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

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.

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

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 of the statutes is repealed.

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

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

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 of the statutes is repealed.

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

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

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

632.835 (2) (d) 2. Along with the notice to the insurer of the request for After receiving notice of the independent review organization selected by the commissioner under sub. (3) (a), the insured submits to the independent review organization selected by the insured a request to bypass the internal grievance procedure under s. 632.83 and the independent review organization determines that
the health condition of the insured is such that requiring the insured to use the
internal grievance procedure before proceeding to independent review would
jeopardize the life or health of the insured or the insured’s ability to regain maximum
function.

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

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

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

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

**SECTION 8.** 632.835 (3) (b) (intro.) of the statutes is amended to read:
632.835 (3) (b) (intro.) Within 5 business days after receiving written notice from the commissioner of a request for the independent review organization selected under par. (a), the insurer shall submit to the independent review organization copies of all of the following:

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

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

**Section 10.** 632.835 (3) (f) 1. of the statutes is renumbered 632.835 (3) (f) 1. a. and amended to read:

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

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

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

632.835 (3) (f) 1. b. Notwithstanding the timelines specified in subd. 1. a. and pars. (b) and (c), in no case may the written decision under subd. 1. a. be served or mailed to the insured, or his or her authorized representative, or to the insurer more than 60 calendar days after the independent review organization received notice from the commissioner of its selection under par. (a).
SECTION 12. 632.835 (3) (f) 2. of the statutes is renumbered 632.835 (3) (f) 2.

b.

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

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

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

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

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

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

SECTION 16. Initial applicability.

(1) This act first applies to independent reviews that are requested by insureds under all of the following:
(a) Except as provided in paragraph (b), health benefit plans that are newly
issued or renewed on the effective date of this paragraph.

(b) Health benefit plans covering employees who are affected by a collective
bargaining agreement containing provisions inconsistent with this act that are
newly issued or renewed on the earlier of the following:

1. The day on which the collective bargaining agreement expires.
2. The day on which the collective bargaining agreement is extended, modified,
or renewed.

SECTION 17. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after
publication.