



## 2011 SENATE BILL 551

March 6, 2012 – Introduced by Senators ERPENBACH and CARPENTER, cosponsored by Representatives RICHARDS, BERCEAU, PASCH, POPE-ROBERTS and TURNER. Referred to Committee on Insurance and Housing.

1     **AN ACT to repeal** 632.835 (1) (a) 4., 632.835 (1) (b) 4. and 632.835 (5) (c); **to**  
2     **renumber** 632.835 (3) (f) 2.; **to renumber and amend** 632.835 (3) (f) 1.; **to**  
3     **amend** 632.835 (1) (b) 2., 632.835 (2) (b), 632.835 (2) (d) 2., 632.835 (3) (a),  
4     632.835 (3) (b) (intro.) and 632.835 (3m) (b) (intro.); **to repeal and recreate**  
5     632.835 (3) (g); and **to create** 632.835 (2) (d) 3., 632.835 (3) (dm) and 632.835  
6     (3) (f) 1. b. of the statutes; **relating to:** external review process of health benefit  
7     plan decisions.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, a health insurer must have an internal grievance procedure and an independent review procedure whereby an insured person may appeal certain types of coverage denials to an independent review organization. This bill makes the following changes to the independent review process that health insurers must provide:

1. Under current law, with some exceptions, an insured must exhaust the internal grievance procedure before the insured may request an independent review of a coverage denial. The bill adds as another exception to that requirement that the insurer or another entity other than the insured did not meet all of the timelines required under the internal grievance procedure.

2. Under current law, access to the independent review process must be provided for a reduction, denial, or termination of treatment or payment for

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treatment related to the admission to a facility, the availability of care, or the continued stay in a facility (adverse determination) if the amount of the reduction or the cost of the denied or terminated treatment exceeds \$250, adjusted in accordance with the consumer price index. Also under current law, access to the independent review process must be provided for a denial of treatment on the basis that the treatment is experimental (experimental treatment determination) if the cost of the denied treatment exceeds \$250, adjusted in accordance with the consumer price index. The bill removes the minimum dollar amount for both adverse determinations and experimental treatment determinations.

3. Under current law, the insured selects an independent review organization and notifies the insurer both that he or she is requesting an independent review and which independent review organization he or she has selected to conduct the review. Under the bill, the insured notifies both the insurer and the commissioner of insurance (commissioner) that he or she is requesting an independent review, and the commissioner then, within two business days, randomly selects the independent review organization that will conduct the review.

4. Current law provides a timeline within which an insurer must submit information to the independent review organization and the independent review organization must make a decision. The bill generally does not change the timeline, but specifies that in no case may the independent review organization send its written decision to the insured and insurer more than 60 days after it was notified of its selection by the commissioner.

5. Current law provides an expedited timeline for independent reviews when the independent review organization determines that, due to the insured's health condition, following the usual timeline would jeopardize the insured's life or health (urgent matters). The bill eliminates the expedited timeline and provides, simply, that in urgent matters the independent review organization must notify the insured and insurer of its decision no more than four business days after it was notified of its selection by the commissioner. Additionally, if notification to the insured and insurer of its decision was not in writing, the independent review organization must send written confirmation of its decision within 48 hours after providing the initial notice of its decision.

6. Finally, current law provides that a decision regarding an experimental treatment determination is limited to a determination of whether the proposed treatment is experimental and specifies what an independent review organization must find to determine that a treatment is not experimental and to find in favor of the insured. The bill does not change what an independent review organization must find to find in favor of the insured, but removes the restriction that an experimental treatment determination is limited to a determination of whether the proposed treatment is experimental and requires that an independent review of an experimental treatment determination must provide for all the same protections that apply in an independent review of an adverse determination.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 632.835 (1) (a) 4. of the statutes is repealed.

2           **SECTION 2.** 632.835 (1) (b) 2. of the statutes is amended to read:

3           632.835 (1) (b) 2. Based on the information provided, the treatment under  
4           subd. 1. is determined to be experimental or investigational under the terms of the  
5           health benefit plan.

6           **SECTION 3.** 632.835 (1) (b) 4. of the statutes is repealed.

7           **SECTION 4.** 632.835 (2) (b) of the statutes is amended to read:

8           632.835 (2) (b) If a coverage denial determination is made, the insurer involved  
9           in the determination shall provide notice to the insured of the insured's right to  
10          obtain the independent review required under this section, how to request the  
11          review, and the time within which the review must be requested. The notice shall  
12          include a current listing of independent review organizations certified under sub. (4).  
13          An independent review under this section may be conducted only by an independent  
14          review organization certified under sub. (4) and selected by the insured  
15          commissioner under sub. (3) (a).

