BILL ANALYSIS

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C.S.H.B. 2645
By: Turner, Chris (Ellis)
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Independent review organizations (IROs) are small businesses regulated at the Texas Department of Insurance (TDI) which perform final administrative reviews of adverse determinations regarding the medical necessity of healthcare services. IROs play a critical role in providing objective, third-party reviews and in keeping disputes out of courts. Texas's IRO laws are seen as a model and have worked well since the late 1990s.

C.S.H.B. 2645 amends current law relating to certification and operation of independent review organizations.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 1 (Section 4202.002, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 5 (Section 4202.012, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 4202.002, Insurance Code, by amending Subsection (c) and adding Subsections (d), (e), and (f), as follows:

> (c) Requires the commissioner of insurance (commissioner), in addition to the standards described by Subsection (b), to adopt standards and rules that:
>
> > (1) prohibit:
> >
> > > (A)-(D) Makes no change to these subdivisions;
> > >
> > > (E) an individual who serves as an officer, director, manager, executive, or supervisor of an independent review organization from serving as an officer, director, manager, executive, supervisor, employee, agent, or independent contractor of another independent review organization; and
> > >
> > > (F) an independent review organization from publicly disclosing patient information protected by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), or transmitting the information to a subcontractor involved in the independent review process that has not signed an agreement similar to the business associate agreement required by regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), rather than an independent review organization from disclosing confidential patient information except to a provider who is under contract to perform the review; and
> >
> > (2) require:

(A) an independent review organization to maintain a physical address and a mailing address in this state, be incorporated in this state, be in good standing with the comptroller of public accounts of the State of Texas (comptroller), and be based and certified in this state and to locate the organization's primary offices in this state;

(B) an independent review organization to surrender the organizations certification as part of an agreed order, rather than voluntarily surrender the organization's certification while the organization is under investigation or as part of an agreed order; and

(C) an independent review organization to:

(i) notify the Texas Department of Insurance (TDI) of an agreement to sell the organization or shares in the organization;

(ii) not later than the 60th day before the date of the sale, submit the name of the purchaser and a complete and legible set of fingerprints for each officer of the purchaser and for each owner or shareholder of the purchaser or, if the purchaser is publicly held, each owner or shareholder described by Section 4202.004(a)(1), and any additional information necessary to comply with Section 4202.004(d); and

(iii) complete the transfer of ownership after TDI has sent written confirmation in accordance with Subsection (d) that the requirements of this chapter have been satisfied.

Deletes existing text requiring the commissioner, in addition to the standards described by Subsection (b), to adopt standards and rules that prohibit an attorney who is, or has in the past served as, the registered agent for an independent review organization from representing the independent review organization in legal proceedings. Deletes existing text requiring the commissioner, in addition to the standards described by Subsection (b), to adopt standards and rules requiring an independent review organization to apply for and receive a new certification after the organization is sold to a new owner.

(d) Requires TDI to send the written confirmation required by Subsection (c)(2)(C)(iii) not later than the expiration of the fourth week after the date TDI determines the requirements are satisfied.

(e) Requires that the standards to ensure the confidentiality of medical records transmitted to an independent review organization under Subsection (b)(2) require organizations and utilization review agents to transmit and store records in compliance with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the regulations and standards adopted under that Act.

(f) Requires the commissioner to adopt standards requiring that:

(1) on application for certification, an officer of the independent review organization attest that the office is located at a physical address;

(2) the office be equipped with a computer system capable of:

(A) processing requests for independent review; and

(B) accessing all electronic records related to the review and the independent review process;

(3) all records be maintained electronically and made available to TDI on request; and

(4) in the case of an office located in a residence, the working office be located in a room set aside for independent review business purposes and in a manner to ensure confidentiality in accordance with Subsection (e).

SECTION 2. Amends Section 4202.003, Insurance Code, as follows:

Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF DETERMINATION. Requires that the standards adopted under Section 4202.002 require each independent review organization to make the organization's determination:

(1) for a life-threatening condition as defined by Section 4201.002 (Definitions), not later than the earlier of the third day, rather than the fifth day, after the date the organization receives the information necessary to make the determination or with respect to:

(A) a review of a health care service provided to a person eligible for workers' compensation medical benefits, the eighth day after the date the organization receives the request that the determination be made; or

(B) a review of a health care service other than a service described by Paragraph (A), the third day after the date the organization receives the request that the determination be made; or

(2) Makes no change to this subdivision.

Makes nonsubstantive changes.

SECTION 3. Amends Section 4202.004, Insurance Code, as follows:

Sec. 4202.004. CERTIFICATION. (a) Creates this subsection from existing text. Requires an independent review organization, to be certified as an independent review organization under this chapter, to submit to the commissioner an application in the form required by the commissioner. Requires that the application include:

(1) for an applicant that is publicly held, the name of each shareholder or owner of more than five percent of any of the applicant's stock or options;

(2) the name of any holder of the applicant's bonds or notes that exceed $100,000;

(3) the name and type of business of each corporation or other organization described by Subdivision (4) that the applicant controls or is affiliated with and the nature and extent of the control or affiliation;

(4) the name and a biographical sketch of each director, officer, and executive of the applicant and of any entity listed under Subdivision (3) and a description of any relationship the applicant or the named individual has with:

(A) a health benefit plan;

(B) a health maintenance organization;

(C) an insurer;

(D) a utilization review agent;

(E) a nonprofit health corporation;

(F) a payor;

(G) a health care provider;

(H) a group representing any of the entities described by Paragraphs (A) through (G); or

(I) any other independent review organization in the state;

(5) Makes no change to this subdivision;

(6) a description of:

(A) Creates this paragraph from existing text and makes a nonsubstantive change;

(B) the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used; and

(C) the software used by the credentialing manager for managing the processes, databases, and records described by Paragraph (B);

(7) Makes a nonsubstantive change; and

(8) a description of the applicant's use of communications, records, and computer processes to manage the independent review process.

Makes nonsubstantive changes.

(b) Requires the commissioner to establish certifications for independent review of health care services provided to persons eligible for workers' compensation medical benefits and other health care services after considering accreditation, if any, by a nationally recognized accrediting organization that imposes requirements for accreditation that are the same as, substantially similar to, or more stringent than TDI's requirements for accreditation.

(c) Requires TDI to make available to applicants applications for certification to review health care services provided to persons eligible for workers' compensation medical benefits and other health care services.

(d) Requires the commissioner to require each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by Subsection (a)(1) to submit a complete and legible set of fingerprints to TDI for the purpose of obtaining criminal history record information from the Department of Public Safety of the State of Texas (DPS) and the Federal Bureau of Investigation. Requires TDI to conduct a criminal history check of each applicant using information provided under this section, and made available to TDI by DPS, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

(e) Requires that an application for certification for review of health care services require an organization that is accredited by an organization described by Subsection (b) to provide TDI with evidence of the accreditation. Requires the commissioner to consider the evidence if the accrediting organization published and made available to the commissioner the organization's requirements for and methods used in the accreditation process. Authorizes an independent review organization that is accredited by an organization described by Subsection (b) to request that TDI expedite the application process.

(f) Authorizes a certified independent review organization that becomes accredited by an organization described by Subsection (b) to provide evidence of that accreditation to TDI and requires that evidence be maintained in TDI's file related to the independent review organization's certification.

(g) Requires that certification be renewed biennially.

SECTION 4. Amends Section 4202.005, Insurance Code, as follows:

Sec. 4202.005. New heading: PERIODIC REPORTING OF INFORMATION; BIENNIAL DESIGNATION; UPDATES AND INSPECTION. (a) Requires an independent review organization to submit biennially, rather than annually, the information required in an application for certification under Section 4202.004.

(b) Requires the commissioner to designate biennially, rather than annually, each organization that meets the standards for an independent review organization adopted under Section 4202.002.

(c) Requires that information regarding a material change be submitted on a form adopted by the commissioner not later than the 30th day after the date the material change occurs. Requires the organization, if the material change is a relocation of the organization, to inform TDI that the location is available for inspection before the date of the relocation by TDI, and an officer to attend the inspection, on request of TDI.

SECTION 5. Amends Chapter 4202, Insurance Code, by adding Sections 4202.011, 4202.012, 4202.013, and 4202.014 as follows:

Sec. 4202.011. ADVISORY GROUP. (a) Requires the commissioner to establish a group to advise TDI and make recommendations related to the efficiency of independent review.

(b) Requires the commissioner to appoint as a member of the group a TDI employee to report to the commissioner group recommendations and policies. Requires the commissioner to appoint as members of the group individuals who have applied for membership, including:

(1) two officers of different independent review organizations certified under this chapter;

(2) an officer of a utilization review organization certified under Chapter 4201 (Utilization Review Agents);

(3) an officer or representative of an association of physicians with knowledge of and interest in the independent review process;

(4) an officer or representative of an association of insurance carriers with knowledge of and interest in the independent review process; and

(5) two officers or representatives of different patient advocacy associations with knowledge of and interest in the independent review process.

(c) Provides that a recommendation of the advisory group does not bind the commissioner.

(d) Provides that members of the group serve two-year terms. Requires the commissioner to appoint a replacement member in the event of a vacancy to serve the remainder of the unexpired term.

(e) Requires the commissioner to designate one member to serve as presiding member of the group. Authorizes a member to serve more than one term as presiding member.

(f) Requires the advisory group to meet annually and otherwise at the request of the presiding member or the commissioner. Requires the group to make recommendations at least annually to the commissioner.

(g) Prohibits a member of the group from receiving compensation for service as a group member.

Sec. 4202.012. REFERRAL. Requires the commissioner by rule to require referral by random assignment of adverse determinations under Subchapter I (Independent Review of Adverse Determination), Chapter 4201, to independent review organizations. Requires the commissioner, on referral of a determination, to notify:

(1) the utilization review agent;

(2) the payor;

(3) the independent review organization;

(4) the patient, as defined by Section 4201.002, or the patient's representative; and

(5) the provider of record as defined by Section 4201.002.

Sec. 4202.013. PRIMARY OFFICE IN THIS STATE REQUIRED. Requires an independent review organization operating under this chapter to maintain the organization's primary office in this state.

Sec. 4202.014. PREEMPTION. Requires the commissioner to suspend enforcement of any provision of this chapter that the commissioner determines to be preempted by 42 U.S.C. Section 300gg-19.

SECTION 6. Provides that Chapter 4202, Insurance Code, as amended by this Act, applies only to an independent review organization that applies for an initial certification or renewal certification on or after January 1, 2014. Provides that an organization certified 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.

SECTION 7. Effective date: September 1, 2013.