Legislative Analysis

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PATIENT'S RIGHT TO INDEPENDENT REVIEW

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House Bill 4933 (H-1) as passed by the House
Sponsor: Rep. Tom Barrett
Committee: Insurance
Complete to 11-17-15

SUMMARY:

This bill would amend the "Patient's Right to Independent Review Act," which allows persons with health insurance to request a review by an independent review organization to resolve disputes over covered benefits when they cannot be resolved by an insurer's internal grievance process. The bill amends the act by changing the appeal process for experimental procedures after a denial of coverage. Additionally, it amends the instances in which the internal grievance program may be exhausted. It also allows the reviewing entity to consider additional factors when deciding whether to allow external review by an independent review organization. Finally, it adds five definitions to the previous 27, and amends several others.

According to proponents of the bill, the statutory changes reflect changes in federal law under the Affordable Care Act, and will allow Michigan to continue to operate the appeals process. For more on how that appeals process works and the role of the Department of Insurance and Financial Services (DIFS), see:
https://www.michigan.gov/difs/0,5269,7-303-12902_35510-263250--,00.html

Section 3
Several definitions for terms used throughout the bill are added or amended. For instance, in addition to "adverse determination" already included in the act, this bill adds "final adverse determination," which means an adverse determination involving a covered benefit that has been upheld by a health carrier. It also defines "evidence-based standard" as the conscientious use of current best evidence and thorough research in making decisions for individual patients. Finally, the bill specifies the types of documents and resources that will be considered "medical or scientific evidence."

Section 7
This bill would allow a health provider to waive its internal grievance process and the requirement that a patient exhaust the process before seeking external review. Also, the provider may consider the process exhausted, even if the provider did not comply with it, as long as the failure to comply is minor and is unlikely to harm the covered person.

Section 11
The most impactful change effected by this bill is the process for approving or denying requests for external review in cases of experimental treatment. A patient that has applied for coverage for an experimental or instructional procedure and been issued an adverse determination or final adverse determination then has 120 days to appeal that decision to

the director of the Department of Insurance and Financial Services. Under the new rules, the director would need to complete a preliminary review to determine the following within five days:

- Whether the person requesting the procedure is covered by a health benefit plan;
- Whether the procedure would be covered if it were not determined to be experimental, or is not explicitly excluded in the benefit plan;
- Whether the patient's doctor has certified that standard care has been ineffective, would be inappropriate, or that there is no standard care more beneficial than the experimental care;
- Whether the patient's doctor has certified that the experimental care is likely to be more beneficial than standard care or that scientifically valid studies show that to be the case;
- Whether the patient has exhausted the health carrier's internal grievance program, unless it is not necessary that he do so under the act; and
- Whether the patient has submitted all required information to the Department.

When considering a request for external review for experimental care, the bill allows the reviewing entity to consider the following, in addition to the other documents listed in Section 11: (1) whether the requested health care service has been approved by the US Food and Drug Administration (FDA), if applicable; or (2) if medical or scientific evidence demonstrate that the expected benefits of the requested service are more likely to be more beneficial to the patient than those of standard health care services, and would not present substantially more risk (risk-reward determination).

Section 13

As before, in instances where the length of the expedited internal grievance process would jeopardize the patient's health or life, the patient may request an expedited external review. However, this bill would also provide that the reviewing entity may consider whether the FDA has approved the procedure and conduct the risk-reward determination described above when deciding whether to allow an expedited external review.

Section 19

The bill requires that an independent review organization be accredited by a nationally recognized private accrediting organization approved the DIFS director.

This bill is tie-barred to House Bill 4935, and would take effect 90 days after enactment.

FISCAL IMPACT:

The bill, along with other related bills, HB 4933 and 4934, would have a neutral fiscal impact on the Department of Insurance and Financial Services (DIFS). The bills would stimulate higher expenditures, within the short-term, to the extent that DIFS would prepare and publish departmental bulletins and declaratory rulings to provide guidance pertaining to the applicability and interpretation of statutory revisions to the insurance code, in addition to training relevant regulatory and enforcement staff on the aspects and effects of the revisions under the bills. However, these expenditures would be sufficiently offset with

revenue generated by the annual regulatory fee determined by DIFS, subject to a statutory formula, and levied on insurers (totaling approximately $18.2 million during FY 15).

POSITIONS:

The Michigan Association of Health Plans testified in support of the bill. (10-8-15)

The Department of Insurance and Financial Services (DIFS) indicated neutrality. (10-29-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.