

By: Turner of Tarrant

H.B. No. 2645

A BILL TO BE ENTITLED

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(D) an individual who has served on the board of an independent review organization whose certification was revoked for cause from serving on the board of another independent review organization before the fifth anniversary of the date on which the revocation occurred; and

(E) ~~[an attorney who is, or has in the past served as, the registered agent for an independent review organization~~

1 ~~from representing the independent review organization in legal~~
2 ~~proceedings; and~~

3 ~~[(F)]~~ an independent review organization from:

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

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

14 (2) require:

15 (A) an independent review organization to:

16 (i) maintain a physical address and a
17 mailing address in this state;

18 (ii) be incorporated in this state;

19 (iii) be in good standing with the
20 comptroller; and

21 (iv) be certified under this chapter [be
22 based and certified in this state and to locate the organization's
23 primary offices in this state];

24 (B) an independent review organization to
25 ~~[voluntarily]~~ surrender the organization's certification ~~[while~~
26 ~~the organization is under investigation or]~~ as part of an agreed
27 order; and

1 (C) an independent review organization to:

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

4 (ii) not less than the 45th day before the
5 date of the sale, submit the name of the purchaser and a complete
6 and legible set of fingerprints for each officer of the purchaser
7 and for each owner or shareholder of the purchaser or, if the
8 purchaser is publicly held, each owner or shareholder described by
9 Section 4202.004(a)(1), and any additional information necessary
10 to comply with Section 4202.004(f); and

11 (iii) complete the transfer of ownership
12 after the department has sent written confirmation that the
13 requirements of Section 4202.004(f) have been satisfied ~~[apply for~~
14 ~~and receive a new certification after the organization is sold to a~~
15 ~~new owner].~~

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

23 (e) The commissioner shall adopt standards requiring that:

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

27 (2) the office be equipped with a computer system

1 capable of:

2 (A) processing requests for independent review;

3 and

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

6 (3) all records only be maintained electronically; and

7 (4) in the case of an office located in a residence,
8 the working office be located in a room set aside for business
9 purposes.

10 SECTION 2. Section 4202.003, Insurance Code, is amended to
11 read as follows:

12 Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF
13 DETERMINATION. The standards adopted under Section 4202.002 must
14 require each independent review organization to make the
15 organization's determination:

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

18 [~~(A)~~] the fifth day after the date the
19 organization receives the information necessary to make the
20 determination[+] or, with respect to:

21 (A) a review of a health care service provided to
22 a person eligible for workers' compensation medical benefits,

23 [~~(B)~~] the eighth day after the date the organization receives the
24 request that the determination be made; or

25 (B) a review of a health care service other than a
26 service described by Paragraph (A), the fourth day after the date
27 the organization receives the request that the determination be

1 made; or [~~and~~]

2 (2) for a condition other than a life-threatening
3 condition, not later than [~~the earlier of:~~

4 [~~(A) the 15th day after the date the organization~~
5 ~~receives the information necessary to make the determination; or~~

6 [~~(B)~~] the 20th day after the date the
7 organization receives all information necessary to make the
8 [~~request that the~~] determination [~~be made~~].

9 SECTION 3. Section 4202.004, Insurance Code, is amended to
10 read as follows:

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

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

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

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

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

- 1 (A) a health benefit plan;
- 2 (B) a health maintenance organization;
- 3 (C) an insurer;
- 4 (D) a utilization review agent;
- 5 (E) a nonprofit health corporation;
- 6 (F) a payor;
- 7 (G) a health care provider; or
- 8 (H) a group representing any of the entities
- 9 described by Paragraphs (A) through (G);

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

13 (6) a description of:

14 (A) the areas of expertise of the physicians or
15 other health care providers making review determinations for the
16 applicant;

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

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

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

26 (8) a description of the applicant's use of
27 communications, records, and computer processes to manage the

1 independent review process.

2 (b) The commissioner shall establish and implement separate
3 certifications for independent review of health care services
4 provided to persons eligible for workers' compensation medical
5 benefits and other health care services after considering:

6 (1) certification processes available in the private
7 sector for members of a national association of independent review
8 organizations with not less than 10 members; and

9 (2) the advice of the advisory group established under
10 Section 4202.011.

