

ADMINISTRATIVE AGENCY RULE REPORT
75 O.S. Supp. 2000, § 303.1
SUBMITTED TO THE GOVERNOR AND TO THE LEGISLATURE

- 1. Date the Notice of Intended Rulemaking was published in the Oklahoma Register:**
October 1, 2013, Vol. 31, No. 2 Ok Reg 10, Docket No. 13-1192

- 2. Name and address of the Agency:**
Oklahoma State Department of Health
1000 N.E. Tenth Street
Oklahoma City, Oklahoma 73117-1299

- 3. Title and Number of the Rule:**
Title 310. Oklahoma State Department of Health
Chapter 658. Independent Review Organization Certification Rules

- 4. Citation to the Statutory Authority for the Rule:**
Title 63 O.S. Section 1-104; and Title 36 O.S. § 6475.1.

- 5. Brief Summary of the Content of the Adopted Rule:**
This proposal revokes the rules of the Board of Health concerning independent review organization certification and external review. Effective August 26, 2011, The Uniform Health Carrier External Review Act, sections 25 through 41 of House Bill 2072 (2011), transferred responsibility for external reviews and approval of independent review organizations to the Oklahoma Insurance Department [see Title 36 O.S. § 6475.1 et. seq.]. The Oklahoma Insurance Department promulgated emergency rules, effective September 12,, 2011, and later superseded those emergency rules with permanent rules, effective July 14, 2012 [see Title 365, Insurance Department, Chapter 10, Subchapter 29 - External Review Regulations.]

- 6. Statement explaining the Need for the Adopted Rule:**
To comply with a change in authority implemented by statute.

- 7. Date and Location of the Meeting at which such Rules Were Adopted:**
Adopted January 14, 2014, in the offices of the Oklahoma State Department of Health.

- 8. Summary of the Comments and Explanation of Changes or Lack of any Change Made in the Adopted Rules as a Result of Testimony Received at Public Hearings:**
No comments were received during the comment period or during the public hearing.

- 9. List of Persons or Organizations Who Appeared or Registered For or Against the Adopted Rule at Any Public Hearing Held by the Agency or Those Who Have Commented in Writing Before or After the Hearing:**
None.

- 10. Rule Impact Statement:** Hereto annexed as Exhibit A.

11. Incorporation by Reference Statement: "n/a"

12. Members of the Governing Board of the Agency Adopting the Rules and the Recorded Vote of Each Member:

Murali Krishna, President, M.D. – aye
Ronald Woodson, Vice-President, M.D. – aye
Martha Burger, M.B.A, Secretary-Treasurer – absent
Jenny Alexopoulos, D.O. – aye
Charles W. Grim, D.D.S., M.H.S.A. – aye
Terry Gerard, D.O. – aye
Robert S. Stewart, M.D. – aye
Tim Starkey, M.B.A. – aye
Cris Hart-Wolfe – aye

13. Additional information: Information regarding this rule may be obtained by contacting James Joslin, Service Director, Health Resources Development Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, phone 405-271-6868, or by e-mail to james@health.ok.gov.

RULE IMPACT STATEMENT

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 658. INDEPENDENT REVIEW ORGANIZATION CERTIFICATION RULES

Before the Oklahoma State Board of Health December 10, 2013

1. DESCRIPTION:

This proposal revokes the rules of the Board of Health concerning independent review organization certification and external review. Effective August 26, 2011, The Uniform Health Carrier External Review Act, sections 25 through 41 of House Bill 2072 (2011), transferred responsibility for external reviews and approval of independent review organizations to the Oklahoma Insurance Department [see [Title 36 O.S. § 6475.1](#) et. seq.]. The Oklahoma Insurance Department promulgated emergency rules, effective September 12,, 2011, and later superseded those emergency rules with permanent rules, effective July 14, 2012 [see Title 365, Insurance Department, Chapter 10, Subchapter 29 - External Review Regulations.]

