

New York State  
Seal

**STATE OF NEW YORK  
INSURANCE DEPARTMENT**  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

George E. Pataki  
Governor

Howard Mills  
Acting Superintendent

The Office of General Counsel issued the following opinion on March 9, 2005 representing the position of the New York State Insurance Department.

**Re: Utilization Review Agents, Licensure as Independent Adjusters**

**Issue**

Must a Utilization Review Agent also be licensed as an Independent Adjuster?

**Conclusion**

While there is no requirement that a Utilization Review Agent also be licensed as an Independent Adjuster, depending upon the particular circumstances, a license as an Independent adjuster might be required. Under the facts as presented, the client would not have to be so licensed.

**Facts**

The inquirer's client is registered as a Utilization Review Agent in accordance with New York Insurance Law Article 49 (McKinney 2000) and New York Public Health Law Article 49 (McKinney 2002) and performs reviews of the necessity of high cost diagnostic imaging modalities, such as Magnetic Resonance Imaging, for several managed care organizations. The firm's reviews are conducted on both a prospective and retrospective basis.

Prospective reviews are made at the request of a referring physician. If, after a review the client determines that the diagnostic test is medically necessary, it will issue, on behalf of the managed care organization, an advance authorization for the diagnostic test.

Retrospective reviews are initiated by the client's customer, i.e. the managed care organization, when either a diagnostic test is performed that had not been, as was required by the insurance policy or contract, pre-authorized or the diagnostic test that was performed differed from the one that had previously been authorized.

In either event, while the client makes a determination as to medical necessity and conveys that determination to both the managed care organization and the patient or health care provider, the determination as to whether

payment will be made for the diagnostic procedure resides with the managed care organization.

The inquirer sought confirmation that, based upon the circumstances under which the client operates, it need not secure a license as an Independent Adjuster.

## **Analysis**

Utilization review is defined, New York Insurance Law § 4900(h) (McKinney 2000):

‘Utilization review’ means the review to determine whether health care services that have been provided, are being provided or are proposed to be provided to a patient, whether undertaken prior to, concurrent with or subsequent to the delivery of such services are medically necessary. . . .

New York Public Health Law § 4900(8) (McKinney 2002) has an identical definition.

An independent adjuster is defined, New York Insurance Law § 2101(g)(1) (McKinney 2000):

The term ‘independent adjuster’ means any person, firm, association or corporation who, or which, for money, commission or any other thing of value, acts in this state on behalf of an insurer in the work of investigating and adjusting claims arising under insurance contracts issued by such insurer and who performs such duties required by such insurer as are incidental to such claims and also includes any person who for compensation or anything of value investigates and adjusts claims on behalf of any independent adjuster . . . .

New York Insurance Law § 2108(a)(3) (McKinney 2000 and 2004 Supplement) prohibits acting as an independent adjuster without a license.

By letter of July 9, 2002, the Insurance Department opined that a Utilization Review Agent is not, by reason of such activities, required to be licensed as an Independent Adjuster. That opinion further provided that, in the particular circumstances described in that opinion, i.e. the Utilization Review Agent made recommendations as to the settlement of the claim, that particular Utilization Review Agent’s activities fell within the definition of adjusting.

However, with respect to the client, the inquirer argued that since the determination by the insurer or other managed care organization as to whether to cover the service is governed by the insurance policy or contract, (or, in the case of a self-funded plan, the plan document) and that document may compel either a acceptance or denial of the claim independent of the medical necessity, your client does not make a final recommendation and thus does not engage in adjusting.

Based upon the inquirer’s representation, it appears that the client would not have to be licensed as an Independent Adjuster.

For further information you may contact Principal Attorney Alan Rachlin at the New York City Office.