

Title 20. Public Health and Welfare
Chapter I. Generally, Department of Health
Subchapter B. Health Facilities
Part 50. Rules for Utilization Review in Arkansas

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"SECTION I: AUTHORITY AND PURPOSE

The following Rules for Utilization Review in Arkansas are duly adopted and promulgated by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas in Act 537 of 1989, Ark. Code Ann. §§ 20-9-901 et seq."

"SECTION 10: REPEAL

All provisions of these Rules are amendatory to the Arkansas Code of 1987 Annotated.

CERTIFICATION

This will certify that the foregoing revisions to the Rules for Utilization Review in Arkansas were adopted by the State Board of Health of Arkansas at a regular session of said Board held in Little Rock, Arkansas, on the 23rd day of January, 2003.

Fay W. Boozman, M.D. Date

Secretary of Arkansas State Board of Health Director, Arkansas Department of Health
The forgoing Rules , copy having been filed in my office, are hereby approved.

Mike Huckabee Date

Governor

Subpart 1. Generally

20 CAR § 50-101. Purpose.

The purpose of this part is to:

- (1) Promote the delivery of quality health care in a cost effective manner;
- (2) Foster greater coordination between payers and providers conducting utilization review activities;
- (3) Protect patients, business, and providers by ensuring that private review agents are qualified to:
 - (A) Perform utilization activities; and
 - (B) Make informed decisions on the appropriateness of medical care; and
- (4) Ensure that private review agents maintain the confidentiality of medical records.

Authority. Arkansas Code § 20-9-906.

20 CAR § 50-102. Definitions.

For the purpose of this part the following definitions shall apply:

- (1) "Board" means the State Board of Health;
- (2) "Certificate" means a certificate of registration granted by the State Board of Health to a private review agent;
- (3) "Certified private review agent" means a private review agent who has:
 - (A) Met all the criteria for certification as set forth in this part;
 - (B) Paid all current fees; and
 - (C) Been assigned a certification number;
- (4) "Consulting physician" means a medical doctor, doctor of osteopathy, dentist, or chiropractor who possesses the degree of skill ordinarily possessed and used by members of his or her profession in good standing engaged in the same type of

practice and specialty in the locality where the service under review occurred or in a similar locality;

(5) "Hospital" means any facility established for the purpose of providing inpatient diagnostic care and treatment for two (2) or more unrelated persons for more than twenty-four (24) hours may not be conducted or maintained in this state without being licensed;

(6) "Private review agent" means a nonhospital affiliated entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of an Arkansas business entity or third party that provides or administers hospital and medical benefits to citizens of this state, including a health maintenance organization or entity offering health insurance policies, contracts, or benefits in this state, including a:

- (A) Health insurer;
- (B) Nonprofit health service plan;
- (C) Health insurance service organization; or
- (D) Preferred provider organization;

(7) "Secretary" means the Secretary of the Department of Health or his or her designee;

(8)(A) "Utilization review" means a system for reviewing the appropriate and efficient allocation of hospital resources and medical services given or proposed to be given to a patient or group of patients.

(B) More specifically, utilization review refers to a preservice determination of the medical necessity or appropriateness of services to be rendered in a hospital setting either on an inpatient or outpatient basis, when such determination results in approval or denial of payment for the services.

(C) It includes prospective, concurrent, or retrospective reviews;

(9) "Utilization review plan" means a description of the standards governing utilization review activities performed by a private review agent; and

(10) "Utilization review representative" means the person or persons in a physician's office or hospital designated by the physician or hospital to provide the necessary information to complete the review process.

Authority. Arkansas Code § 20-9-906.

20 CAR § 50-103. Private review agents — Application for certification.

(a) By December 31, 1990, or a date approved by the Secretary of the Department of Health, a private review agent shall hold a certificate from the secretary to conduct utilization review in this state.

(b) A private review agent seeking certification shall:

(1) Submit an application to the secretary in a form that the secretary requires;

(2)(A) Pay an application fee of one thousand two hundred fifty dollars (\$1,250) per year.

(B) This fee is payable in advance for both years of the certification (total two thousand five hundred (\$2,500)).

(C) This fee applies to the entity doing the review and not to the individual reviewer; and

(3) Provide supporting documentation as required by this part.

(c) An application for certification shall be accompanied by all of the following:

(1)(A) A utilization review plan, which shall include any or all of the following components used by the private review agent to:

(i) Approve or deny payment;

(ii) Recommend approval or denial of payment in advance for proposed or delivered inpatient or outpatient care; or

(iii) Retrospectively approve or deny under certain circumstances.

(B) Elements of review such as:

(i) Prospective review (includes preadmission, admission, and preauthorization);

(ii) Concurrent or continued stay review;

(iii) Reconsideration;

(iv) Second surgical opinion;

- (v) Noncertification or nonauthorization;
- (vi) Lack of information or administrative denial;
- (vii) Retrospective review; and
- (viii) Bill review.

(C) Policies and procedures for review including:

- (i) Any forms or form letters used during the review process;
- (ii) Time frames that shall be met during the review; and
- (iii) A written protocol describing every aspect of the review process.

(D) A description of the clinical review criteria and the policies and procedures for updating or modification.

(E) Review delegation and oversight policies and procedures.

(F) The provisions, procedures, and time frames by which patients, physicians, or hospitals may seek appeal of an adverse determination by the private review agent including:

- (i) A written protocol describing the appeal procedure;
- (ii) Any forms or form letters which shall be used during the appeal

procedure;

(iii) Time frames that shall be met during the appeal procedure; and

(iv) The names and qualifications of personnel making final appeal determinations.

(G) Quality management program policies and procedures.

(H) Case management policies and procedures;

(2)(A) The name, number, type, and qualification or qualifications of the personnel either employed or under contract to perform the utilization review.

(B) Any change in the medical director shall be reported to the secretary within thirty (30) days;

(3) Policies and procedures to verify the current licensure and credentials of:

- (A) Utilization review personnel;
- (B) Consulting and appeal physicians;
- (C) Chiropractic physicians; and

(D) Dentists;

(4)(A) Policies and procedures to ensure that a:

(i) Representative of the private review agent is accessible to patients and providers five (5) days a week during normal business hours in this state; and

(ii) Free telephone number be provided with adequate lines available and staffed.

(B) The procedure for handling after-hours, weekend, and holiday inquiries shall be specified;

(5) The policies and procedures to ensure that all applicable state and federal laws to protect the privacy, security, and confidentiality of individual health information are followed;

(6) A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan; and

(7) A list of the health plans, health insurers, third-party payers, or others for which the private review agent is performing utilization review in this state.

(d) A certificate of registration is not transferable.

(e) The application information and all supporting documents as provided by Acts 1989, No. 537 shall:

(1) Be held in confidence; and

(2) Not disclosed to the public.

Authority. Arkansas Code §§ 20-9-906, 20-9-908.

20 CAR § 50-104. Specific assurances.

The following specific assurances must be submitted by all applicants:

(1) To assure confidentiality, a private review agent must, when contacting a physician's office or hospital, provide its certification number, the caller's name, and professional qualifications to the designated utilization review representative in the physician's office or hospital;

(2)(A) The entity providing utilization review will first contact the designated utilization review representative in the physician's office or hospital.

(B) Direct contact with the physician will be requested only when necessary information cannot be obtained from the designated representative.

(C) The designated utilization review representative must be reasonably available;

(3) Any provider targeted for one hundred percent (100%) concurrent review must be provided the reason, in writing, by the private review agent;

(4) Only information necessary to complete the review process submitted under 20 CAR § 50-103 will be collected;

(5)(A) An expedited appeal process shall be available.

(B) The physician of record shall have an opportunity to appeal that determination over the phone on an expedited basis.

(C) Utilization review organizations shall provide for reasonable access to their consulting physician or physicians for such appeals;

(6)(A) The physician or designated utilization review representative shall be:

(i) Notified, as required by 18 U.S.C. § 2511, when telephone conversations are being recorded; and

(ii) Provided a copy of the conversation upon request.

(B) The physician or utilization review representative who records any conversation with a private review agent shall have like responsibility;

(7) Copies of denials shall be furnished at the request of the Secretary of the Department of Health;

(8)(A) Concurrent review will be initiated at a reasonable length of time following admission and at reasonable intervals thereafter.

(B) Utilization review organizations will base the frequency of the review on the patient's medical condition.

(C) The attending physician and the hospital will be informed of the certified length of stay and the next anticipated review encounter;

(9)(A) A review will be conducted by a physician advisor on a determination not to certify a continued length of stay due to questions of medical necessity or appropriateness.

(B) A consulting physician will be reasonably available by telephone to discuss the medical basis for that determination with the attending physician (e.g., criteria, protocols, medical literature);

(10)(A) When a determination is made not to certify a continued length of stay, the utilization review organization will notify the physician and the hospital of this decision by telephone, supplemented by written notification to the:

- (i) Hospital;
- (ii) Attending physician; and
- (iii) Patient.

(B) The term "patient", when used throughout this document, refers to:

- (i) The patient;
- (ii) His or her representative; and/or
- (iii) The enrollee.

