

AN ACT

relating to certification and operation of independent review organizations.

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

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

(c) In addition to the standards described by Subsection (b), the commissioner shall adopt standards and rules that:

(1) prohibit:

(A) more than one independent review organization from operating out of the same office or other facility;

(B) an individual or entity from owning more than one independent review organization;

(C) an individual from owning stock in or serving on the board of more than one independent review organization;

(D) an individual who has served on the board of an independent review organization whose certification was revoked for cause from serving on the board of another independent review organization before the fifth anniversary of the date on which the revocation occurred;

(E) an individual who serves as an officer, director, manager, executive, or supervisor of an independent

1 review organization from serving as an officer, director, manager,
2 executive, supervisor, employee, agent, or independent contractor
3 of another independent review organization [~~an attorney who is, or~~
4 ~~has in the past served as, the registered agent for an independent~~
5 ~~review organization from representing the independent review~~
6 ~~organization in legal proceedings~~]; and

7 (F) an independent review organization from:

8 (i) publicly disclosing [~~confidential~~]
9 patient information protected by the Health Insurance Portability
10 and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.); or

11 (ii) transmitting the information to a
12 subcontractor involved in the independent review process that has
13 not signed an agreement similar to the business associate agreement
14 required by regulations adopted under the Health Insurance
15 Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d
16 et seq.) [~~, except to a provider who is under contract to perform~~
17 ~~the review~~]; and

18 (2) require:

19 (A) an independent review organization to:

20 (i) maintain a physical address and a
21 mailing address in this state;

22 (ii) be incorporated in this state;

23 (iii) be in good standing with the
24 comptroller; and

25 (iv) be based and certified in this state
26 and to locate the organization's primary offices in this state;

27 (B) an independent review organization to

1 ~~[voluntarily]~~ surrender the organization's certification ~~[while~~
2 ~~the organization is under investigation or]~~ as part of an agreed
3 order; and

4 (C) an independent review organization to:

5 (i) notify the department of an agreement
6 to sell the organization or shares in the organization;

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

14 (iii) complete the transfer of ownership
15 after the department has sent written confirmation in accordance
16 with Subsection (d) that the requirements of this chapter have been
17 satisfied ~~[apply for and receive a new certification after the~~
18 ~~organization is sold to a new owner]~~.

19 (d) The department shall send the written confirmation
20 required by Subsection (c)(2)(C)(iii) not later than the expiration
21 of the fourth week after the date the department determines the
22 requirements are satisfied.

23 (e) Standards to ensure the confidentiality of medical
24 records transmitted to an independent review organization under
25 Subsection (b)(2) must require organizations and utilization
26 review agents to transmit and store records in compliance with the
27 Health Insurance Portability and Accountability Act of 1996 (42

1 U.S.C. Section 1320d et seq.) and the regulations and standards
2 adopted under that Act.

3 (f) The commissioner shall adopt standards requiring that:

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

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

9 (A) processing requests for independent review;
10 and

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

13 (3) all records be maintained electronically and made
14 available to the department on request; and

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

19 SECTION 2. Section 4202.003, Insurance Code, is amended to
20 read as follows:

21 Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF
22 DETERMINATION. The standards adopted under Section 4202.002 must
23 require each independent review organization to make the
24 organization's determination:

25 (1) for a life-threatening condition as defined by
26 Section 4201.002, not later than the earlier of [+

27 [~~(A)~~] the third [~~fifth~~] day after the date the

1 organization receives the information necessary to make the
2 determination[+] or, with respect to:

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

7 (B) a review of a health care service other than a
8 service described by Paragraph (A), the third day after the date the
9 organization receives the request that the determination be made;
10 or [~~and~~]

11 (2) for a condition other than a life-threatening
12 condition, not later than the earlier of:

13 (A) the 15th day after the date the organization
14 receives the information necessary to make the determination; or

15 (B) the 20th day after the date the organization
16 receives the request that the determination be made.

17 SECTION 3. Section 4202.004, Insurance Code, is amended to
18 read as follows:

19 Sec. 4202.004. CERTIFICATION. (a) To be certified as an
20 independent review organization under this chapter, an
21 organization must submit to the commissioner an application in the
22 form required by the commissioner. The application must include:

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

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

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

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

9 (A) a health benefit plan;

10 (B) a health maintenance organization;

11 (C) an insurer;

12 (D) a utilization review agent;

13 (E) a nonprofit health corporation;

14 (F) a payor;

15 (G) a health care provider; [~~or~~]

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

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

20 (5) the percentage of the applicant's revenues that
21 are anticipated to be derived from independent reviews conducted
22 under Subchapter I, Chapter 4201;

23 (6) a description of:

24 (A) the areas of expertise of the physicians or
25 other health care providers making review determinations for the
26 applicant;

27 (B) the procedures used by the applicant to

1 verify physician and provider credentials, including the computer
2 processes, electronic databases, and records, if any, used; and

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

6 (7) the procedures to be used by the applicant in
7 making independent review determinations under Subchapter I,
8 Chapter 4201; and

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

12 (b) The commissioner shall establish certifications for
13 independent review of health care services provided to persons
14 eligible for workers' compensation medical benefits and other
15 health care services after considering accreditation, if any, by a
16 nationally recognized accrediting organization that imposes
17 requirements for accreditation that are the same as, substantially
18 similar to, or more stringent than the department's requirements
19 for accreditation.