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

No persons are affected by this revocation. Effective August 26, 2011, The Uniform Health Carrier External Review Act, sections 25 through 41 of House Bill 2072 (2011), transferred responsibility for external reviews and approval of independent review organizations to the Oklahoma Insurance Department. All oversight of independent review organizations and external review continues under the authority of the Oklahoma Insurance Department.

3. DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:

This revocation eliminates confusion to the industry and public in determining the correct regulatory authority applicable to the industry.

4. ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:

There will be no economic impact to the public or industry. All oversight of independent review organizations and external review continues under the authority of the Oklahoma Insurance Department.

5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:

There will be no cost to the Department of Health to implement and these rule changes other than the cost of promulgating this rule revocation.

6. IMPACT ON POLITICAL SUBDIVISIONS:

There will be no impact on Political subdivisions.

7. ADVERSE EFFECT ON SMALL BUSINESS:

There will be no adverse impact or effect on small business with the revocation of this Chapter.

8. EFFORTS TO MINIMIZE COSTS OF RULE:

No less costly or nonregulatory methods have been identified.

9. EFFECT ON PUBLIC HEALTH AND SAFETY:

Implementation of the revocation of this Chapter eliminates potential confusion regarding the applicable requirements for independent review organizations and external review now under the authority of the Oklahoma Insurance Department.

10. DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:

If these rules are not revoked, there could be a detrimental effect on the regulated community and public by causing potential confusion regarding the agency with authority for oversight of independent review organizations and external review, which is now the Oklahoma Insurance Department.

11. This rule impact statement was prepared on September 24, 2013.

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 658. INDEPENDENT REVIEW ORGANIZATION CERTIFICATION
RULES [REVOKED]

SUBCHAPTER 1. GENERAL PROVISIONS [REVOKED]

310:658-1-1. Purpose [REVOKED]

~~— This Chapter provides for certification of independent review organizations under authority of the following laws: 63 O.S. Supp. 1999, Section 2528.1 et seq., (the Oklahoma Managed Care External Review Act); and 75 O.S. Supp. 1998, Section 250.1 through 323, (Administrative Procedures Act).~~

310:658-1-2. Definitions [REVOKED]

~~— The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:~~

~~— "**Act**" means the Oklahoma Managed Care External Review Act, Title 63 O.S. Supp. 1999, Section 2528.1 et seq.~~

~~— "**Department**" means the Oklahoma State Department of Health.~~

~~— "**Designee**" means an individual designated through expressed written consent by an insured person to represent the interests of the insured person, including, but not limited to, the insured person's physician or where applicable such person's primary care physician [Title 63 O.S. Supp. 1999, Section 2528.2].~~

~~— "**Health benefit plan**" or "**Plan**" means individual or group hospital or medical insurance coverage, a not-for-profit hospital or medical service or indemnity plan, a prepaid health plan, a health maintenance organization, a preferred provider plan, the State and Education Employees Group Insurance Plan, coverage provided by a Multiple Employer Welfare Arrangement (MEWA), or a self insured plan [Title 63 O.S. Supp. 1999, Section 2528.2].~~

~~— "**Informed consent form**" means a document to be signed by the insured person or the designee of the insured person acknowledging receipt of a copy of the terms and conditions of the external review process as provided by Title 63 O.S. Supp. 1999 Section 2528.5 and acknowledging understanding of and consent to such terms and conditions [Title 63 O.S. Supp. 1999, Section 2528.2].~~

~~— "**Insured person**" means an individual who receives medical care and treatment through a health benefit plan. In the case of a minor child, the term includes the parent or legal guardian of the child and, in the case of an incapacitated or partially incapacitated person, the legal guardian of such person [Title 63 O.S. Supp. 1999, Section 2528.2].~~

SUBCHAPTER 3. APPLYING FOR A CERTIFICATE [REVOKED]

310:658-3-1. Application required [REVOKED]

