ERISA Advisory Council
Testimony of
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July 9, 2024

Impediments to Claims/Appeals by Plan Participants

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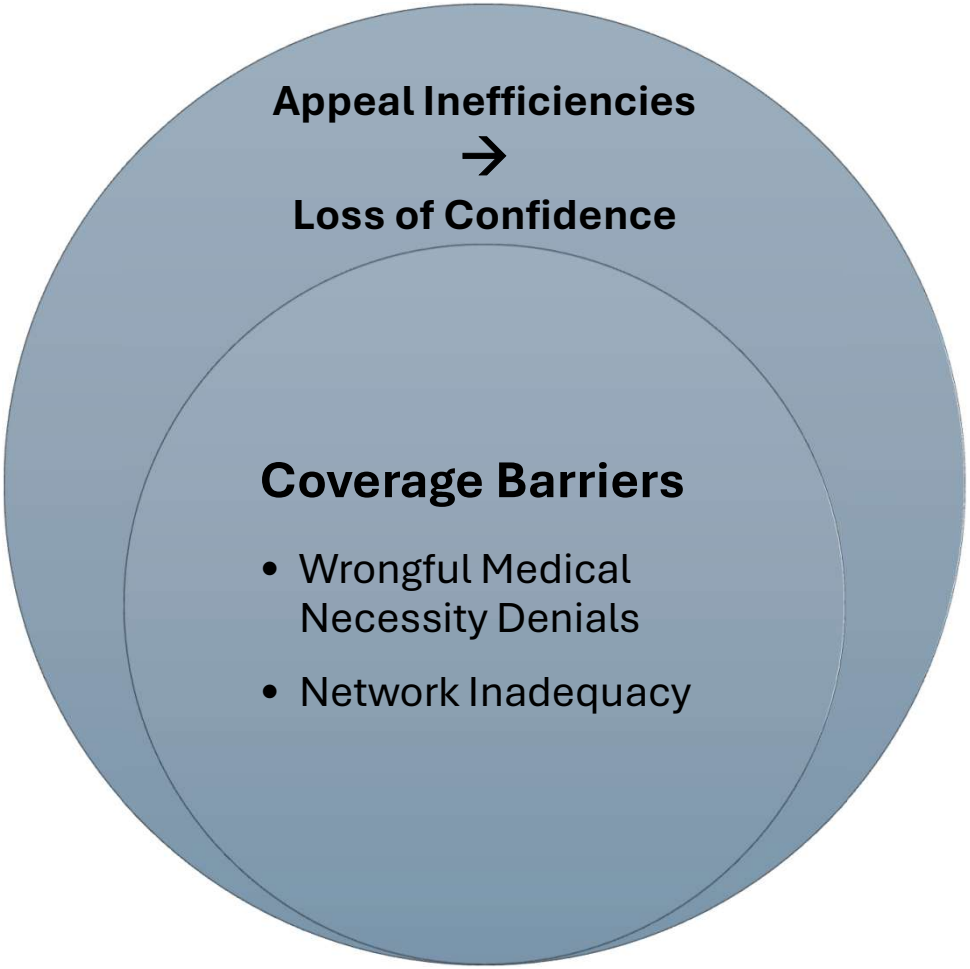


Appeal Efficiency

Timely resolution of denied claims/appeals is paramount

The most efficient way to appeal medical necessity denials is through healthcare providers

- Uniquely situated to address medical necessity
- Possess relevant medical records

For urgent care claims, healthcare providers are *de facto* authorized representatives under 29 C.F.R. § 2560.503-1(b)(4)

Urgent Appeals

Although under 29 C.F.R. § 2560.503-1(m)(1)(iii), healthcare provider determinations of urgency are legally binding, health plans routinely override such determinations, particularly with respect to outpatient services

Urgent Appeals

Complaints to DOL about lack of timely claim/appeal resolution in urgent cases are impractical

DOL takes far too long to respond to complaints and participants are far too likely to forego care or incur uncovered expenses

Urgent Appeals

Possible Solutions

- DOL should issue an FAQ addressing that urgency need not hinge on services being limited to inpatient treatment
- DOL claim rule should be amended to require deemed approval of improperly delayed urgent claim/appeal determinations

External Review

Health plans make it exceedingly difficult to request external review, particularly in expedited cases

No clearly visible web links to external review applications

Participants must call and request external review forms, which at best may be faxed—an impractical option when voluminous records must be transmitted, let alone quickly

External Review

External Review

No provision for provider designation of urgency under 29 C.F.R. § 2590.715-2719(d)(3), unlike in the case of internal claims/appeals.

External Review

No Transparency!

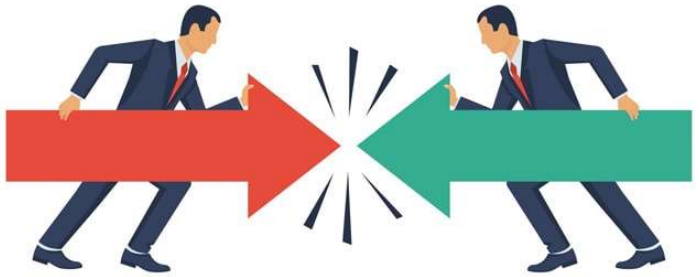
No published data on:

- Contracted IROs
- Services appealed
- Determinations

External Review

Appearance of Conflict

Under current regulations, health plans select IROs, which may be contracted with them for internal utilization reviews, and which can be replaced based on final determinations.



External Review

Possible Solution

Regulation should be revised to require external reviews under self-funded health plans to be entirely facilitated by the HHS-administered system, which does not contract with IROs that service health plans.

Network Inadequacy

DOL should issue guidance stating that a failure to identify a timely and/or geographically available network provider constitutes an adverse benefit determination subject to review.