ISSUE BRIEF:
Independent Review of Health Plan Decisions

The Purpose of This Roundtable
♦ To inform the policy debate in California about the issues, policy options, and public and private sector initiatives in the area of independent review of health plan decisions.

Key Questions to Explore at This Roundtable
♦ What can California learn from the experiences of other states in establishing an independent review system for appeals of health plan decisions?
♦ What are the costs and benefits associated with an independent review system?
♦ What independent review mechanisms are currently available for health plan enrollees in California?
♦ What are the key elements of proposals to implement an independent review system in California?
♦ How does the Center for Health Dispute Resolution (CHDR) conduct independent review for Medicare?

About the Roundtable Speakers

Kevin Hanley, Director of the State of California Office of the Insurance Advisor in Sacramento, California, will discuss the position of the Wilson Administration on independent review.

Peter Lee, J.D., Director of Consumer Protection Programs at the Center for Health Care Rights in Los Angeles, California, will address the consumer protection component of independent review.

Karen Pollitz, M.P.P., Project Director at the Institute for Health Care Research and Policy at Georgetown University in Washington, D.C., will discuss the key aspects of existing state independent review programs.

David Richardson, President of the Center for Health Dispute Resolution (CHDR) in Pittsford, New York, will discuss the role CHDR plays in independently reviewing Medicare coverage decisions.

Michael Shapiro, Staff Director for the California State Senate Committee on Insurance in Sacramento, California, will discuss the existing legislative proposals to implement an independent review program in California.

Alan Zwerner, M.D., J.D., Senior Vice President and Chief Medical Officer of Health Net in Woodland Hills, California, will discuss the independent review process available to Health Net members and the view of the HMO industry on pending independent review legislation in California.

What Is Independent Review?
The current regulatory practice of most states in overseeing the health insurance industry is to require health plans to establish an internal process for the resolution of consumer complaints—be they disputes over coverage, contracts, or denials of service. Consumers in most states can appeal to the appropriate state regulatory agency for external review of health plan decisions, but this process may be informal and consumers may be unaware of their appeal rights.

Currently, there are no formal standards at the federal level or in California for the independent review of health plan decisions for enrollees who have exhausted a health plan’s internal appeals process and are dissatisfied with the resolution of their grievances. Independent reviews are conducted by agencies and/or individuals that have no financial or professional affiliation with health plans and no financial or professional interest in the outcome.

Independent review of health plan decisions is one component of several health care consumer protection proposals. Both the President’s Advisory Commission on Consumer Protection and Quality in the Health Care Industry and the California Managed Health Care Improvement Task Force recommended an independent system of external review of health plan decisions. Independent review is also one component of pending managed care reform proposals in Congress and the subject of California legislation.

Proponents of independent reviews suggest that establishing a process for independent review of health plan decisions would enhance consumer confidence in health plan decision-making, verify the accuracy of utilization reviews, and ensure that health plans are held accountable for their decisions. However, opponents of independent review suggest an independent review system would impose an administrative burden on health plans, lead to overutilization of health care services and the delivery of inappropriate care, and raise legal liability issues for health plans and independent review entities.

How Will Independent Review Affect Health Plan Premiums?
Price Waterhouse conducted an analysis, prepared for the Kaiser Family Foundation, of the benefits and costs of selected provisions of the California Managed Health Care Improvement Task Force recommendations, including the recommendation for independent review. This analysis indicated that if California established an independent review process through which consumers could appeal certain health plan coverage decisions, the estimated direct cost impact would be an increase of three cents per enrollee per month, or an increase in premiums of .03 percent.

In a separate study commissioned by the Kaiser Family Foundation, Coopers & Lybrand conducted a cost analysis of the President’s Consumer Bill of Rights and the Congressional Patient Access to Responsible Care Act (PARCA).
Both proposals include provisions to allow enrollees to request an independent review of health plan service requests and utilization decisions. This analysis estimated the independent review provision would increase premiums by 2 to 16 cents per enrollee per month, or by 0.02 to 0.13 percent.

The Congressional Budget Office (CBO) prepared a cost estimate of H.R. 3605/S. 1890, the federal Patients’ Bill of Rights Act of 1998. According to the CBO analysis, establishing a grievance process, including internal and external appeals of adverse determinations, would increase premiums by 0.3 percent in the 10 years following enactment of the bill.

If utilization of health care services increases as the result of independent review, premiums could increase more than these analyses reported.

What Is the Structure of Independent Review Systems in Other States?

Seventeen states have established an independent review system for enrollee appeals of health plan decisions. Key features of these systems include:

- **What parties are eligible to request an independent review?** In five states, only enrollees are eligible to appeal health plan decisions; in 12 others, an enrollee can designate a representative and/or a physician to act on his or her behalf.

- **What health plan decisions qualify for independent review?** Thirteen states allow only denials based on the medical necessity or appropriateness of a health care service to be eligible for independent review. Four states also allow enrollees to request independent review of coverage or contract disputes.

- **What entities conduct independent reviews?** Independent reviews are conducted by state insurance regulatory agencies in six states, but are more often conducted by independent review organizations (IROs) and/or by appropriately licensed or registered health care professionals (usually physicians and nurses) certified by a state to conduct reviews.

- **What entities select or contract with IROs?** In nine states, the state health insurance regulatory agency is responsible for contracting with IROs. Health plans contract with IROs in four states, and only one state allows the enrollee to choose the reviewing entity.

- **Who pays for independent reviews?** In 12 states, health plans pay most or all of the cost of reviews, either on a direct, per-review basis or indirectly through licensing fees. In six states, enrollees pay a filing fee ranging from $25 to $100. In one state, enrollees evenly share the cost with health plans.

- **What is the time allowed for the normal and expedited independent review process?** The normal independent review process ranges from 10 to 120 days, and the expedited independent review process (when the enrollee’s life or health would be jeopardized) ranges from 24 hours to 45 days.

- **Are the decisions of the independent review entities binding on health plans and enrollees?** In 14 states, the decision of the independent reviewer is binding. In three states, either party can appeal the independent review decision at the judicial level.

What Independent Review Process Is Currently Available in California?

There is currently no formal process through which all insured people in California can request independent review of health plan decisions. Under the Knox-Keene Act, the California Department of Corporations (DOC) is responsible for providing an informal review process through which enrollees can file complaints against HMOs relating to grievances filed or pending with, or resolved by, HMOs.

The Friedman-Knowles Experimental Treatment Act (AB 1663 of 1996), effective July 1, 1998, allows HMO and disability insurer enrollees who have terminal conditions to request independent review of decisions to deny experimental or investigational treatment. The state has contracted with an accrediting entity that will contract with IROs to conduct these reviews.

What Are California’s Proposals to Implement an Independent Review Program?

AB 1667 (Migden), SB 1504 (Rosenthal), and SB 1653 (Johnston) are the three legislative vehicles in California that would establish an independent review process for enrollees of HMOs and disability insurers.

These bills would require every HMO and disability insurer in California to provide an enrollee or insured with the opportunity to seek an independent medical review whenever health care services have been denied, significantly delayed, terminated, or otherwise limited by the plan or insurer. These bills would also require the state DOC and Department of Insurance to contract with one or more IROs to conduct independent reviews, and with a private, nonprofit organization to accredit IROs.

The California Health Policy Roundtable is presented by:

UC Berkeley School of Public Health
Helen Schaufler, Ph.D. - Juliette Cubanski, M.P.P.
140 Warren Hall #7360 - Berkeley, CA 94720-7360
Phone (510)643-1675 - Fax (510)643-2340
cubanski@uclink4.berkeley.edu

California Center for Health Improvement
Karen Bodenhorn, R.N., M.P.H. - Lee Kemper, M.P.A
1321 Garden Highway - Sacramento, CA 95833-9754
Phone (916)646-2149 - Fax (916)646-2151
policymatters@cchi.org

This California Health Policy Roundtable is supported by a grant from the Henry J. Kaiser Family Foundation, Menlo Park, California.