~~(a) Each prospective independent review organization shall apply for a certificate on a form provided by the Department.~~

~~(b) The individual, partnership, association, corporation, or other public or private legal entity responsible for providing or arranging external reviews shall be the applicant for the certificate.~~

310:658-3-2. Description of application form [REVOKED]

~~(a) The application for a certificate requires information to assess the conformity of an independent review organization to the Act and OAC 310:658 as follows:~~

~~— (1) A narrative overview of the independent review organization's operations and its experience in conducting external reviews;~~

~~— (2) A copy of the independent review organization's basic organizational documents and bylaws, and a organizational chart;~~

~~— (3) The chief executive officer's name and biographical information;~~

~~— (4) The contact person's name, business address and telephone number;~~

~~— (5) A list of names and official capacities of all persons responsible for the activities of the independent review organization, including:~~

~~— (A) All members of the governing body, the officers and directors of a corporation, and the partners or associates of a partnership or association; and,~~

~~— (B) Disclosure of any contracts or arrangements between them and the independent review organization, including any appearance of a conflict of interest as specified in the Act;~~

~~— (6) A description of the procedures for accomplishing informed consent;~~

~~— (7) A description of the procedures or methods for ensuring the independence and objectivity of the review organization and review process, to include a description of the method used to establish fees for external reviews, and a description of the method used to ensure timely selection of expert reviewers;~~

~~— (8) A description of the procedures or methods for ensuring the independence and objectivity of health care professionals, including procedures for disseminating to the Department information on the current licenses and clinical practice activities of those professionals;~~

- ~~(9) A description of the procedures or methods for ensuring that the identity of a physician cannot be a factor in the decision on an appeal;~~
 - ~~(10) A description of the procedures or methods for ensuring the confidentiality of medical records and other confidential information;~~
 - ~~(11) A description of the procedures or methods for conducting external reviews and expedited reviews within time frames under the Act and OAC 310:658, to include procedures or methods for ensuring the availability of expert reviewers on a timely basis;~~
 - ~~(12) Such other information as is essential for the Department to determine the applicant's conformity to the Act and OAC 310:658.~~
- ~~(b) The application to renew a certificate requires any changes in information previously submitted to the Department by the independent review organization.~~

**SUBCHAPTER 5. STANDARDS FOR INDEPENDENT REVIEW ORGANIZATIONS
[REVOKED]**

310:658-5-1. Procedures for informed consent [REVOKED]

- ~~(a) The independent review organization's written notice of decision to accept an appeal for full external review shall advise the insured person or the designee to submit the informed consent form prescribed by the Department to the independent review organization.~~
- ~~(b) The independent review organization shall ensure that an appeal does not proceed to a full external review before the independent review organization receives the informed consent form signed by the insured person or the designee.~~

310:658-5-2. Independence and objectivity of review organization and process [REVOKED]

- ~~(a) In addition to eligibility requirements set forth in Section 2528.9.C of the Act, no person or entity shall be certified as an independent review organization if it owns or controls, is owned or controlled by, or exercises common control with any national, state or local illness, health benefit or public advocacy group.~~
- ~~(b) The independent review organization shall ensure that the identities of the insured person, the designee, the health benefit plan, and any health professionals and health facilities associated with the insured and the plan are not disclosed to any person who will render a decision on an appeal.~~
- ~~(c) The independent review organization shall ensure that the fees charged to health benefit plans reflect the reasonable costs~~

~~of conducting external reviews, and that the fees do not vary based on the identity of the health benefit plan.~~

~~(d) The independent review organization shall ensure the availability of expert reviewers adequate to comply with the time requirements for external reviews provided in the Act and OAC 310:658.~~

310:658-5-3. Independence and objectivity of health care professionals [REVOKED]

~~(a) The independent review organization shall ensure that an expert reviewer does not receive from the organization and does not attempt to obtain information identifying any party associated with an appeal.~~

