



News Release

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Most States Now Have External Review Programs, But They Are Used Infrequently
Pending Federal Legislation Could Impact States' Programs Significantly

MENLO PARK, CA – A new report for the Kaiser Family Foundation by researchers at Georgetown University's Institute for Health Care Research and Policy finds that 42 states have external review programs to resolve disputes between health plans and consumers. Although consumers are granted relief about half the time on average, the report finds the programs are used infrequently.

The first state external review requirement was established by Michigan in 1978; over the next 20 years, a dozen more states began operating external review programs. By the end of 2001, 42 states (including the District of Columbia) had enacted external review laws, with most created in the last three years. Their structure and scope, however, vary significantly from one state to the next.

The analysis of these state programs – prepared by Georgetown researchers Karen Pollitz, Jeff Crowley, Kevin Lucia, and Eliza Bangit – finds that health plan denials are overturned in whole in 45% of appeals filed by consumers, ranging from a low of 21% to a high of 72%, and fully upheld 49% of the time. In addition, health plan decisions are partially overturned an average of 6% of the time (which is permitted in approximately half of states).

However, the experience to date shows that these programs are used infrequently, with about 4,000 documented appeals annually. The report found the largest number of cases in New York (from July 1999 to June 2000, 902 cases out of 8.4 million residents estimated to be covered by the state law). A number of administrative features of state programs may limit the number of appeals filed by consumers, including: requirements that internal appeals to a health plan be exhausted before turning to the state, filing fees, and rules that set a minimum dollar amount that must be in dispute before an appeal can be made.

“External review programs have earned broad support but they are not being widely used,” said Drew E. Altman, president of the Kaiser Family Foundation. “The low number of cases suggests that a patients’ bill of rights might not raise insurance premiums as much as some have feared.”

The report released today also discusses pending federal legislation that may impact states’ external review programs. Currently, almost half (47%) of workers with employer-sponsored health insurance cannot use state external review programs because they are in “self-insured” plans (those provided directly by the employer rather than purchased through an insurance company). Under the federal

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“ERISA” law, self-insured plans are federally regulated and have been considered exempt from state external review programs.

Both the U.S. House and Senate have passed bills that would establish a federal right to independent external review of health plan decisions for all privately insured individuals (including those in self-insured employer plans, who are now excluded from state programs). However, the bills take different approaches to already enacted state laws. The Senate bill would establish a federal floor for external review protections, leaving in place features of state programs that are more protective of consumers, but overriding those that are less protective. The House bill, by contrast, would preempt all state external review programs (as well as state requirements for internal appeals), replacing them with a single federal standard.

In addition to the pending federal legislation, a case currently under consideration by the U.S. Supreme Court, *Rush Prudential HMO, Inc. v. Debra C. Moran, et al.*, could also affect the future of state-run external review programs if the Court rules that their decisions cannot be binding on health plans that offer coverage purchased by employers.

“With the issue before Congress and the Supreme Court, the future of state external review programs is in a substantial state of flux,” said lead author Karen Pollitz of Georgetown University. “But in the meantime, consumers in almost every state should know that they have a place to turn if they feel they are inappropriately denied treatment by a health plan.”

Copies of study (#3221) are available on the Kaiser Family Foundation's web site at www.kff.org or by calling the Foundation's Publication Request Line at 1-800-656-4533.

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