Disability Rights California

California's Protection & Advocacy System

Medi-Cal Managed Care: An Independent Medical Review (IMR) Can Change a Plan's No to Yes

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1. I have Medi-Cal managed care. What options do I have if my health plan denies a service?

Most Californians who get Medi-Cal are in managed care through a Medi-Cal health plan. Health plans are also called managed care organizations or health maintenance organizations.

You have several options if your Medi-Cal health plan denies a service, so don't give up! Here are some of the steps you can take:

- File a grievance or appeal with your health plan.
- Ask for an Independent Medical Review (IMR) or a Department of Managed Health Care (DMHC) Complaint. Note: This publication focuses on IMRs.
- Ask for a state hearing from the Department of Social Services.

For general information on Medi-Cal managed care plans, see Disability Rights California's publication on *Medi-Cal Managed Care Health Plans. What are they? What do I need to know about them?* Available at http://www.disabilityrightsca.org/pubs/549501.pdf.

The Department of Health Care Services oversees the Medi-Cal program and Medi-Cal managed care plans, but the DMHC handles IMRs (and complaints).

You can only ask for an IMR (or file a DMHC complaint) if you are in a health plan that is licensed under the Knox-Keene Act. The Knox-Keene Act is a set of laws that regulates most managed care health plans. For more information, visit http://wpso.dmhc.ca.gov/regulations/ - statutes. The five plans that are NOT Knox-Keene licensed are: CalOptima (Orange County); CenCal Health (Santa Barbara and San Luis Obispo Counties); Central California Alliance for Health (Santa Cruz, Monterey, Merced Counties); Gold Coast Health Plan (Ventura County); and Partnership HealthPlan of California (Solano, Napa, Yolo, Sonoma, Mendocino, Marin, Del Norte, Humboldt, Lake, Lassen, Modoc, Shasta, Siskiyou, and Trinity Counties).

This publication focuses on requesting an IMR for Knox-Keene licensed plans only.

2. What is an Independent Medical Review (IMR)?

An IMR is a way for you to get an external, independent medical review if your health plan denies, modifies, or delays services because of medical necessity. Health & Safety Code sec. 1374.30-35. However, Medi-Cal laws must also be followed: see www.dmhc.ca.gov: "[r]eviews shall be conducted in accordance with the statutes and regulations of the Medi-Cal program." 28 CCR sec. 1300.74.30(f)(3).

You can also ask for an IMR when a plan denies reimbursement for emergency or urgent care claiming that no emergency or urgency existed OR when an enrollee seeks treatment for a life-threatening or debilitating condition, and the plan denies the treatment sought as "experimental or investigational." Health & Safety Code sec. 1370.4 and 1374.30(j)(1). 1300.74.30(f)(3).

3. What is medical necessity?

Medi-Cal uses medical necessity standards in evaluating whether to approve a service and/or item. There are different medical necessity standards. For adults (persons 21 years and older), medical necessity means services, medicines, supplies, and devices necessary to protect your life, to prevent a significant illness or disability, or to alleviate severe

pain. Cal. Welf. & Inst. Code sections 14059, 14059.5, 14133.3; 22 CCR sec. 51303(a).

For children, the medical necessity definition is broader. It includes services which are necessary "to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services…." 42 U.S.C. sections 1396a(a)(43) and 1396d(r)(5); 22 CCR sections 51184 and 51340. Please see Disability Rights California's publication on *Extra Services for Children and Youth Under the Medi-Cal EPSDT Program for more information about Medi-Cal services for children*. This publication is available at http://www.disabilityrightsca.org/pubs/PublicationsHealthBenefits.htm.

4. Do I have to do anything before I file for an IMR?

Before you file for an IMR, **usually** you first have to file a grievance with your health plan. If your health plan denies your grievance or does nothing in 30 days, the next step is asking for an IMR. Health & Safety Code sections 1368.01 and 1374.30(j)(3); 28 CCR sec. 1300.68.01. See question 7 below for an explanation of when you **do not** have to ask for a grievance before you ask for an IMR.

In the past, the terms "grievance" and "appeal" were used to mean the same thing. However, starting July 1, 2017, new rules define them separately. For more information on appeals and grievances, see All Plan Letter 17-006, at http://www.dhcs.ca.gov/formsandpubs/Documents/MMCDAPLsandPolicyLetters/APL2017/APL17-006.pdf. It is important to understand the difference between these terms, so we define them below.