~~(b) The independent review organization shall ensure that the expert reviewer relies upon the written record as provided in Section 2528.8 of the Act.~~

~~(c) The independent review organization shall ensure that an expert reviewer meets the qualifications and standards of Section 2528.10 of the Act.~~

310:658-5-4. Identity of physician [REVOKED]

~~The health benefit plan shall ensure that information which would identify a physician associated with an insured person or with a health benefit plan is not disclosed to any person who will render a decision on an appeal relating to that physician.~~

310:658-5-5. Confidentiality of records and information [REVOKED]

~~(a) The independent review organization shall protect against unauthorized disclosure of medical records and confidential information submitted by the physician, the insured person or the designee.~~

~~(b) The independent review organization shall obtain written acknowledgements from all expert reviewers and other personnel associated with the organization indicating understanding that any person causing, aiding, or abetting the unauthorized release of confidential information is responsible for failure to comply with a standard of due care.~~

~~(c) The independent review organization shall ensure that information about the diagnosis, treatment or health of any insured person shall be available to expert reviewers and other personnel only to the extent necessary to accomplish the purposes of this Act and OAC 310:658 and only with the written consent of the insured person or the designee.~~

~~(d) The independent review organization shall ensure that confidential information is not used for marketing or solicitation.~~

310:658-5-6. Expedited appeals [REVOKED]

~~The independent review organization shall ensure that, in the case of a physician certification of emergency, the full external review shall be completed as provided in Section 2528.7.F of the Act. The independent review organization shall make provisions for expeditiously obtaining:~~

- ~~(1) Medical records;~~
- ~~(2) Other information submitted by the insured or the insured's physician; and~~
- ~~(3) Contracts from the health benefits plan.~~

310:658-5-7. Fair business practices [REVOKED]

~~An independent review organization and anyone associated with the independent review organization shall not:~~

- ~~(1) Enter into any formal or informal relationship or agreement with a health benefit plan to encourage selection of the independent review organization for review of appeals or to influence the outcomes of reviews;~~
- ~~(2) Advertise or market its services, solicit insured persons or designees, or otherwise entice or encourage any insured person or designee to file an appeal of a health benefit plan decision; or~~
- ~~(3) Assert or imply directly or indirectly that certification qualifies the independent review organization to provide external reviews except as authorized under the Act and OAC 310:658.~~

310:658-5-8. Other duties of independent review organizations [REVOKED]

~~Each plan shall provide toll free incoming telephone service that is capable of receiving, accepting or recording information at all times and that is capable of providing appropriate instructions to incoming telephone callers during other than normal business hours.~~

SUBCHAPTER 7. ISSUANCE OR DENIAL OF CERTIFICATE [REVOKED]

310:658-7-1. Conditions for issuance or renewal [REVOKED]

~~The Department shall issue or renew a certificate when the Department finds that the independent review organization meets the requirements of the Act and OAC 310:658.~~

310:658-7-2. Duration of certificate [REVOKED]

~~Each certificate issued or renewed by the Department to an independent review organization shall be effective for a period of two (2) years from the date of issue or renewal, unless earlier~~

~~revoked or suspended by the Department based on violations of the Act or OAC 310:658.~~

310:658-7-3. Denial or nonrenewal of application [REVOKED]

~~(a) An application for a certificate may be denied or not renewed based on the applicant's failure to demonstrate compliance with the Act and OAC 310:658.~~

~~(b) After denial or nonrenewal, a person or entity may submit a new application for certification.~~

310:658-7-4. Certificate transfer [REVOKED]

~~—No certificate shall be issued to any person or entity other than the person or entity making application. A certificate shall not be transferred in whole or part to another person or entity.~~

SUBCHAPTER 9. DUTIES OF HEALTH BENEFIT PLANS [REVOKED]

310:658-9-1. Information provided to the Department [REVOKED]

~~—Immediately upon notifying an independent review organization of its selection under Section 2528.6.B.1 of the Act, the Plan shall provide the following to the Department:~~

