The health carrier shall not designate the same person or persons to conduct the  
28       standard review of the grievance that denied the claim or handled the matter that  
29       is the subject of the grievance.
- 30       c. The health carrier shall provide the covered person or the covered person's  
31       authorized representative with the name, address, and telephone number of a

- 1 person designated to coordinate the standard review on behalf of the health  
2 carrier.
- 3 4. a. The health carrier shall notify in writing the covered person or the covered  
4 person's authorized representative of the decision within twenty working days  
5 after the date of receipt of the request for a standard review of a grievance filed  
6 pursuant to subsection 2.
- 7 b. (1) Subject to paragraph 2, if due to circumstances beyond the carrier's control,  
8 the health carrier cannot make a decision and notify the covered person or  
9 the covered person's authorized representative pursuant to subdivision a  
10 within twenty working days, the health carrier may take up to an additional  
11 ten working days to issue a written decision.
- 12 (2) A health carrier may extend the time for making and notifying the covered  
13 person or the covered person's authorized representative in accordance  
14 with paragraph 1, if on or before the twentieth working day after the date of  
15 receiving the request for a standard review of a grievance, the health carrier  
16 provides written notice to the covered person or the covered person's  
17 authorized representative of the extension and the reasons for the delay.
- 18 5. The written decision issued pursuant to subsection 4 must contain:
- 19 a. The titles and qualifying credentials of the reviewers participating in the standard  
20 review process;
- 21 b. A statement of the reviewers' understanding of the covered person's grievance;
- 22 c. The reviewers' decision in clear terms and the contract basis in sufficient detail  
23 for the covered person to respond further to the health carrier's position;
- 24 d. A reference to the evidence or documentation used as the basis for the decision;
- 25 e. If applicable, a statement indicating:
- 26 (1) A description of the process to obtain an additional review of the standard  
27 review decision if the covered person wishes to request a voluntary review  
28 pursuant to section 26.1-36.8-07; and
- 29 (2) The written procedures governing the voluntary review, including any  
30 required timeframe for the review; and

1           f. Notice of the covered person's right, at any time, to contact the commissioner's  
2           office, including the telephone number and address of the commissioner's office.

3           **26.1-36.8-07. Voluntary level of reviews of grievances.**

4           1. a. A health carrier that offers managed care plans shall establish a voluntary review  
5           process for its managed care plans to give those covered persons who are  
6           dissatisfied with the first-level review decision made pursuant to section  
7           26.1-36.8-05 or who are dissatisfied with the standard review decision made  
8           pursuant to section 26.1-36.8-06, the option to request an additional voluntary  
9           review, at which the covered person or the covered person's authorized  
10           representative has the right to appear in person at the review meeting before  
11           designated representatives of the health carrier.

12           b. This section shall not apply to health indemnity plans.

13           2. a. A health carrier required by this section to establish a voluntary review process  
14           shall provide covered persons or their authorized representatives with notice  
15           pursuant to subsection 7 of section 26.1-36.8-05 or subsection 5 of section  
16           26.1-36.8-06 as appropriate of the option to file a request with the health carrier  
17           for an additional voluntary review of the first-level review decision received under  
18           section 26.1-36.8-05 or the standard review decision received under section  
19           26.1-36.8-06.

20           b. Upon receipt of a request for an additional voluntary review, the health carrier  
21           shall send notice to the covered person or the covered person's authorized  
22           representative of the covered person's right to:

23           (1) Request within the timeframe specified in paragraph 1 of subdivision c the  
24           opportunity to appear in person before a review panel of the health carrier's  
25           designated representatives;

26           (2) Receive from the health carrier upon request copies of all documents,  
27           records, and other information that is not confidential or privileged relevant  
28           to the covered person's request for benefits;

29           (3) Present the covered person's case to the review panel;

