

1-1 By: Giddings (Senate Sponsor - Watson) H.B. No. 1006
1-2 (In the Senate - Received from the House March 26, 2007;
1-3 March 29, 2007, read first time and referred to Committee on State
1-4 Affairs; April 30, 2007, reported favorably by the following vote:
1-5 Yeas 6, Nays 2; April 30, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to doctor licensing requirements for peer review,
1-9 utilization, and retrospective review of medical decisions
1-10 regarding workers' compensation claims.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 401.011, Labor Code, is amended by
1-13 adding Subdivisions (12-a), (38-a), (42-b), and (42-c) and amending
1-14 Subdivision (42-a) to read as follows:

1-15 (12-a) "Credentialing" has the meaning assigned by
1-16 Chapter 1305, Insurance Code.

1-17 (38-a) "Retrospective review" has the meaning
1-18 assigned by Chapter 1305, Insurance Code.

1-19 (42-a) "Utilization review" has the meaning assigned
1-20 by Chapter 4201, Insurance Code.

1-21 (42-b) "Utilization review agent" has the meaning
1-22 assigned by Chapter 4201, Insurance Code.

1-23 (42-c) "Violation" means an administrative violation
1-24 subject to penalties and sanctions as provided by this subtitle.

1-25 SECTION 2. Section 408.023(h), Labor Code, is amended to
1-26 read as follows:

1-27 (h) Notwithstanding Section 4201.152 [~~4(h), Article~~
1-28 ~~21.58A~~], Insurance Code, a utilization review agent or an insurance
1-29 carrier that uses doctors to perform reviews of health care
1-30 services provided under this subtitle, including utilization
1-31 review and retrospective review, may only use doctors licensed [~~by~~
1-32 ~~another state to perform the reviews, but the reviews must be~~
1-33 ~~performed under the direction of a doctor licensed]~~ to practice in
1-34 this state.

1-35 SECTION 3. Section 408.0231(e), Labor Code, is amended to
1-36 read as follows:

1-37 (e) The commissioner shall act on a recommendation by the
1-38 medical advisor selected under Section 413.0511 and, after notice
1-39 and the opportunity for a hearing, may impose sanctions under this
1-40 section on a doctor or an insurance carrier or may recommend action
1-41 regarding a utilization review agent. The commissioner and the
1-42 commissioner of insurance shall enter into a memorandum of
1-43 understanding to coordinate the regulation of insurance carriers
1-44 and utilization review agents as necessary to ensure:

1-45 (1) compliance with applicable regulations; and

1-46 (2) that appropriate health care decisions are reached
1-47 under this subtitle and under Chapter 4201 [~~Article 21.58A~~],
1-48 Insurance Code.

1-49 SECTION 4. Sections 1305.004(a)(12), (17), (27), and (28),
1-50 Insurance Code, are amended to read as follows:

1-51 (12) "Life-threatening" has the meaning assigned by
1-52 Chapter 4201 [~~Section 2, Article 21.58A~~].

1-53 (17) "Nurse" has the meaning assigned by Chapter 4201
1-54 [~~Section 2, Article 21.58A~~].

1-55 (27) "Utilization review" has the meaning assigned by
1-56 Chapter 4201 [~~Section 2, Article 21.58A~~].

1-57 (28) "Utilization review agent" has the meaning
1-58 assigned by Chapter 4201 [~~Article 21.58A~~].

1-59 SECTION 5. Section 1305.154(c), Insurance Code, is amended
1-60 to read as follows:

1-61 (c) A network's contract with a carrier must include:

1-62 (1) a description of the functions that the carrier
1-63 delegates to the network, consistent with the requirements of
1-64 Subsection (b), and the reporting requirements for each function;

2-1 (2) a statement that the network and any management
 2-2 contractor or third party to which the network delegates a function
 2-3 will perform all delegated functions in full compliance with all
 2-4 requirements of this chapter, the Texas Workers' Compensation Act,
 2-5 and rules of the commissioner or the commissioner of workers'
 2-6 compensation;

2-7 (3) a provision that the contract:
 2-8 (A) may not be terminated without cause by either
 2-9 party without 90 days' prior written notice; and
 2-10 (B) must be terminated immediately if cause
 2-11 exists;

2-12 (4) a hold-harmless provision stating that the
 2-13 network, a management contractor, a third party to which the
 2-14 network delegates a function, and the network's contracted
 2-15 providers are prohibited from billing or attempting to collect any
 2-16 amounts from employees for health care services under any
 2-17 circumstances, including the insolvency of the carrier or the
 2-18 network, except as provided by Section 1305.451(b)(6);

2-19 (5) a statement that the carrier retains ultimate
 2-20 responsibility for ensuring that all delegated functions and all
 2-21 management contractor functions are performed in accordance with
 2-22 applicable statutes and rules and that the contract may not be
 2-23 construed to limit in any way the carrier's responsibility,
 2-24 including financial responsibility, to comply with all statutory
 2-25 and regulatory requirements;

2-26 (6) a statement that the network's role is to provide
 2-27 the services described under Subsection (b) as well as any other
 2-28 services or functions delegated by the carrier, including functions
 2-29 delegated to a management contractor, subject to the carrier's
 2-30 oversight and monitoring of the network's performance;

2-31 (7) a requirement that the network provide the
 2-32 carrier, at least monthly and in a form usable for audit purposes,
 2-33 the data necessary for the carrier to comply with reporting
 2-34 requirements of the department and the division of workers'
 2-35 compensation with respect to any services provided under the
 2-36 contract, as determined by commissioner rules;

2-37 (8) a requirement that the carrier, the network, any
 2-38 management contractor, and any third party to which the network
 2-39 delegates a function comply with the data reporting requirements of
 2-40 the Texas Workers' Compensation Act and rules of the commissioner
 2-41 of workers' compensation;

2-42 (9) a contingency plan under which the carrier would,
 2-43 in the event of termination of the contract or a failure to perform,
 2-44 reassume one or more functions of the network under the contract,
 2-45 including functions related to:
 2-46 (A) payments to providers and notification to
 2-47 employees;
 2-48 (B) quality of care;
 2-49 (C) utilization review;
 2-50 (D) retrospective review; and
 2-51 (E) continuity of care, including a plan for
 2-52 identifying and transitioning employees to new providers;

2-53 (10) a provision that requires that any agreement by
 2-54 which the network delegates any function to a management contractor
 2-55 or any third party be in writing, and that such an agreement require
 2-56 the delegated third party or management contractor to be subject to
 2-57 all the requirements of this subchapter;

2-58 (11) a provision that requires the network to provide
 2-59 to the department the license number of a management contractor or
 2-60 any delegated third party who performs a function that requires a
 2-61 license as a utilization review agent under Chapter 4201 [~~Article~~
 2-62 ~~21.58A~~] or any other license under this code or another insurance
 2-63 law of this state;

2-64 (12) an acknowledgment that:
 2-65 (A) any management contractor or third party to
 2-66 whom the network delegates a function must perform in compliance
 2-67 with this chapter and other applicable statutes and rules, and that
 2-68 the management contractor or third party is subject to the
 2-69 carrier's and the network's oversight and monitoring of its

3-1 performance; and

3-2 (B) if the management contractor or the third
3-3 party fails to meet monitoring standards established to ensure that
3-4 functions delegated to the management contractor or the third party
3-5 under the delegation contract are in full compliance with all
3-6 statutory and regulatory requirements, the carrier or the network
3-7 may cancel the delegation of one or more delegated functions;

3-8 (13) a requirement that the network and any management
3-9 contractor or third party to which the network delegates a function
3-10 provide all necessary information to allow the carrier to provide
3-11 information to employees as required by Section 1305.451; and

3-12 (14) a provision that requires the network, in
3-13 contracting with a third party directly or through another third
3-14 party, to require the third party to permit the commissioner to
3-15 examine at any time any information the commissioner believes is
3-16 relevant to the third party's financial condition or the ability of
3-17 the network to meet the network's responsibilities in connection
3-18 with any function the third party performs or has been delegated.