- ~~(1) The name of the independent review organization selected by the Plan;~~
- ~~(2) The name, mailing address, and telephone number of the insured person or the designee; and,~~
- ~~(3) A copy of the Plan's final decision to deny coverage or reimbursement.~~

310:658-9-2. Information provided to independent review organization [REVOKED]

~~—Immediately upon notification from the independent review organization that the insured person has filed the documents required in Section 2528.6.C of the Act, the health benefit plan shall provide the independent review organization with information needed by that organization to determine the insured's conformity to Section 2528.6.D of the Act.~~

SUBCHAPTER 11. FORMS FOR USE BY INSURED PERSONS [REVOKED]

310:658-11-1. Request for external review form [REVOKED]

~~—The request for external review form requires the following:~~

- ~~—(1) Identifying information for the insured person and the health benefit plan;~~
- ~~—(2) A statement of the reasons for the request; and~~
- ~~—(3) A blank for the signature of the insured person or the designee.~~

310:658-11-2. Medical records release form [REVOKED]

~~The medical records release form requires the following:~~

- ~~(1) Identifying information for the insured person;~~
- ~~(2) A statement authorizing the independent review organization to obtain necessary medical records; and~~
- ~~(3) A blank for the signature of the insured person or the designee.~~

310:658-11-3. Informed consent form [REVOKED]

~~The informed consent form includes the following:~~

- ~~(1) A copy of the terms and conditions of the external review process as provided in Section 2528.5 of the Act;~~
- ~~(2) An acknowledgement of receipt of the terms and conditions;~~
- ~~(3) An acknowledgement of understanding of and consent to the terms and conditions;~~
- ~~(4) A blank for identifying information for the insured person and the designee; and~~
- ~~(5) A blank for the signature of the insured person or the designee.~~

SUBCHAPTER 13. DEPARTMENT PROCEDURES [REVOKED]

310:658-13-1. Request for external review form [REVOKED]

~~Immediately upon receipt of the notice of selection required in OAC 310:658-9-1, the Department shall provide the insured person with the following:~~

- ~~(1) Notice of the opportunity to object to the selected independent review organization;~~
- ~~(2) Notice of the forms and information to be provided by the insured person to the independent review organization, to include:
 - ~~(A) The request for external review form;~~
 - ~~(B) A copy of the Plan's final decision to deny coverage or reimbursement;~~
 - ~~(C) A medical records release; and~~
 - ~~(D) An informed consent form.~~~~

310:658-13-2. List of certified independent review organizations [REVOKED]

~~The Department shall make available to all health benefit plans, and update at least annually, a list of certified independent review organizations.~~

SUBCHAPTER 15. REPORTING REQUIREMENTS [REVOKED]

310:658-15-1. Records [REVOKED]

~~Independent review organizations shall maintain written records on all requests for external reviews. Said records shall be available for inspection upon request by the Department.~~

310:658-15-2. Annual reports [REVOKED]

~~An independent review organization shall file with the Department not later than March 1 of each year for the preceding calendar year:~~

~~(1) The year's experience in conducting external reviews, on a form provided by the Department, that includes the following:~~

~~(A) Information on appeals received, accepted, pending and completed;~~

~~(B) Information on expedited reviews; and~~

~~(C) Information on reviews terminated due to plan reconsideration; and~~

~~(2) Such other information as is essential for the Department to determine an independent review organization's compliance with the Act and OAC 310:658.~~

310:658-15-3. Decision filings [REVOKED]

~~An independent review organization shall, within thirty (30) days after reaching a final decision on an external review, submit to the Department the written notification of the decision.~~

SUBCHAPTER 17. PROHIBITED ACTS [REVOKED]

310:658-17-1. Prohibited acts [REVOKED]

~~No person or entity shall assert or imply directly or indirectly that it has been certified by the Department as an independent review organization unless that person or entity first obtains a certificate from the Department.~~