

BILL ANALYSIS

H.B. 4290
By: Smithee
Insurance
Committee Report (Amended)

BACKGROUND AND PURPOSE

Texas consumers with managed care health plans regulated by the Texas Department of Insurance (TDI), such as health maintenance organizations and preferred provider plans, currently are entitled to an independent review of their carriers' decisions to deny a pre-authorization of treatment based on a carrier's decision that the treatment is not medically necessary, but current law does not require an independent review of a carrier's conclusion that a treatment should be denied because it is experimental or investigational. In addition, current law does not provide for an independent review of a carrier's conclusion after the fact that a treatment was not medically necessary.

Health plans may deny a requested service for the reason that the plan deems it to be experimental or investigational, and the provider or claimant does not have access to an administrative process to seek review of the denial. However, such decisions are entitled to independent review both prospectively and retroactively through a process coordinated by TDI. A study by a national association of health plans found that a majority of states currently have independent review programs that cover either all adverse decisions or all adverse decisions involving medical necessity or services deemed to be experimental. Texas is the only state with limitations on retrospective reviews of denials based on medical necessity and the only state with an independent review law that does not extend to retrospective reviews of at least emergency and urgent care.

TDI has received numerous complaints regarding these issues, but there is little TDI can do to address them. Carriers have varying standards for what is considered experimental and investigational and, in regard to retrospective reviews, TDI's data regarding workers' compensation claim denials show that carriers incorrectly issue retrospective denials more often than prospective denials, with retrospective medical necessity decisions, including experimental and investigational denials, overturned 68 percent of the time after an independent review is conducted, while prospective medical necessity decisions are overturned approximately 30 percent of the time.

H.B. 4290 requires an independent review of experimental and investigational denials and an independent review of denials based on retrospective reviews when requested by the insured, the provider, or a person acting on behalf of the insured.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 4290 amends Insurance Code provisions relating to a utilization review agent's questioning of the appropriateness of a health care service before making an adverse determination to include the questioning of the experimental or investigational nature of such a service. The bill requires the agent to comply with the independent review organization's determination regarding the

experimental or investigational nature of health care items and services for an enrollee. The bill amends the definition for "adverse determination" to include a determination that health care services provided or proposed to be provided to a patient are experimental or investigational, and amends the definition for "utilization review" to include a system for prospective review of the medical necessity and appropriateness of health care services and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services.

H.B. 4290 removes a retrospective review program from the provisions of the Workers' Compensation Health Care Network Act and makes conforming changes. The bill redefines "adverse determination" to assign it the definition of that term under provisions relating to a utilization review or an independent review of the medical necessity and appropriateness of health care services. The bill amends the definition of "independent review" to apply the term to a review of the experimental or investigational nature of health care services being provided, proposed to be provided, or that have been provided to an employee.

H.B. 4290 amends the Labor Code to remove retrospective reviews from workers' compensation health care networks, a review of dental services, a review of chiropractic services, and the duties of treating doctors. The bill redefines "retrospective review" to mean the utilization review process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee, rather than assigning the definition provided in the Workers' Compensation Health Care Network Act. The bill defines "screening criteria."

H.B. 4290 repeals the following sections of the Insurance Code:

- Section 1305.004(a) (21)
- Section 1305.352
- Subchapter K, Chapter 4201

EFFECTIVE DATE

September 1, 2009.

EXPLANATION OF AMENDMENTS

H.B. 4290 is amended to remove the savings provision regarding a compensable injury that occurs on or after the effective date of the bill.