16          **SECTION 5.** 632.835 (2) (d) 2. of the statutes is amended to read:

17          632.835 (2) (d) 2. ~~Along with the notice to the insurer of the request for~~ After  
18          receiving notice of the independent review organization selected by the  
19          commissioner under sub. (3) (a), the insured submits to the independent review  
20          organization selected by the insured a request to bypass the internal grievance  
21          procedure under s. 632.83 and the independent review organization determines that

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1 the health condition of the insured is such that requiring the insured to use the  
2 internal grievance procedure before proceeding to independent review would  
3 jeopardize the life or health of the insured or the insured's ability to regain maximum  
4 function.

5 **SECTION 6.** 632.835 (2) (d) 3. of the statutes is created to read:

6 632.835 (2) (d) 3. The insurer or another entity other than the insured does not  
7 meet all of the timeline requirements, if any, under the internal grievance procedure  
8 under s. 632.83.

9 **SECTION 7.** 632.835 (3) (a) of the statutes is amended to read:

10 632.835 (3) (a) To request an independent review, an insured or his or her  
11 authorized representative shall provide timely written notice of the request for  
12 independent review, ~~and of the independent review organization selected,~~ to the  
13 commissioner and to the insurer that made or on whose behalf was made the  
14 coverage denial determination. The insurer shall immediately notify No more than  
15 2 business days after receiving the notice of the request for independent review, the  
16 commissioner and the shall, on a random basis, select an independent review  
17 organization selected by the insured of the request for independent review certified  
18 under sub. (4) to conduct the independent review based on the subject of the review  
19 and other circumstances, including any conflict of interest concerns, and shall notify  
20 the independent review organization, the insured or his or her authorized  
21 representative, and the insurer of the independent review organization selected. For  
22 each independent review in which it is involved, an insurer shall pay a fee to the  
23 independent review organization.

24 **SECTION 8.** 632.835 (3) (b) (intro.) of the statutes is amended to read:

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1           632.835 (3) (b) (intro.) Within 5 business days after receiving written notice  
2           from the commissioner of a request for the independent review organization selected  
3           under par. (a), the insurer shall submit to the independent review organization  
4           copies of all of the following:

5           **SECTION 9.** 632.835 (3) (dm) of the statutes is created to read:

6           632.835 (3) (dm) An independent review of an experimental treatment  
7           determination shall provide for all of the same protections that apply in an  
8           independent review of an adverse determination.

9           **SECTION 10.** 632.835 (3) (f) 1. of the statutes is renumbered 632.835 (3) (f) 1.

10          a. and amended to read:

11          632.835 (3) (f) 1. a. If the independent review is not terminated under par. (e),  
12          the independent review organization shall, within 30 business days after the  
13          expiration of all time limits that apply in the matter, make a decision on the basis  
14          of the documents and information submitted under this subsection. The decision  
15          shall be in writing, signed on behalf of the independent review organization and  
16          served by personal delivery or by mailing a copy to the insured or his or her  
17          authorized representative and to the insurer.

18          2. a. Except as provided in subd. 2. b., a decision of an independent review  
19          organization is binding on the insured and the insurer.

20          **SECTION 11.** 632.835 (3) (f) 1. b. of the statutes is created to read:

21          632.835 (3) (f) 1. b. Notwithstanding the timelines specified in subd. 1. a. and  
22          pars. (b) and (c), in no case may the written decision under subd. 1. a. be served or  
23          mailed to the insured, or his or her authorized representative, or to the insurer more  
24          than 60 calendar days after the independent review organization received notice  
25          from the commissioner of its selection under par. (a).

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1           **SECTION 12.** 632.835 (3) (f) 2. of the statutes is renumbered 632.835 (3) (f) 2.

2           b.

3           **SECTION 13.** 632.835 (3) (g) of the statutes is repealed and recreated to read:

4           632.835 **(3)** (g) 1. If the independent review organization determines that the  
5 health condition of the insured is such that following the procedure outlined in pars.  
6 (b) to (f) would jeopardize the life or health of the insured or the insured's ability to  
7 regain maximum function, the independent review organization shall follow an  
8 expedited independent review process and notify the insured, or his or her  
9 authorized representative, and the insurer of its decision no more than 4 business  
10 days after receiving notice from the commissioner of its selection under par. (a).

11           2. If the notice of its decision under subd. 1. is not in writing, the independent  
12 review organization shall provide written confirmation of its decision within 48  
13 hours after the date of the notice of the decision under subd. 1.

14           **SECTION 14.** 632.835 (3m) (b) (intro.) of the statutes is amended to read:

15           632.835 **(3m)** (b) (intro.) ~~A With respect to a decision of an independent review~~  
16 ~~organization regarding an experimental treatment determination is limited to a~~  
17 ~~determination of whether the proposed treatment is experimental. The, the~~  
18 ~~independent review organization shall determine that the treatment is not~~  
19 ~~experimental and find in favor of the insured only if the independent review~~  
20 ~~organization finds all of the following:~~

21           **SECTION 15.** 632.835 (5) (c) of the statutes is repealed.

22           **SECTION 16. Initial applicability.**

23           (1) This act first applies to independent reviews that are requested by insureds  
24 under all of the following:

