

By: Giddings

H.B. No. 1006

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to doctor licensing requirements for peer review,  
3 utilization, and retrospective review of medical decisions  
4 regarding workers' compensation claims.

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

6 SECTION 1. Section 401.011, Labor Code, is amended by  
7 adding Subdivisions (12-a), (38-a), (42-b), and (42-c) and amending  
8 Subdivision (42-a) to read as follows:

9 (12-a) "Credentialing" has the meaning assigned by  
10 Chapter 1305, Insurance Code.

11 (38-a) "Retrospective review" has the meaning  
12 assigned by Chapter 1305, Insurance Code.

13 (42-a) "Utilization review" has the meaning assigned  
14 by Chapter 4201, Insurance Code.

15 (42-b) "Utilization review agent" has the meaning  
16 assigned by Chapter 4201, Insurance Code.

17 (42-c) "Violation" means an administrative violation  
18 subject to penalties and sanctions as provided by this subtitle.

19 SECTION 2. Section 408.023(h), Labor Code, is amended to  
20 read as follows:

21 (h) Notwithstanding Section 4201.152 [~~4(h), Article~~  
22 ~~21.58A~~], Insurance Code, a utilization review agent or an insurance  
23 carrier that uses doctors to perform reviews of health care  
24 services provided under this subtitle, including utilization

1 review and retrospective review, may only use doctors licensed [~~by~~  
2 ~~another state to perform the reviews, but the reviews must be~~  
3 ~~performed under the direction of a doctor licensed]~~ to practice in  
4 this state.

5 SECTION 3. Section 408.0231(e), Labor Code, is amended to  
6 read as follows:

7 (e) The commissioner shall act on a recommendation by the  
8 medical advisor selected under Section 413.0511 and, after notice  
9 and the opportunity for a hearing, may impose sanctions under this  
10 section on a doctor or an insurance carrier or may recommend action  
11 regarding a utilization review agent. The commissioner and the  
12 commissioner of insurance shall enter into a memorandum of  
13 understanding to coordinate the regulation of insurance carriers  
14 and utilization review agents as necessary to ensure:

- 15 (1) compliance with applicable regulations; and  
16 (2) that appropriate health care decisions are reached  
17 under this subtitle and under Chapter 4201 [~~Article 21.58A~~],  
18 Insurance Code.

19 SECTION 4. Sections 1305.004(a)(12), (17), (27), and (28),  
20 Insurance Code, are amended to read as follows:

21 (12) "Life-threatening" has the meaning assigned by  
22 Chapter 4201 [~~Section 2, Article 21.58A~~].

23 (17) "Nurse" has the meaning assigned by Chapter 4201  
24 [~~Section 2, Article 21.58A~~].

25 (27) "Utilization review" has the meaning assigned by  
26 Chapter 4201 [~~Section 2, Article 21.58A~~].

27 (28) "Utilization review agent" has the meaning

1 assigned by Chapter 4201 [~~Article 21.58A~~].

2 SECTION 5. Section 1305.154(c), Insurance Code, is amended  
3 to read as follows:

4 (c) A network's contract with a carrier must include:

5 (1) a description of the functions that the carrier  
6 delegates to the network, consistent with the requirements of  
7 Subsection (b), and the reporting requirements for each function;

8 (2) a statement that the network and any management  
9 contractor or third party to which the network delegates a function  
10 will perform all delegated functions in full compliance with all  
11 requirements of this chapter, the Texas Workers' Compensation Act,  
12 and rules of the commissioner or the commissioner of workers'  
13 compensation;

14 (3) a provision that the contract:

15 (A) may not be terminated without cause by either  
16 party without 90 days' prior written notice; and

17 (B) must be terminated immediately if cause  
18 exists;

19 (4) a hold-harmless provision stating that the  
20 network, a management contractor, a third party to which the  
21 network delegates a function, and the network's contracted  
22 providers are prohibited from billing or attempting to collect any  
23 amounts from employees for health care services under any  
24 circumstances, including the insolvency of the carrier or the  
25 network, except as provided by Section 1305.451(b)(6);

26 (5) a statement that the carrier retains ultimate  
27 responsibility for ensuring that all delegated functions and all

1 management contractor functions are performed in accordance with  
2 applicable statutes and rules and that the contract may not be  
3 construed to limit in any way the carrier's responsibility,  
4 including financial responsibility, to comply with all statutory  
5 and regulatory requirements;

6 (6) a statement that the network's role is to provide  
7 the services described under Subsection (b) as well as any other  
8 services or functions delegated by the carrier, including functions  
9 delegated to a management contractor, subject to the carrier's  
10 oversight and monitoring of the network's performance;

11 (7) a requirement that the network provide the  
12 carrier, at least monthly and in a form usable for audit purposes,  
13 the data necessary for the carrier to comply with reporting  
14 requirements of the department and the division of workers'  
15 compensation with respect to any services provided under the  
16 contract, as determined by commissioner rules;

17 (8) a requirement that the carrier, the network, any  
18 management contractor, and any third party to which the network  
19 delegates a function comply with the data reporting requirements of  
20 the Texas Workers' Compensation Act and rules of the commissioner  
21 of workers' compensation;

22 (9) a contingency plan under which the carrier would,  
23 in the event of termination of the contract or a failure to perform,  
24 reassume one or more functions of the network under the contract,  
25 including functions related to:

26 (A) payments to providers and notification to  
27 employees;

