

By: Bonnen

H.B. No. 4343

A BILL TO BE ENTITLED

AN ACT

1
2 relating to health benefit plan preauthorization requirements for
3 certain health care services and the direction of utilization
4 review by physicians.

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

6 SECTION 1. Section [4201.152](#), Insurance Code, is amended to
7 read as follows:

8 Sec. 4201.152. UTILIZATION REVIEW UNDER DIRECTION OF
9 PHYSICIAN. A utilization review agent shall conduct utilization
10 review under the direction of a physician licensed to practice
11 medicine in this state. The physician may not hold a license to
12 practice administrative medicine under Section [155.009](#),
13 Occupations Code.

14 SECTION 2. Subchapter [M](#), Chapter [4201](#), Insurance Code, is
15 amended by adding Section 4201.6015 to read as follows:

16 Sec. 4201.6015. INQUIRY BY TEXAS MEDICAL BOARD. (a) If the
17 Texas Medical Board believes that a physician has directed a
18 utilization review in an arbitrary manner or without a medical
19 basis or receives a complaint with that allegation, the Texas
20 Medical Board:

21 (1) shall notify the physician of the allegation; and
22 (2) may compel the production of documents or other
23 information as necessary to determine whether the utilization
24 review was directed in an arbitrary manner or without a medical

1 basis.

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

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

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

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

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

18 SECTION 5. Section 4201.603, Insurance Code, is amended to
19 read as follows:

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

- 25 (1) impose a sanction under Chapter 82;
26 (2) issue a cease and desist order under Chapter 83; or
27 (3) assess an administrative penalty under Chapter 84.

1 (b) The Texas Medical Board may restrict, suspend, or revoke
2 the license of a physician the board determines has directed a
3 utilization review in an arbitrary manner or without a medical
4 basis at the conclusion of a proceeding conducted under Section
5 4201.6015.

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

15 SECTION 6. Section 4201.653(d), Insurance Code, is amended
16 to read as follows:

17 (d) To qualify for an exemption under Subsection (a), a [A]
18 physician or provider is not required to:

- 19 (1) request the [an] exemption; or
20 (2) perform the health care service that is the
21 subject of the exemption a minimum number of times [under
22 ~~Subsection (a) to qualify for the exemption].~~

23 SECTION 7. Section 4201.655, Insurance Code, is amended by
24 amending Subsection (b) and adding Subsection (b-1) to read as
25 follows:

26 (b) A determination made under Subsection (a)(2) must be
27 made by an individual licensed to practice medicine in this state.

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

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

14 SECTION 8. Section 4201.656(a), Insurance Code, is amended
15 to read as follows:

16 (a) A physician or provider has a right to a review of an
17 adverse determination regarding a preauthorization exemption,
18 including a health maintenance organization's or insurer's
19 determination to deny an exemption to the physician or provider
20 under Section 4201.653, be conducted by an independent review
21 organization. A health maintenance organization or insurer may not
22 require a physician or provider to engage in an internal appeal
23 process before requesting a review by an independent review
24 organization under this section.

25 SECTION 9. Sections 4201.659(b) and (c), Insurance Code,
26 are amended to read as follows:

27 (b) Regardless of whether an exemption is rescinded after

1 the provision of a health care service subject to the exemption, a
2 [A] health maintenance organization or an insurer may not conduct a
3 utilization [~~retrospective~~] review or require another review
4 similar to preauthorization of the [~~a health care~~] service [~~subject~~
5 ~~to an exemption~~] except:

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

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

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

14 (1) the requirements under or application of Section
15 [4201.305](#), including any timeframes specified by that section; or

16 (2) any other applicable law, except to prescribe the
17 only circumstances under which:

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

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

22 SECTION 10. Subchapter [N](#), Chapter [4201](#), Insurance Code, is
23 amended by adding Section 4201.660 to read as follows:

24 Sec. 4201.660. REPORT. Each health maintenance
25 organization and insurer shall submit to the department, in the
26 form and manner prescribed by the commissioner, an annual written
27 report, for each health care service subject to an exemption under

1 Section 4201.653, on the:

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

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

7 SECTION 11. Section 151.002(a)(13), Occupations Code, is
8 amended to read as follows:

9 (13) "Practicing medicine" means:

10 (A) the diagnosis, treatment, or offer to treat a
11 mental or physical disease or disorder or a physical deformity or
12 injury by any system or method, or the attempt to effect cures of
13 those conditions, by a person who:

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

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

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

21 SECTION 12. The change in law made by this Act applies only
22 to utilization review conducted on or after the effective date of
23 this Act. Utilization review conducted before the effective date of
24 this Act is governed by the law as it existed immediately before the
25 effective date of this Act, and that law is continued in effect for
26 that purpose.

27 SECTION 13. This Act takes effect September 1, 2023.