5. Can I get an IMR regarding all disagreements?

No. You can only get an IMR if the issue is medical necessity. Contrast this with a "coverage decision" about whether a service could be covered. Health & Safety Code sec. 1374.30(c). However, even if the plan says they made a coverage decision, you should go ahead and ask for an IMR. That way, the DMHC can make a decision about whether or not an IMR is available in your situation. Disputes that are not eligible for IMR review can

still be appealed to DMHC through its complaint process. Call the DMHC Help Center at 1-888-466-2219.

6. What is a grievance?

A grievance is a written complaint to your health plan. The grievance is an expression of dissatisfaction about any matter other than an Adverse Benefit Determination (see question #6 for what this means). 42 C.F.R. sec. 438.400(b). Every health plan is required to have a grievance process and to inform consumers about the process. Health & Safety Code sec. 1368(a). Information about your health plan's grievance policy must be on its website. You can also ask your doctor or other health care provider for a copy of the grievance policy. Health & Safety Code sec. 1368.015, 28 CCR sec. 1300.68 (b)(7). Your health plan has 30 days to respond in writing to your grievance. If the matter is urgent, your health plan must respond to your grievance within 3 days. Health & Safety Code sec. 1368.01(b), 28 CCR sec. 1300.68(a).

7. What is an appeal?

An appeal is a review by your managed care plan of an Adverse Benefit Determination. 42 C.F.R. sec. 438.400(b). If your health plan denies you a service, it must issue a written notice of an Adverse Benefit Determination. An Adverse Benefit Determination can involve the delay, modification, or denial of services based on medical necessity, or the determination that the requested service was not a covered benefit.

8. Are there ever times when I can ask for an IMR without filing for a grievance first?

Yes, you can skip a grievance and go straight to an IMR in two situations:

- If the provider or health plan denies the service because it says that the service is "experimental or investigational." 28 CCR sec. 1300.70.4. While Medi-Cal does not cover "experimental" services, it does cover "investigational" services if you meet certain criteria. 22 CCR sections 51303(g) and (h) and page 19

of Chapter 11 in the National Health Law Program's Medi-Cal Overview Manual, found at: http://www.healthconsumer.org/Medi-CalOverview2008Ch11.pdf

- If the situation is very serious and you need an expedited IMR. Health & Safety Code sec. 1374.31(a). See question 13 below for more information.

9. What are some examples of when I can ask for an IMR?

Here are examples of when you could get an IMR:

- Your health care provider has said you need a service because it is medically necessary, but your health plan denies it, changes it, or causes delays in your getting the service because it disagrees that the service is medically necessary; or

- Your health plan refuses to pay for the service you received or to authorize continued services that your doctor says are medically necessary. This includes denials of a continued period of nursing or physical/occupational therapy or other services pursuant to 22 CCR sections 51003(c) (reauthorizations for continuation of previously authorized Medi-Cal services), 51014.1(f) (denial of a request by a provider for acute continuing services), 51014.2(a) and (d) (continuing benefits pending outcome of Medi-Cal fair hearing); or

- You went to a doctor either in or outside the plan who says the service you are requesting is medically necessary, but your health plan denies your request because it disagrees that you need the service. You can ask for an IMR based on the recommendation a provider who is not part of your health plan. Health & Safety Code section 1374.30(j)(C); or

- You have a life-threatening or debilitating condition, ask for treatment for it, and the plan says no because it is experimental or investigational. Health & Safety Code section 1370.4; or

- You got emergency or urgent care and your plan will not pay for it. Health & Safety Code section 1374.30.

10. How do I file an IMR?

You can file an IMR by filling out an IMR Application/Complaint Form. It is available online at: http://www.dmhc.ca.gov/dmhc_consumer/pc/pc_forms.aspx in 13 languages, including English and Spanish.

You can ask for the form by calling DMHC's Help Center at 1-888-466-2219 or TDD at 1-877-688-9891. You can submit the form via email, or mail or fax it to Department of Managed Health Care, 980 9th Street, Suite 500 Sacramento, CA 95814-2724; FAX: 916-255-5241. More information is available at http://www.dmhc.ca.gov/dmhc_consumer/pc/pc_default.aspx. You can also visit http://www.healthconsumer.org/fs046LAeng.pdf for additional suggestions about IMRs and what to do if you need one.

11. What is the deadline for filing an IMR?

You must file an IMR within 6 months of the plan's response to your appeal, which is a called a Notice of Appeal Resolution. You must also file an IMR within 6 months of your plan's response to your grievance, or if your plan failed to respond to your grievance within 30 days.

12. Is there anything special about requesting an IMR for someone under age 21?

Yes. If you are requesting an IMR for a Med-Cal beneficiary who is under age 21, you should insist that the expert reviewer have pediatric expertise or is affiliated with a children's hospital. Even if you are requesting an IMR for someone over age 21, it is always a good idea to make sure the reviewer has appropriate expertise.

13. How long will it take to get a decision on an IMR?

The DMHC usually must give you a written decision on your IMR within 30 days. Health & Safety Code sec. 1374.33(c).

14. What if I need a decision on my IMR right away?

If your situation is very serious, there is a way for you to skip the grievance process and ask for an "expedited" IMR. You must have your provider put in writing that you will face serious harm if you do not get the service you have requested. Health & Safety Code sec. 1374.33(c). Include this information in your IMR request. If DMHC agrees that you are facing harm, you can get a decision within 3 days. Health & Safety Code sec. 1374.33(c).

15. Can I look at past IMR determinations online?

Yes. All IMR determinations since 2001 are posted on the DMHC's website so you can look at outcomes. All personal information is removed. They are categorized by diagnosis and treatment. Search for IMR determinations here: http://wpso.dmhc.ca.gov/imr/

16. What is a Medi-Cal fair hearing? Can I file for a Medi-Cal fair hearing?

A Medi-Cal fair hearing is another way of challenging a decision about your Medi-Cal that you think is wrong. You can file for a Medi-Cal fair hearing if the issue is whether the service is covered by Medi-Cal or medically necessary, or if a service is terminated, reduced, or denied.

Beginning July 1, 2017, you will have to go through your Medi-Cal managed care plan's internal appeals process before filing for a Medi-Cal fair hearing. (See APL 17-006, referenced above). The hearing is held before an Administrative Law Judge who works for the Department of Social Services. The CDSS hearing website is here: http://www.cdss.ca.gov/Reporting/Hearings-and-Appeals. Information about requesting a fair hearing is here: http://www.cdss.ca.gov/Hearing-Requests (or you can call 1-800-952-5253 (Voice); 1-800-952-8349 (TDD).

17. Can I have a Medi-Cal fair hearing and an IMR?

There are some restrictions on getting a Medi-Cal fair hearing if you have already asked for an IMR. If you have already attended a Medi-Cal fair

hearing, you can no longer get an IMR. See Disability Rights California's publication *Medi-Cal Managed Care Health Plans. What are they? What do I need to know about them?* Here: http://www.disabilityrightsca.org/pubs/549501.pdf

18. How can I decide if I should file for a Medi-Cal fair hearing or an IMR?

Here are some factors for you to consider:

- Will an IMR or a Medi-Cal hearing get you a decision faster?
- You have 120 calendar days from the time you receive a Notice of Appeal Resolution to ask for a Medi-Cal fair hearing (or 90 days from the date of the situation giving rise to a grievance), but you have 6 months from the time you receive a Notice of Appeal Resolution to ask for an IMR. However, if you have already gone to a Medi-Cal fair hearing, you cannot get an IMR. You can always request both a Medi-Cal fair hearing and an IMR at the same time, and then postpone your Medi-Cal fair hearing until after the IMR. It is important to remember that the deadline for filing a fair hearing request continues to run even if you request an IMR. Therefore, make sure you request your fair hearing before the deadlines specified above.
- Is the issue is something a medical professional would be better at deciding than an administrative law judge? If so, you may want to file an IMR.
- Do you need your services to continue during the process? You can't stop your services from being cut while you ask for an IMR. But you can stop your services from being cut if you ask for a Medi-Cal hearing before your services are cut. This is called "aid paid pending" the hearing and it means your service stays the same during the appeal process. Therefore, if you need continued services, a Medi-Cal hearing may be best for you.

Please call Disability Rights California for more information. Whichever option you choose, make sure you meet the deadlines.

19. What resources are available to help me if I have additional questions or I need help?

Disability Rights California, www.disabilityrightsca.org, 1-800-776-5746

Health Consumer Alliance, http://healthconsumer.org/index.php?id=partners, to find the local legal services program closest to you.

Department of Managed Health Care, www.dmhc.ca.gov, 1-888-466-2219 or (TDD) 1-877-688-9891 for more information about grievances and IMRs.

Department of Social Services State Hearings Division for information about asking for a Medi-Cal state hearing, http://www.cdss.ca.gov/Hearing-Requests, 1-800-952-5253, 1-800-952-8349 (TDD)

We want to hear from you! Please complete the following survey about our publications and let us know how we are doing! https://docs.google.com/forms/d/1d6ezTl2M5UMAWU66exLbc1SQ9wDPzvtuS3AGR4-cgwE/viewform?c=0&w=1

For legal assistance call 800-776-5746 or complete a request for assistance form. For all other purposes call 916-504-5800 (Northern CA); 213-213-8000 (Southern CA).

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