3-19 SECTION 6. Section 1305.351, Insurance Code, is amended by
3-20 amending Subsection (a) and adding Subsection (d) to read as
3-21 follows:

3-22 (a) The requirements of Chapter 4201 [Article 21.58A] apply
3-23 to utilization review conducted in relation to claims in a workers'
3-24 compensation health care network. In the event of a conflict
3-25 between Chapter 4201 [Article 21.58A] and this chapter, this
3-26 chapter controls.

3-27 (d) Notwithstanding Section 4201.152, a utilization review
3-28 agent or an insurance carrier that uses doctors to perform reviews
3-29 of health care services provided under this chapter, including
3-30 utilization review and retrospective review, or peer reviews under
3-31 Section 408.0231(g), Labor Code, may only use doctors licensed to
3-32 practice in this state.

3-33 SECTION 7. (a) Sections 4201.054(a) and (d), Insurance
3-34 Code, as effective April 1, 2007, are amended to conform to Section
3-35 6.072, Chapter 265, Acts of the 79th Legislature, Regular Session,
3-36 2005, to read as follows:

3-37 (a) Except as provided by this section, this chapter applies
3-38 to utilization review of a health care service provided to a person
3-39 eligible for workers' compensation medical benefits under Title 5,
3-40 Labor Code. The commissioner of workers' compensation shall
3-41 regulate as provided by this chapter a person who performs
3-42 utilization review of a medical benefit provided under Title 5
3-43 [Chapter 408], Labor Code.

3-44 (d) The commissioner of workers' compensation [and the
3-45 Texas Workers' Compensation Commission] may adopt rules [and enter
3-46 into memoranda of understanding] as necessary to implement this
3-47 section.

3-48 (b) Section 4201.054(b), Insurance Code, is repealed to
3-49 conform to Section 6.072, Chapter 265, Acts of the 79th
3-50 Legislature, Regular Session, 2005.

3-51 (c) Section 6.072, Chapter 265, Acts of the 79th
3-52 Legislature, Regular Session, 2005, which amended former
3-53 Subsection (c), Section 14, Article 21.58A, Insurance Code, is
3-54 repealed.

3-55 SECTION 8. (a) Section 4201.207(b), Insurance Code, as
3-56 effective April 1, 2007, is amended to conform to Section 6.071,
3-57 Chapter 265, Acts of the 79th Legislature, Regular Session, 2005,
3-58 to read as follows:

3-59 (b) A health care provider's charges for providing medical
3-60 information to a utilization review agent may not:

3-61 (1) exceed the cost of copying records regarding a
3-62 workers' compensation claim as set by rules adopted by the
3-63 commissioner of workers' compensation [Texas Workers' Compensation
3-64 Commission]; or

3-65 (2) include any costs otherwise recouped as part of
3-66 the charges for health care.

3-67 (b) Section 6.071, Chapter 265, Acts of the 79th
3-68 Legislature, Regular Session, 2005, which amended former
3-69 Subsection (1), Section 4, Article 21.58A, Insurance Code, is

4-1 repealed.

4-2 SECTION 9. To the extent of any conflict, this Act prevails
4-3 over another Act of the 80th Legislature, Regular Session, 2007,
4-4 relating to nonsubstantive additions to and corrections in enacted
4-5 codes.

4-6 SECTION 10. The change in law made by this Act applies only
4-7 to a review provided under a claim for workers' compensation
4-8 benefits that is conducted on or after the effective date of this
4-9 Act. A review that is conducted before that date is governed by the
4-10 law in effect on the date that the review was conducted, and the
4-11 former law is continued in effect for that purpose.

4-12 SECTION 11. This Act takes effect September 1, 2007.

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