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Restrictive State Laws Can Compromise the Integrity of Independent Review

Accredited IROs call for states to revisit their laws that lessen the quality of independent review

Within the health care ecosystem, independent peer review plays a critical role in achieving transparent, evidence-based medical claims reviews. When functioning optimally, independent review delivers expertise to both health plans and consumers during the claims appeals process.

However, legislative action in some states is compromising the integrity of the independent review process. To date, a total of 18 states mandate some form of restrictive requirements that payers and IROs must adhere to when conducting internal and external review. These requirements, while well intended, are potentially causing an adverse effect for patients and plans within their own state.

Undue state requirements

Some states have created requirements that restrict which IROs can participate in their external review program. In Texas, for example, law requires that an IRO maintain a physical address in the state and be incorporated in the state in order to work with health plans in providing independent external review. (See the charts below for the full list of states with restrictive laws.) Several other states only allow IROs to use physicians licensed in the certifying state, restricting access to national experts.

While some may assert that these states have developed stringent statutes and regulations with the intent of improving the quality and independence of the healthcare appeals and grievance process for patients within their own state, NAIRO believes that the effect of such efforts compromises the independent review process.

Such restrictive policies limit the effectiveness of the independent review process and are not in line with the Affordable Care Act and the National Association of Insurance Commissioners Health Carrier Uniform External Review Model Act (Model Act), which are the federally recognized guidelines for the provision of effective independent review services. Further, NAIRO believes that such laws limit access to nationally recognized standards of excellence.

In various letters to state commissioners and state governors, NAIRO has voiced its objections to restrictive same-state licensure laws. In this Issue Brief, NAIRO reiterates its opposition to any laws that increase the likelihood of conflicts of interest or impede the interests of health care consumers.

Removing restrictions of same-state licensure improves the quality and outcomes for both payers and consumers.

Affecting the quality, impartiality of independent review

NAIRO believes that restrictive laws produce consequences that affect the quality and impartiality of independent review, including but not limited to the following areas.

- **Restrictive laws increase conflict of interest.** The use of same-state licensed peer reviewers increases the actual and potential incidence of conflict of interest.
- **With same-state laws, consumers suffer.** Same-state requirements are not in the consumer's best interest. These laws can limit access to the most qualified doctors and/or reviewers in a given specialty.
- **Specialty reviews suffer a loss of choice and quality.** Restricting to a same state licensure greatly limits the ability of an IRO to select the most qualified peer reviewer who has the certification, experience and expertise to provide a qualified and expert determination on a given case, and on highly specialized cases in particular. Specialties such as neurosurgery, oncology and genetics are just a few examples that would greatly benefit from a larger pool of candidates to provide expert determinations on a given case.
- **Same-state laws dismiss nationally recognized standards.** The limiting requirements of same-state laws do not adhere to standards specified in the NAIC Model Act or URAC standards, both of which require expert reviewers to hold a non-restricted license in a state of the United States.
- **Lower participation decreases quality.** By restricting the number of candidates for independent reviews, same-state laws dilute the quality of the IRO pool and the ultimate decisions.

In reaction to the negative and harmful effects incurred by consumers and health organizations, NAIRO calls for all states with unduly restrictive licensure laws to revisit their laws in the interest of ensuring quality-based independent reviews.

Delivering high-quality reviews: The role of accredited IROs

With the expertise of clinical reviewers and specialized knowledge of health care services, accredited IROs are the best equipped to make evidence-based decisions about these types of appeals. More specifically, accredited IROs offer:

- **Deep expertise and experience.** IROs have immediate access to physicians and allied health care practitioners who are at the vanguard of medical treatments and services. Accredited IROs provide expertise in experimental and investigational reviews and are up-to-date on the accepted standards of care.
- **Large panels of clinical reviewers.** IROs feature expansive reviewer panels of hundreds to thousands of experts, who can provide access to all recognized specialties and sub-specialties.
- **Affiliations to leading research and knowledge centers.** Many peer reviewers contracted by IROs are affiliated with or have relationships with medical centers of excellence and research hospitals, which links them to the latest knowledge and resources of accepted medical practices and treatments.
- **Advanced, ongoing education and training.** The training and credentialing programs for IROs are designed to ensure the use of reviewers who are knowledgeable of the most current peer-reviewed literature and evidence-based medicine.

Table 1. States with laws restricting IRO use, external review

State	Rule and Citation
Missouri	Missouri Annotated Statutes, Title 24, Chapter 376 § 376.423. Health insurance, claims for chiropractic services denial must be reviewed by Missouri-licensed chiropractor
New Jersey	§ 11:24-8.7 External appeals process, section h
North Carolina	§ 58-50-87(a)(6) - Minimum qualifications for independent review organizations.
Texas	28 TAC §133.308 - This applies to Texas licensed IROS providing WC medical necessity reviews

Table 2. States with laws restricting IRO use, utilization review

State	Rule and Citation
Colorado	Colorado Board of Chiropractic Examiners Policies 30-13: Utilization Review, CRS 10-16-113 (4)
Kentucky	KRS Section 304.17A-607
Massachusetts	MRC, title 211, Section 52.03 and 53.08(7)
Minnesota	62M.09 Staff and Program Qualifications - Subd. 3(B)
Missouri	Missouri Annotated Statutes, Title 24, Chapter 376 § 376.423. Missouri Revised Statute Section 376.
Mississippi	MCA, Section 41-83-31(a)
New Hampshire	NH Rev Stat Ann, Section 420-E:2a and NHCAR 2001.16 (c)
New Jersey	§ 11:24A-3.6(g) Independent health care appeals process. NJ Stat. § 17:48G-2 (2) Dental decisions made by insurer. NJ Stat. § 45:9-14.5 (d); § 11:24-8.7 External appeals process, section h
New Mexico	N.M. Stat. Ann. § 59A-57-3 & 4
North Carolina	58-50-61(d); § 58-50-87(a)(6) – Minimum qualifications for independent review organizations
North Dakota	ND Cent. Code, Section 26.1-26.4-04(8)
Oklahoma	OAC 365:10-15-5
Oregon	OR Rev Stat, Section 743.806(4) or Section 743.807(2)(d)
Vermont	8 VSA 4089a and Rule H-2011-H
Virginia	Code of VA, Section 32.1-137.1, 32.1-138.6

Table 3. States with laws restricting IRO use, workers' compensation utilization review

State	Rule and Citation
California	See 8 CCR 9792.6
Colorado	Rule 16-5 , 16-9 and 16-10
Connecticut	Chapter 568, §38a-226(a)(6) and (7)
Kentucky	KY Rev Stat Ann, Section 312.200(3) and 201 KY Admin Regs 21.095
Mississippi	MCA, Section 41-83-31(a)
Nevada	NRS 630.261
Tennessee	Chapter 0800-02-06.1 - General Rules of WC UR Program
Texas	TAC 28, Part 2. Chapter 180.22

About NAIRO

NAIRO (The National Association of Independent Review Organizations) was formed by the majority of URAC-accredited IROs. The mission of NAIRO is to promote the quality and integrity of the independent review process at the internal and external levels. Utilizing the expertise of board-certified clinicians throughout the country, NAIRO members embrace an evidence-based approach to independent peer review, in order to help resolve coverage disputes between enrollees and their health plans. More information can be found at www.nairo.org.

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