20 (c) The department shall make available to applicants
21 applications for certification to review health care services
22 provided to persons eligible for workers' compensation medical
23 benefits and other health care services.

24 (d) The commissioner shall require that each officer of the
25 applicant and each owner or shareholder of the applicant or, if the
26 purchaser is publicly held, each owner or shareholder described by
27 Subsection (a)(1) submit a complete and legible set of fingerprints

1 to the department for the purpose of obtaining criminal history
2 record information from the Department of Public Safety and the
3 Federal Bureau of Investigation. The department shall conduct a
4 criminal history check of each applicant using information:

5 (1) provided under this section; and

6 (2) made available to the department by the Department
7 of Public Safety, the Federal Bureau of Investigation, and any
8 other criminal justice agency under Chapter 411, Government Code.

9 (e) An application for certification for review of health
10 care services must require an organization that is accredited by an
11 organization described by Subsection (b) to provide the department
12 evidence of the accreditation. The commissioner shall consider the
13 evidence if the accrediting organization published and made
14 available to the commissioner the organization's requirements for
15 and methods used in the accreditation process. An independent
16 review organization that is accredited by an organization described
17 by Subsection (b) may request that the department expedite the
18 application process.

19 (f) A certified independent review organization that
20 becomes accredited by an organization described by Subsection (b)
21 may provide evidence of that accreditation to the department that
22 shall be maintained in the department's file related to the
23 independent review organization's certification.

24 (g) Certification must be renewed biennially.

25 SECTION 4. Section 4202.005, Insurance Code, is amended to
26 read as follows:

27 Sec. 4202.005. PERIODIC REPORTING OF INFORMATION; BIENNIAL

1 ~~[ANNUAL]~~ DESIGNATION; UPDATES AND INSPECTION. (a) An independent
2 review organization shall biennially ~~[annually]~~ submit the
3 information required in an application for certification under
4 Section 4202.004. Anytime there is a material change in the
5 information the organization included in the application, the
6 organization shall submit updated information to the commissioner.

7 (b) The commissioner shall designate biennially ~~[annually]~~
8 each organization that meets the standards for an independent
9 review organization adopted under Section 4202.002.

10 (c) Information regarding a material change must be
11 submitted on a form adopted by the commissioner not later than the
12 30th day after the date the material change occurs. If the material
13 change is a relocation of the organization:

14 (1) the organization must inform the department that
15 the location is available for inspection before the date of the
16 relocation by the department; and

17 (2) on request of the department, an officer shall
18 attend the inspection.

19 SECTION 5. Chapter 4202, Insurance Code, is amended by
20 adding Sections 4202.011, 4202.012, 4202.013, and 4202.014 to read
21 as follows:

22 Sec. 4202.011. ADVISORY GROUP. (a) The commissioner shall
23 establish a group to advise the department and make recommendations
24 related to the efficiency of independent review.

25 (b) The commissioner shall appoint as a member of the group
26 a department employee to report to the commissioner group
27 recommendations and policies. The commissioner shall appoint as

1 members of the group individuals who have applied for membership,
2 including:

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

5 (2) an officer of a utilization review organization
6 certified under Chapter 4201;

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

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

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

16 (c) A recommendation of the advisory group does not bind the
17 commissioner.

18 (d) Members of the group serve two-year terms. The
19 commissioner shall appoint a replacement member in the event of a
20 vacancy to serve the remainder of the unexpired term.

21 (e) The commissioner shall designate one member to serve as
22 presiding member of the group. A member may serve more than one
23 term as presiding member.

24 (f) The advisory group shall meet annually and otherwise at
25 the request of the presiding member or the commissioner. The group
26 shall make recommendations at least annually to the commissioner.

27 (g) A member of the group may not receive compensation for

1 service as a group member.

2 Sec. 4202.012. REFERRAL. The commissioner by rule shall
3 require referral by random assignment of adverse determinations
4 under Subchapter I, Chapter 4201, to independent review
5 organizations. On referral of a determination, the commissioner
6 shall notify:

7 (1) the utilization review agent;

8 (2) the payor;

9 (3) the independent review organization;

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

12 (5) the provider of record as defined by Section
13 4201.002.

14 Sec. 4202.013. PRIMARY OFFICE IN THIS STATE REQUIRED. An
15 independent review organization operating under this chapter must
16 maintain the organization's primary office in this state.

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

20 SECTION 6. Chapter 4202, Insurance Code, as amended by this
21 Act, applies only to an independent review organization that
22 applies for an initial certification or renewal certification on or
23 after January 1, 2014. An organization certified before that date
24 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 7. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 2645 was passed by the House on May 2, 2013, by the following vote: Yeas 145, Nays 2, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2645 on May 24, 2013, by the following vote: Yeas 139, Nays 6, 3 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2645 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor