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# Legislative Briefs

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## HEALTH INSURANCE GRIEVANCES AND REVIEWS

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### HEALTH CARE WORKERS WHISTLEBLOWER PROTECTION

Two laws enacted by the 1999-2000 Wisconsin Legislature provide health care consumers and workers additional protections.

#### HEALTH INSURANCE GRIEVANCE AND INDEPENDENT REVIEW

1999 Wisconsin Act 155 requires all health insurers to establish an internal grievance procedure to handle insureds' complaints. Most provisions became effective on May 27, 2000. The law also provides a procedure for independent review of adverse treatment decisions, including negative determinations regarding experimental treatments.

**Internal Grievance Procedure Required for All Health Insurers.** Act 155 requires that an insurer issuing a health benefit plan in Wisconsin must have an internal grievance procedure under which an insured person may submit a written complaint for investigation and appropriate corrective action. Grievances may involve any type of complaint about the insurer or the plan. Previously, only managed care plans, such as health maintenance organizations (HMOs), were required to have such procedures.

Generally, the insured must exhaust all internal grievance procedures before requesting an independent review, as described below. Exceptions are provided if the insured and insurer both agree to bypass the internal procedures or if an independent review organization (IRO) determines the review should be expedited to avoid jeopardizing the life or health of the insured.

**Independent Review of Adverse Determinations.** Act 155 requires every health insurer issuing a health benefit plan in Wisconsin to have an independent review procedure for review of certain decisions that are adverse to the insureds. Adverse determinations may involve: 1) the denial of, or refusal to pay for, treatment that the insurer considers experimental or 2) the insurer's denial, reduction, or termination of, or refusal to pay for, a health care service, based on the insurer's determination that the health care service does not meet the plan's requirements regarding medical necessity, medical appropriateness, proper health care setting or level, or effectiveness of care.

Independent review provisions only apply when the amount or expected cost of the denied treatment is at least \$250. (This amount may be periodically adjusted by the commissioner of insurance, based on inflation.) Generally, the insured must request independent review within four months after receiving notice of an adverse decision under the internal grievance procedure. Requests for independent review must be in writing and accompanied by a \$25 fee, which is refundable if the insured prevails in whole or in part. The insurer also pays an additional fee to the IRO for each review.

The law requires that the IRO must be free from any conflict of interest in its reviews, and it must submit its written decision within 30 days after receiving all relevant information. Expedited reviews must be completed within 72 hours. IRO decisions are binding on both parties, and the IRO is immune from liability for its decisions. An unbiased clinical peer reviewer,

who must be a health care provider specializing in the relevant field, may conduct the review on behalf of an IRO. Patients retain the right to sue their health care insurer in civil or criminal court except for damages attributable to actions taken in compliance with an IRO decision.

## **HEALTH CARE EMPLOYEE WHISTLEBLOWER LAW**

1999 Wisconsin Act 176 protects all health care workers from retaliation if they report violations of patient care standards. The law took effect June 2, 2000.

**Protection Expanded to All Health Care Workers.** Act 176 provides health care workers protection from disciplinary actions if they make good faith reports about suspected cases of abuse, neglect, or substandard care of patients. Protected reports include violations of: 1) state or federal laws, rules, or regulations; or 2) established patient health care quality standards that pose a potential risk to public health or safety. Reports may be made internally or to regulatory agencies or professional accrediting or standard-setting bodies. The act extends to private facilities the whistleblower protections previously granted to employees of governmental facilities who reported violations of laws or dangers to public health or safety.

The law protects employees of health care facilities or providers, such as hospitals, nursing homes, and community-based residential facilities. Types of workers covered include physicians, nurses, chiropractors, dentists, therapists, dieticians, pharmacists, psychologists, social workers, and emergency medical technicians, and any other employee of a health care facility or provider.

**Disciplinary Action Prohibited.** Employers may not take or threaten disciplinary action against workers who initiate or participate in good faith reporting. Prohibited disciplinary actions include dismissal, demotion, reprimand, suspension, transfer, involuntary reassignment to another position or shift, removal of duties, verbal or physical harassment, denial of education or training, or reduction of or failure to increase base pay.

**Notice and Enforcement.** By September 2, 2000, health care facilities must notify their employees of their rights and remedies under this law. In addition, facilities must conspicuously post a notice setting forth employee's rights. Failure to post the required notice may result in a forfeiture of not more than \$100 for each offense.

Any employee subject to or threatened with disciplinary action, other than a state employee, may file a complaint with the Equal Rights Division of the Department of Workforce Development at (608) 266-6860. Employees of facilities operated by the state may complain to the Wisconsin Personnel Commission at (608) 266-1995. Violators are subject to a forfeiture of not more than \$1,000 for a first violation; not more than \$5,000 for a second violation that is committed within 12 months of a previous violation; and not more than \$10,000 for a violation committed within 12 months of two or more previous violations. Corrective action such as reinstatement, back pay and attorney's fees may also be ordered.

## **FOR MORE INFORMATION**

Questions about the independent review law may be directed to the Office of the Commissioner of Insurance at (800) 236-8517. Copies of the laws relating to independent reviews (Sections 632.83 and 632.835, Wisconsin Statutes) and whistleblower protections (Section 146.997) may be obtained by contacting the Legislative Reference Bureau at (608) 266-0342. Acts may be downloaded from the Internet at: <http://www.legis.state.wi.us/billtext/acts/99acts.html>.