11 (c) An applicant may apply for certifications for
12 independent review of health care services provided to persons
13 eligible for workers' compensation medical benefits and other
14 health care services.

15 (d) Notwithstanding any other provision of this chapter,
16 the commissioner by rule may require that a review of health care
17 services provided to persons eligible for workers' compensation
18 medical benefits and other health care services or exclusively
19 other health care services be in compliance with the requirements
20 of the Uniform Health Carrier External Review Act adopted by the
21 National Association of Insurance Commissioners.

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

26 (f) The commissioner shall require that each officer of the
27 applicant and each owner or shareholder of the applicant or, if the

1 purchaser is publicly held, each owner or shareholder described by
2 Subsection (a)(1), submit a complete and legible set of
3 fingerprints to the department for the purpose of obtaining
4 criminal history record information from the Department of Public
5 Safety and the Federal Bureau of Investigation. The department
6 shall conduct a criminal history check of each applicant using
7 information:

8 (1) provided under this section; and

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

12 (g) An application for certification for review of health
13 care services other than health care services provided to persons
14 eligible for workers' compensation medical benefits exclusively
15 must require an organization that is certified by an association
16 described by Subsection (b)(1) to provide the department evidence
17 of the certification and all of the information submitted to the
18 association to obtain the certification. An independent review
19 organization that is certified by or has applied for certification
20 by an association described by Subsection (b)(1) may request that
21 the department expedite the application process.

22 (h) Certification must be renewed biennially.

23 SECTION 4. Section 4202.005, Insurance Code, is amended to
24 read as follows:

25 Sec. 4202.005. PERIODIC REPORTING OF INFORMATION; BIENNIAL
26 [ANNUAL] DESIGNATION; UPDATES AND INSPECTION. (a) An independent
27 review organization shall biennially [~~annually~~] submit the

1 information required in an application for certification under
2 Section 4202.004. Anytime there is a material change in the
3 information the organization included in the application, the
4 organization shall submit updated information to the commissioner.

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

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

12 (1) the organization must inform the department of a
13 range of dates the location is available for inspection by the
14 department; and

15 (2) on request of the department, an officer shall
16 attend the inspection.

17 SECTION 5. Chapter 4202, Insurance Code, is amended by
18 adding Sections 4202.011 and 4202.012 to read as follows:

19 Sec. 4202.011. ADVISORY GROUP. (a) The commissioner shall
20 establish a group to advise the department and make recommendations
21 approved by a majority vote of the group related to the efficiency
22 of utilization review and independent review generally and the
23 efficiency of the review of health care services.

24 (b) The commissioner shall appoint as a member of the group
25 a department employee to report to the commissioner group
26 recommendations and policies. The commissioner shall appoint as
27 members of the group individuals who have applied for membership,

1 including:

2 (1) an officer of an independent review organization
3 certified under this chapter;

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

6 (3) two officers or representatives of associations of
7 independent review organizations:

8 (A) with not less than 10 members that are
9 certified under this chapter; or

10 (B) that have been in existence for not less than
11 three years;

12 (4) an officer or representative of an association of
13 physicians with knowledge of and interest in the independent review
14 process;

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

18 (6) an officer or representative of a patient advocacy
19 association with knowledge of and interest in the independent
20 review process.

21 (c) A recommendation of the advisory group does not bind the
22 commissioner.

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

26 (e) The commissioner shall designate one member to serve as
27 presiding member of the group. A member may serve more than one

1 term as presiding member.

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

5 (g) A member of the group may not receive compensation for
6 service as a group member.

7 Sec. 4202.012. REFERRAL. The commissioner by rule shall
8 require referral to an independent review organization in
9 appropriate dispute resolution processes involving health care
10 services.

11 SECTION 6. Chapter 4202, Insurance Code, as amended by this
12 Act, applies only to an independent review organization that
13 applies for an initial certification or renewal certification on or
14 after January 1, 2014. An organization certified before that date
15 is governed by the law as it existed immediately before January 1,
16 2014, and that law is continued in effect for that purpose.

17 SECTION 7. This Act takes effect September 1, 2013.