- 1           (4) Submit written comments, documents, records, and other material relating  
2           to the request for benefits for the review panel to consider when conducting  
3           the review both before and at a review meeting:
- 4           (5) Ask questions of any representative of the health carrier on the review  
5           panel; and
- 6           (6) Be assisted or represented by an individual of the covered person's choice.
- 7        c. (1) A covered person or the authorized representative of the covered person  
8           wishing to request to appear in person before the review panel of the health  
9           carrier's designated representatives shall make the request to the health  
10          carrier within five working days after the date of receipt of the notice sent in  
11          accordance with subdivision b.
- 12          (2) The covered person's right to a fair review shall not be made conditional on  
13          the covered person's appearance at the review.
- 14        3. a. (1) With respect to a voluntary review of a first-level review decision made  
15           pursuant to section 26.1-36.8-05, a health carrier shall appoint a review  
16           panel to review the request.
- 17           (2) In conducting the review, the review panel shall take into consideration all  
18           comments, documents, records, and other information regarding the request  
19           for benefits submitted by the covered person or the covered person's  
20           authorized representative pursuant to subdivision b of subsection 2, without  
21           regard to whether the information was submitted or considered in reaching  
22           the first-level review decision.
- 23           (3) The panel shall have the legal authority to bind the health carrier to the  
24           panel's decision.
- 25        b. (1) Except as provided in paragraph 2, a majority of the panel shall be  
26           comprised of individuals who were not involved in the first-level review  
27           decision made pursuant to section 26.1-36.8-05.
- 28           (2) An individual who was involved with the first-level review decision may be a  
29           member of the panel or appear before the panel to present information or  
30           answer questions.

- 1                   (3) The health carrier shall ensure that a majority of the individuals conducting  
2                   the additional voluntary review of the first-level review decision made  
3                   pursuant to section 26.1-36.8-05 are health care professionals who have  
4                   appropriate expertise.
- 5                   (4) Except when a reviewing health care professional who has appropriate  
6                   expertise is not reasonably available, in cases in which there has been a  
7                   denial of a health care service, the reviewing health care professional may  
8                   not:
- 9                   (a) Be a provider in the covered person's health benefit plan; and  
10                  (b) Have a financial interest in the outcome of the review.
- 11               4. a. (1) With respect to a voluntary review of a standard review decision made  
12                  pursuant to section 26.1-36.8-06, a health carrier shall appoint a review  
13                  panel to review the request.
- 14                  (2) The panel shall have the legal authority to bind the health carrier to the  
15                  panel's decision.
- 16               b. (1) Except as provided in paragraph 2, a majority of the panel shall be  
17                  comprised of employees or representatives of the health carrier who were  
18                  not involved in the standard review decision made pursuant to section  
19                  26.1-36.8-06.
- 20                  (2) An employee or representative of the health carrier who was involved with  
21                  the standard review decision may be a member of the panel or appear  
22                  before the panel to present information or answer questions.
- 23               5. a. (1) Whenever a covered person or the covered person's authorized  
24                  representative requests within the timeframe specified in paragraph 1 of  
25                  subdivision c of subsection 2 the opportunity to appear in person before the  
26                  review panel appointed pursuant to subsection 3 or 4, the procedures for  
27                  conducting the review shall include the provisions described in this  
28                  paragraph.
- 29                  (2) (a) The review panel shall schedule and hold a review meeting within  
30                  forty-five working days after the date of receipt of the request.

1                   (b) The covered person or the covered person's authorized  
2                   representative shall be notified in writing at least fifteen working days  
3                   in advance of the date of the review meeting.

4                   (c) The health carrier shall not unreasonably deny a request for  
5                   postponement of the review made by the covered person or the  
6                   covered person's authorized representative.

7                   (3) The review meeting shall be held during regular business hours at a location  
8                   reasonably accessible to the covered person or the covered person's  
9                   authorized representative.

10                  (4) In cases in which a face-to-face meeting is not practical for geographic  
11                  reasons, a health carrier shall offer the covered person or the covered  
12                  person's authorized representative the opportunity to communicate with the  
13                  review panel, at the health carrier's expense, by conference call,  
14                  videoconferencing, or other appropriate technology.

15                  (5) If the health carrier desires to have an attorney present to represent the  
16                  interests of the health carrier, the health carrier shall notify the covered  
17                  person or the covered person's authorized representative at least fifteen  
18                  working days in advance of the date of the review meeting that an attorney  
19                  will be present and that the covered person may wish to obtain legal  
20                  representation of the covered person's own.

21                  (6) The review panel shall issue a written decision, as provided in subsection 6,  
22                  to the covered person or the covered person's authorized representative  
23                  within five working days of completing the review meeting.

24                  b. Whenever the covered person or the covered person's authorized representative  
25                  does not request the opportunity to appear in person before the review panel  
26                  within the specified timeframe provided under paragraph 1 of subdivision c of  
27                  subsection 2, the review panel shall issue a decision and notify the covered  
28                  person or the covered person's authorized representative of the decision, as  
29                  provided in subsection 6, in writing or electronically, within forty-five working days  
30                  after the earlier of:

- 1           (1) The date the covered person or the covered person's authorized  
2           representative notifies the health carrier of the covered person's decision  
3           not to request the opportunity to appear in person before the review panel;  
4           or  
5           (2) The date on which the covered person's or the covered person's authorized  
6           representative's opportunity to request to appear in person before the  
7           review panel expires pursuant to paragraph 1 of subdivision c of  
8           subsection 2.  
9           (3) For purposes of calculating the time periods within which a decision is  
10          required to be made and notice provided under subdivisions a and b, the  
11          time period shall begin on the date the request for an additional voluntary  
12          review is filed with the health carrier in accordance with the health carrier's  
13          procedures established pursuant to section 26.1-36.8-04 for filing a request  
14          without regard to whether all of the information necessary to make the  
15          determination accompanies the filing.

16          6. A decision issued pursuant to subsection 5 shall include:

- 17          a. The titles and qualifying credentials of the members of the review panel;  
18          b. A statement of the review panel's understanding of the nature of the grievance  
19          and all pertinent facts;  
20          c. The rationale for the review panel's decision;  
21          d. A reference to evidence or documentation considered by the review panel in  
22          making that decision;  
23          e. In cases concerning a grievance involving an adverse determination:  
24               (1) The instructions for requesting a written statement of the clinical rationale,  
25               including the clinical review criteria used to make the determination; and  
26               (2) If applicable, a statement describing the procedures for obtaining an  
27               independent external review of the adverse determination pursuant to  
28               chapter 26.1-36.6; and  
29          f. Notice of the covered person's right to contact the commissioner's office or  
30          ombudsman's office for assistance with respect to any claim, grievance, or

1 appeal at any time, including the telephone number and address of the  
2 commissioner's office or ombudsman's office.

3 **26.1-36.8-08. Expedited reviews of grievances involving an adverse determination.**

- 4 1. A health carrier shall establish written procedures for the expedited review of urgent  
5 care requests of grievances involving an adverse determination.
- 6 2. In addition to subsection 1, a health carrier shall provide expedited review of a  
7 grievance involving an adverse determination with respect to concurrent review urgent  
8 care requests involving an admission, availability of care, continued stay, or health  
9 care service for a covered person who has received emergency services but has not  
10 been discharged from a facility.
- 11 3. The procedures shall allow a covered person or the covered person's authorized  
12 representative to request an expedited review under this section orally or in writing.
- 13 4. A health carrier shall appoint an appropriate clinical peer or peers in the same or  
14 similar specialty as would typically manage the case being reviewed to review the  
15 adverse determination. The clinical peer or peers may not have been involved in  
16 making the initial adverse determination.
- 17 5. In an expedited review all necessary information, including the health carrier's decision  
18 shall be transmitted between the health carrier and the covered person or the covered  
19 person's authorized representative by telephone, facsimile, or the most expeditious  
20 method available.
- 21 6. a. An expedited review decision shall be made and the covered person or the  
22 covered person's authorized representative shall be notified of the decision in  
23 accordance with subsection 8 as expeditiously as the covered person's medical  
24 condition requires, but in no event more than seventy-two hours after the receipt  
25 of the request for the expedited review.
- 26 b. If the expedited review is of a grievance involving an adverse determination with  
27 respect to a concurrent review urgent care request, the service shall be  
28 continued without liability to the covered person until the covered person has  
29 been notified of the determination.
- 30 7. For purposes of calculating the time periods within which a decision is required to be  
31 made under subsection 6, the time period within which the decision is required to be

1 made shall begin on the date the request is filed with the health carrier in accordance  
2 with the health carrier's procedures established pursuant to section 26.1-36.8-04 for  
3 filing a request without regard to whether all of the information necessary to make the  
4 determination accompanies the filing.

5 8. a. A notification of a decision under this section must set forth in a manner  
6 calculated to be understood by the covered person or the covered person's  
7 authorized representative:

8 (1) The titles and qualifying credentials of the reviewers participating in the  
9 expedited review process;

10 (2) Information sufficient to identify the claim involved with respect to the  
11 grievance, including the date of service, the health care provider if  
12 applicable, the claim amount, the diagnosis code and its corresponding  
13 meaning, and the treatment code and its corresponding meaning;

14 (3) A statement of the reviewers' understanding of the covered person's  
15 grievance;

16 (4) The reviewers' decision in clear terms and the contract basis or medical  
17 rationale in sufficient detail for the covered person to respond further to the  
18 health carrier's position;

19 (5) A reference to the evidence or documentation used as the basis for the  
20 decision; and

21 (6) If the decision involves a final adverse determination, the notice shall  
22 provide:

23 (a) The specific reasons or reasons for the final adverse determination,  
24 including the denial code and its corresponding meaning, as well as a  
25 description of the health carrier's standard, if any, that was used in  
26 reaching the denial;

27 (b) Reference to the specific plan provisions on which the determination  
28 is based;

29 (c) A description of any additional material or information necessary for  
30 the covered person to complete the request, including an explanation

1 of why the material or information is necessary to complete the  
2 request;

3 (d) If the health carrier relied upon an internal rule, guideline, protocol, or  
4 other similar criterion to make the adverse determination, either the  
5 specific rule, guideline, protocol, or other similar criterion or a  
6 statement that a specific rule, guideline, protocol, or other similar  
7 criterion was relied upon to make the adverse determination and that  
8 a copy of the rule, guideline, protocol, or other similar criterion will be  
9 provided free of charge to the covered person upon request;

10 (e) If the final adverse determination is based on a medical necessity or  
11 experimental or investigational treatment or similar exclusion or limit,  
12 either an explanation of the scientific or clinical judgment for making  
13 the determination, applying the terms of the health benefit plan to the  
14 covered person's medical circumstances or a statement that an  
15 explanation will be provided to the covered person free of charge  
16 upon request;

17 (f) If applicable, instructions for requesting:

18 [1] A copy of the rule, guideline, protocol, or other similar criterion  
19 relied upon in making the adverse determination in accordance  
20 with subparagraph d; or

21 [2] The written statement of the scientific or clinical rationale for the  
22 adverse determination in accordance with subparagraph e;

23 (g) A statement describing the procedures for obtaining an independent  
24 external review of the adverse determination pursuant to chapter  
25 26.1-36.6;

26 (h) A statement indicating the covered person's right to bring a civil action  
27 in a court of competent jurisdiction;

28 (i) The following statement: "You and your plan may have other voluntary  
29 alternative dispute resolution options such as mediation. One way to  
30 find out what may be available is to contact your state Insurance  
31 Commissioner."; and

- 1                   (j) A notice of the covered person's right to contact the commissioner's  
2                   office or ombudsman's office for assistance with respect to any claim,  
3                   grievance, or appeal at any time, including the telephone number and  
4                   address of the commissioner's office or ombudsman's office.
- 5           b. (1) A health carrier shall provide the notice required under this section in a  
6           culturally and linguistically appropriate manner if required in accordance  
7           with federal regulations.
- 8                   (2) If a health carrier is required to provide the notice required under this  
9           section in a culturally and linguistically appropriate manner in accordance  
10           with federal regulations, the health carrier shall:
- 11                   (a) Include a statement in the English version of the notice, prominently  
12                   displayed in the non-English language, offering the provision of the  
13                   notice in the non-English language;
- 14                   (b) Once a utilization review or benefit determination request has been  
15                   made by a covered person, provide all subsequent notices to the  
16                   covered person in the non-English language; and
- 17                   (c) To the extent the health carrier maintains a consumer assistance  
18                   process, such as a telephone hotline that answers questions or  
19                   provides assistance with filing claims and appeals, the health carrier  
20                   shall provide this assistance in the non-English language.
- 21           c. (1) A health carrier may provide the notice required under this section orally, in  
22           writing, or electronically.
- 23                   (2) If notice of the adverse determination is provided orally, the health carrier  
24           shall provide written or electronic notice of the adverse determination within  
25           three days following the oral notification.

26           **26.1-36.8-09. Rulemaking.**

27           The commissioner may adopt rules to carry out the provisions of this chapter.

28           **26.1-36.8-10. Penalties.**

29           The commissioner may assess a penalty against a health carrier that violates this chapter  
30 of not more than ten thousand dollars for each violation. The fine may be recovered in an action  
31 brought in the name of the state. In addition to imposing a monetary penalty, the commissioner

- 1 may also cancel, revoke, or refuse to renew the certificate of authority of a health carrier that
- 2 has violated this chapter.