1 (B) quality of care;

2 (C) utilization review;

3 (D) retrospective review; and

4 (E) continuity of care, including a plan for  
5 identifying and transitioning employees to new providers;

6 (10) a provision that requires that any agreement by  
7 which the network delegates any function to a management contractor  
8 or any third party be in writing, and that such an agreement require  
9 the delegated third party or management contractor to be subject to  
10 all the requirements of this subchapter;

11 (11) a provision that requires the network to provide  
12 to the department the license number of a management contractor or  
13 any delegated third party who performs a function that requires a  
14 license as a utilization review agent under Chapter 4201 [~~Article~~  
15 ~~21.58A~~] or any other license under this code or another insurance  
16 law of this state;

17 (12) an acknowledgment that:

18 (A) any management contractor or third party to  
19 whom the network delegates a function must perform in compliance  
20 with this chapter and other applicable statutes and rules, and that  
21 the management contractor or third party is subject to the  
22 carrier's and the network's oversight and monitoring of its  
23 performance; and

24 (B) if the management contractor or the third  
25 party fails to meet monitoring standards established to ensure that  
26 functions delegated to the management contractor or the third party  
27 under the delegation contract are in full compliance with all

1 statutory and regulatory requirements, the carrier or the network  
2 may cancel the delegation of one or more delegated functions;

3 (13) a requirement that the network and any management  
4 contractor or third party to which the network delegates a function  
5 provide all necessary information to allow the carrier to provide  
6 information to employees as required by Section 1305.451; and

7 (14) a provision that requires the network, in  
8 contracting with a third party directly or through another third  
9 party, to require the third party to permit the commissioner to  
10 examine at any time any information the commissioner believes is  
11 relevant to the third party's financial condition or the ability of  
12 the network to meet the network's responsibilities in connection  
13 with any function the third party performs or has been delegated.

14 SECTION 6. Section 1305.351, Insurance Code, is amended by  
15 amending Subsection (a) and adding Subsection (d) to read as  
16 follows:

17 (a) The requirements of Chapter 4201 [~~Article 21.58A~~] apply  
18 to utilization review conducted in relation to claims in a workers'  
19 compensation health care network. In the event of a conflict  
20 between Chapter 4201 [~~Article 21.58A~~] and this chapter, this  
21 chapter controls.

22 (d) Notwithstanding Section 4201.152, a utilization review  
23 agent or an insurance carrier that uses doctors to perform reviews  
24 of health care services provided under this chapter, including  
25 utilization review and retrospective review, or peer reviews under  
26 Section 408.0231(g), Labor Code, may only use doctors licensed to  
27 practice in this state.

1           SECTION 7. (a) Sections 4201.054(a) and (d), Insurance  
2 Code, as effective April 1, 2007, are amended to conform to Section  
3 6.072, Chapter 265, Acts of the 79th Legislature, Regular Session,  
4 2005, to read as follows:

5           (a) Except as provided by this section, this chapter applies  
6 to utilization review of a health care service provided to a person  
7 eligible for workers' compensation medical benefits under Title 5,  
8 Labor Code. The commissioner of workers' compensation shall  
9 regulate as provided by this chapter a person who performs  
10 utilization review of a medical benefit provided under Title 5  
11 [~~Chapter 408~~], Labor Code.

12           (d) The commissioner of workers' compensation [~~and the~~  
13 ~~Texas Workers' Compensation Commission~~] may adopt rules [~~and enter~~  
14 ~~into memoranda of understanding~~] as necessary to implement this  
15 section.

16           (b) Section 4201.054(b), Insurance Code, is repealed to  
17 conform to Section 6.072, Chapter 265, Acts of the 79th  
18 Legislature, Regular Session, 2005.

19           (c) Section 6.072, Chapter 265, Acts of the 79th  
20 Legislature, Regular Session, 2005, which amended former  
21 Subsection (c), Section 14, Article 21.58A, Insurance Code, is  
22 repealed.

23           SECTION 8. (a) Section 4201.207(b), Insurance Code, as  
24 effective April 1, 2007, is amended to conform to Section 6.071,  
25 Chapter 265, Acts of the 79th Legislature, Regular Session, 2005,  
26 to read as follows:

27           (b) A health care provider's charges for providing medical

1 information to a utilization review agent may not:

2 (1) exceed the cost of copying records regarding a  
3 workers' compensation claim as set by rules adopted by the  
4 commissioner of workers' compensation [~~Texas Workers' Compensation~~  
5 ~~Commission~~]; or

6 (2) include any costs otherwise recouped as part of  
7 the charges for health care.

8 (b) Section 6.071, Chapter 265, Acts of the 79th  
9 Legislature, Regular Session, 2005, which amended former  
10 Subsection (1), Section 4, Article 21.58A, Insurance Code, is  
11 repealed.

12 SECTION 9. To the extent of any conflict, this Act prevails  
13 over another Act of the 80th Legislature, Regular Session, 2007,  
14 relating to nonsubstantive additions to and corrections in enacted  
15 codes.

16 SECTION 10. The change in law made by this Act applies only  
17 to a review provided under a claim for workers' compensation  
18 benefits that is conducted on or after the effective date of this  
19 Act. A review that is conducted before that date is governed by the  
20 law in effect on the date that the review was conducted, and the  
21 former law is continued in effect for that purpose.

22 SECTION 11. This Act takes effect September 1, 2007.