By: Bonnen H.B. No. 4343

Substitute the following for H.B. No. 4343:

By: Klick C.S.H.B. No. 4343

A BILL TO BE ENTITLED

AN ACT

relating to health benefit plan preauthorization requirements for certain health care services and the direction of utilization review by physicians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 4201.152, Insurance Code, is amended to read as follows:

Sec. 4201.152. UTILIZATION REVIEW UNDER DIRECTION OF PHYSICIAN. A utilization review agent shall conduct utilization review under the direction of a physician licensed to practice medicine in this state. The physician may not hold a license to practice administrative medicine under Section 155.009, Occupations Code.

SECTION 2. Subchapter M, Chapter 4201, Insurance Code, is amended by adding Section 4201.6015 to read as follows:

Sec. 4201.6015. INQUIRY BY TEXAS MEDICAL BOARD. (a) This section does not apply to chiropractic treatments.

(b) If the Texas Medical Board believes that a physician has directed a utilization review in an arbitrary manner or without a medical basis or receives a complaint with that allegation, the Texas Medical Board may request the department to determine whether the health insurance policy or health benefit plan that is the subject of the utilization review covers the health care service being reviewed.

(c) If the department determines the health care service is covered under Subsection (b), the Texas Medical Board:

(1) shall notify the physician of the allegation; and

(2) may compel the production of documents or other information as necessary to determine whether the utilization review was directed in an arbitrary manner or without a medical basis.

(d) An inquiry and determination under this section is limited to whether the utilization review was directed in an arbitrary manner or without a medical basis in accordance with the standards of medical practice. If the commissioner initiates a proceeding under Section 4201.601 in relation to the same utilization review for which the inquiry is being conducted, the Texas Medical Board shall suspend the inquiry until the conclusion of the commissioner's proceeding.

(e) The Texas Medical Board may conduct an inquiry under this section in the manner provided by Section 154.0561, Occupations Code.

SECTION 3. The heading to Section 4201.602, Insurance Code, is amended to read as follows:

Sec. 4201.602. ENFORCEMENT PROCEEDINGS [~~PROCEEDING~~].

SECTION 4. Section 4201.602(a), Insurance Code, is amended to read as follows:

(a) The commissioner may initiate a proceeding under Section 4201.601 [~~this subchapter~~]. The Texas Medical Board may initiate a proceeding under Section 4201.6015.

SECTION 5. Section 4201.603, Insurance Code, is amended to

read as follows:

Sec. 4201.603. REMEDIES AND PENALTIES; EMERGENCY REMEDIES [~~FOR VIOLATION~~]. (a) If the commissioner determines that a utilization review agent, health maintenance organization, insurer, or other person or entity conducting utilization review has violated or is violating this chapter, the commissioner may:

(1) impose a sanction under Chapter 82;

(2) issue a cease and desist order under Chapter 83; or

(3) assess an administrative penalty under Chapter 84.

(b) The Texas Medical Board may restrict, suspend, or revoke the license of a physician the board determines has directed a utilization review in an arbitrary manner or without a medical basis at the conclusion of a proceeding conducted under Section 4201.6015.

(c) If a utilization review results in the serious injury or death of the individual who is the subject of the review, the commissioner may temporarily prohibit a physician who directed the review from directing utilization review and the Texas Medical Board may temporarily suspend the physician's license. The commissioner or Texas Medical Board, as applicable, shall conduct a proceeding under Section 4201.601 or 4201.6015, as applicable, regarding the utilization review, and the prohibition or suspension is effective until the conclusion of the proceeding.

SECTION 6. Section 4201.651(a), Insurance Code, is amended to read as follows:

(a) In this subchapter:

(1) "Affiliate" has the meaning assigned by Section

823.003.

(2) "Preauthorization"[~~, "preauthorization"~~] means a determination by a health maintenance organization, insurer, or person contracting with a health maintenance organization or insurer that health care services proposed to be provided to a patient are medically necessary and appropriate.

SECTION 7. Section 4201.653, Insurance Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a) A health maintenance organization or an insurer that uses a preauthorization process for health care services may not require a physician or provider to obtain preauthorization for a particular health care service if, in the most recent one-year [~~six-month~~] evaluation period, as described by Subsection (b), the health maintenance organization or insurer, including any affiliate, has approved or would have approved not less than 90 percent of the preauthorization requests submitted by the physician or provider for the particular health care service.

(a-1) In conducting an evaluation for an exemption under this section, a health maintenance organization or insurer must include all preauthorization requests submitted by a physician or provider to the health maintenance organization or insurer, or its affiliate, considering all health insurance policies and health benefit plans issued or administered by the health maintenance organization or insurer, or its affiliate, regardless of whether the preauthorization request was made in connection with a health insurance policy or health benefit plan that is subject to this

subchapter.

(b) Except as provided by Subsection (c), a health maintenance organization or insurer shall evaluate whether a physician or provider qualifies for an exemption from preauthorization requirements under Subsection (a) once every year [~~six months~~].

SECTION 8. Section 4201.655, Insurance Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A determination made under Subsection (a)(2) must be made by an individual licensed to practice medicine in this state. For a determination made under Subsection (a)(2) with respect to a physician, the determination must be made by an individual licensed to practice medicine in this state who has the same or similar specialty as that physician. The reviewing physician may not hold a license to practice administrative medicine under Section 155.009, Occupations Code.

(b-1) Notwithstanding Subsection (a)(2), if there are fewer than five claims submitted by the physician or provider during the most recent evaluation period described by Section 4201.653(b) for a particular health care service, the health maintenance organization or insurer shall review all the claims submitted by the physician or provider during the most recent evaluation period for that service.

SECTION 9. Section 4201.656(a), Insurance Code, is amended to read as follows:

(a) A physician or provider has a right to a review of an

adverse determination regarding a preauthorization exemption, including a health maintenance organization's or insurer's determination to deny an exemption to the physician or provider under Section 4201.653, to be conducted by an independent review organization. A health maintenance organization or insurer may not require a physician or provider to engage in an internal appeal process before requesting a review by an independent review organization under this section.

SECTION 10. Sections 4201.659(b) and (c), Insurance Code, are amended to read as follows:

(b) Regardless of whether an exemption is rescinded after the provision of a health care service subject to the exemption, a [~~A~~] health maintenance organization or an insurer may not conduct a utilization [~~retrospective~~] review or require another review similar to preauthorization of the [~~a health care~~] service [~~subject to an exemption~~] except:

(1) to determine if the physician or provider still qualifies for an exemption under this subchapter; or

(2) if the health maintenance organization or insurer has a reasonable cause to suspect a basis for denial exists under Subsection (a).

(c) For a utilization [~~retrospective~~] review described by Subsection (b)(2), nothing in this subchapter may be construed to modify or otherwise affect:

(1) the requirements under or application of Section 4201.305, including any timeframes specified by that section; or

(2) any other applicable law, except to prescribe the

only circumstances under which:

(A) a [~~retrospective~~] utilization review may occur as specified by Subsection (b)(2); or

(B) payment may be denied or reduced as specified by Subsection (a).

SECTION 11. Subchapter N, Chapter 4201, Insurance Code, is amended by adding Section 4201.660 to read as follows:

Sec. 4201.660. REPORT. (a) Each health maintenance organization and insurer shall submit to the department, in the form and manner prescribed by the commissioner, an annual written report, for each health care service subject to an exemption under Section 4201.653, on the:

(1) exemptions granted by the health maintenance organization or insurer for the service; and

(2) determinations by the health maintenance organization or insurer to rescind or deny an exemption for the service.

(b) Subject to this subsection, a report submitted under Subsection (a) is public information subject to disclosure under Chapter 552, Government Code. The department shall ensure that the report does not contain any identifying information before disclosing the report in accordance with Chapter 552, Government Code.

SECTION 12. Section 151.002(a)(13), Occupations Code, is amended to read as follows:

(13) "Practicing medicine" means:

(A) the diagnosis, treatment, or offer to treat a

mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who:

(i) [~~(A)~~] publicly professes to be a physician or surgeon; or

(ii) [~~(B)~~] directly or indirectly charges money or other compensation for those services; and

(B) the direction of utilization review conducted by a utilization review agent under Section 4201.152, Insurance Code.

SECTION 13. (a) The change in law made by this Act applies only to utilization review conducted on or after the effective date of this Act. Utilization review conducted before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) A preauthorization exemption provided under Section 4201.653, Insurance Code, before the effective date of this Act may not be rescinded before the first anniversary of the last day of the most recent evaluation period for the exemption.

SECTION 14. This Act takes effect September 1, 2023.