(C) This written notification will include an explanation of the principal reason or reasons for the determination not to certify and the procedures to initiate an appeal of that determination if the patient so chooses; and

(11) If after an initial appeal or request of reconsideration, continued stay is not certified due to questions of medical necessity or appropriateness, the patient or provider will have the right to an additional review by another consulting physician of the appropriate medical specialty.

Authority. Arkansas Code § 20-9-906.

20 CAR § 50-105. Private review agents — Renewal of certification.

(a) A certificate expires on the second anniversary of its effective date unless certification has been renewed for a two-year term.

(b) Before certification expires, the certified private agent may renew its certification for an additional two-year term, if the certified private review agent:

(1) Otherwise is entitled to be certified;

(2) Pays to the Secretary of the Department of Health the renewal fee of two thousand five hundred dollars (\$2,500); and

(3) Submits to the secretary:

(A) A renewal application on the form that the secretary requires; and

(B) An update of information as required under 20 CAR § 50-103.

(c) The secretary shall renew the certification of each certified private review agent if the requirements of this part are met.

Authority. Arkansas Code §§ 20-9-906, 20-9-910.

20 CAR § 50-106. Private review agents — Reporting requirements.

The Secretary of the Department of Health may establish reporting requirements to:

(1) Evaluate the effectiveness of private review agents; and

(2) Determine if the utilization review programs are in compliance with the provisions of this part.

Authority. Arkansas Code § 20-9-906.

20 CAR § 50-107. Private review agents — Denial or revocation of certification.

(a) The Secretary of the Department of Health shall deny a certificate to an applicant if the State Board of Health finds that the applicant does not:

(1) Have available the services of a sufficient number of registered nurses, medical records technicians, or similarly qualified persons who are supervised by appropriate physicians to carry out its utilization review activities;

(2) Meet any applicable provisions of this part relating to the qualifications of private review agents or the performance of utilization review the board adopts relating to the qualifications of private review agents or the performance of utilization review;

(3) Have policies and procedures which protect the confidentiality of medical records in accordance with applicable state and federal laws; and

(4) Make itself accessible to patients and providers five (5) working days a week during normal business hours in this state.

(b) The secretary may revoke the certification of a private review agent if the board finds that the agent:

(1) Does not comply with performance assurances;

(2) Violates any provision of this part;

(3) Violates any rule adopted under any provision of this subtitle;

(4) Fraudulently or deceptively obtains, attempts to obtain, or uses a certification;

(5) Fails to substantially meet the standards and qualifications adopted by the secretary; or

(6) Fails to comply with the rules adopted by the board.

(c) Before denying or revoking a certificate, the secretary shall provide the applicant or certificate holder:

(1) Written notice of the reasons for the denial or revocation;

(2) Thirty (30) days in which to supply additional information demonstrating compliance with the requirements; and

(3) The opportunity to request a hearing in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(d) If the applicant requests a hearing, the secretary shall send a hearing notice by certified mail, return receipt requested, at least thirty (30) days before the hearing.

(e) An aggrieved party has the right to take direct judicial appeal of a final decision in accordance with the Arkansas Administrative Procedure Act.

(f)(1) A person who violates any provision of this part is guilty of a misdemeanor, and on conviction, is subject to a penalty not exceeding one thousand dollars (\$1,000).

(2) Each day a violation is continued after the first conviction is a separate offense.

Authority. Arkansas Code § 20-9-906.

20 CAR § 50-108. Private review agents — Exemptions.

(a) The Secretary of the Department of Health may waive the requirements of this part for a private review agent that operates solely under contract with the federal government for utilization review of patients eligible for hospital services under Title XVIII of the Social Security Act (Medicare) and Title XIX (Medicaid).

(b) No certificate is required for utilization review by any Arkansas-licensed pharmacist or pharmacy, or organizations of either, while engaged in the practice of pharmacy in this state.

Authority. Arkansas Code § 20-9-906.

Codification Notes. Title XVIII of the Social Security Act is codified at 42 U.S.C. 1395 et seq.

Title XIX of the Social Security Act is codified at 42 U.S.C. § 1396 et seq.

20 CAR § 50-109. Health insurance plan — Insurer issuing health insurance policy — Group or blanket health insurance policy.

(a) All stated entities under 20 CAR § 50-103 shall have a certificate in accordance with this part or contract with a private review agent that has a certificate of registration.

(b) An insurer that does not meet the requirements of this section shall pay any person or hospital entitled to reimbursement under the policy or contract for claims where medical necessity of a covered benefit has been disputed.

Authority. Arkansas Code § 20-9-906.