

1-1 By: Turner of Tarrant (Senate Sponsor - Ellis) H.B. No. 2645
1-2 (In the Senate - Received from the House May 6, 2013;
1-3 May 7, 2013, read first time and referred to Committee on State
1-4 Affairs; May 17, 2013, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 17, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13			X	
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 2645 By: Ellis

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to certification and operation of independent review
1-22 organizations.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 4202.002, Insurance Code, is amended by
1-25 amending Subsection (c) and adding Subsections (d), (e), and (f) to
1-26 read as follows:

1-27 (c) In addition to the standards described by Subsection
1-28 (b), the commissioner shall adopt standards and rules that:

1-29 (1) prohibit:

1-30 (A) more than one independent review
1-31 organization from operating out of the same office or other
1-32 facility;

1-33 (B) an individual or entity from owning more than
1-34 one independent review organization;

1-35 (C) an individual from owning stock in or serving
1-36 on the board of more than one independent review organization;

1-37 (D) an individual who has served on the board of
1-38 an independent review organization whose certification was revoked
1-39 for cause from serving on the board of another independent review
1-40 organization before the fifth anniversary of the date on which the
1-41 revocation occurred;

1-42 (E) an individual who serves as an officer,
1-43 director, manager, executive, or supervisor of an independent
1-44 review organization from serving as an officer, director, manager,
1-45 executive, supervisor, employee, agent, or independent contractor
1-46 of another independent review organization [an attorney who is, or
1-47 has in the past served as, the registered agent for an independent
1-48 review organization from representing the independent review
1-49 organization in legal proceedings]; and

1-50 (F) an independent review organization from:
1-51 (i) publicly disclosing [confidential]
1-52 patient information protected by the Health Insurance Portability
1-53 and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.); or

1-54 (ii) transmitting the information to a
1-55 subcontractor involved in the independent review process that has
1-56 not signed an agreement similar to the business associate agreement
1-57 required by regulations adopted under the Health Insurance
1-58 Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d
1-59 et seq.) [except to a provider who is under contract to perform
1-60 the review]; and

2-1 (2) require:

2-2 (A) an independent review organization to:

2-3 (i) maintain a physical address and a

2-4 mailing address in this state;

2-5 (ii) be incorporated in this state;

2-6 (iii) be in good standing with the

2-7 comptroller; and

2-8 (iv) be based and certified in this state

2-9 and to locate the organization's primary offices in this state;

2-10 (B) an independent review organization to

2-11 ~~[voluntarily]~~ surrender the organization's certification ~~[while~~

2-12 ~~the organization is under investigation or]~~ as part of an agreed

2-13 order; and

2-14 (C) an independent review organization to:

2-15 (i) notify the department of an agreement

2-16 to sell the organization or shares in the organization;

2-17 (ii) not later than the 60th day before the

2-18 date of the sale, submit the name of the purchaser and a complete

2-19 and legible set of fingerprints for each officer of the purchaser

2-20 and for each owner or shareholder of the purchaser or, if the

2-21 purchaser is publicly held, each owner or shareholder described by

2-22 Section 4202.004(a)(1), and any additional information necessary

2-23 to comply with Section 4202.004(d); and

2-24 (iii) complete the transfer of ownership

2-25 after the department has sent written confirmation in accordance

2-26 with Subsection (d) that the requirements of this chapter have been

2-27 satisfied ~~[apply for and receive a new certification after the~~

2-28 ~~organization is sold to a new owner].~~

2-29 (d) The department shall send the written confirmation

2-30 required by Subsection (c)(2)(C)(iii) not later than the expiration

2-31 of the fourth week after the date the department determines the

2-32 requirements are satisfied.

2-33 (e) Standards to ensure the confidentiality of medical

2-34 records transmitted to an independent review organization under

2-35 Subsection (b)(2) must require organizations and utilization

2-36 review agents to transmit and store records in compliance with the

2-37 Health Insurance Portability and Accountability Act of 1996 (42

2-38 U.S.C. Section 1320d et seq.) and the regulations and standards

2-39 adopted under that Act.

2-40 (f) The commissioner shall adopt standards requiring that:

2-41 (1) on application for certification, an officer of

2-42 the organization attest that the office is located at a physical

2-43 address;

2-44 (2) the office be equipped with a computer system

2-45 capable of:

2-46 (A) processing requests for independent review;

2-47 and

2-48 (B) accessing all electronic records related to

2-49 the review and the independent review process;

2-50 (3) all records be maintained electronically and made

2-51 available to the department on request; and

2-52 (4) in the case of an office located in a residence,

2-53 the working office be located in a room set aside for independent

2-54 review business purposes and in a manner to ensure confidentiality

2-55 in accordance with Subsection (e).

2-56 SECTION 2. Section 4202.003, Insurance Code, is amended to

2-57 read as follows:

2-58 Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF

2-59 DETERMINATION. The standards adopted under Section 4202.002 must

2-60 require each independent review organization to make the

2-61 organization's determination:

2-62 (1) for a life-threatening condition as defined by

2-63 Section 4201.002, not later than the earlier of ~~[+~~

2-64 ~~[(A)]~~ the third ~~[fifth]~~ day after the date the

2-65 organization receives the information necessary to make the

2-66 determination ~~[+]~~ or, with respect to:

2-67 (A) a review of a health care service provided to

2-68 a person eligible for workers' compensation medical benefits,

2-69 ~~[(B)]~~ the eighth day after the date the organization receives the

3-1 request that the determination be made; or
3-2 (B) a review of a health care service other than a
3-3 service described by Paragraph (A), the third day after the date the
3-4 organization receives the request that the determination be made;
3-5 or [~~and~~]
3-6 (2) for a condition other than a life-threatening
3-7 condition, not later than the earlier of:
3-8 (A) the 15th day after the date the organization
3-9 receives the information necessary to make the determination; or
3-10 (B) the 20th day after the date the organization
3-11 receives the request that the determination be made.
3-12 SECTION 3. Section 4202.004, Insurance Code, is amended to
3-13 read as follows:
3-14 Sec. 4202.004. CERTIFICATION. (a) To be certified as an
3-15 independent review organization under this chapter, an
3-16 organization must submit to the commissioner an application in the
3-17 form required by the commissioner. The application must include:
3-18 (1) for an applicant that is publicly held, the name of
3-19 each shareholder or owner of more than five percent of any of the
3-20 applicant's stock or options;
3-21 (2) the name of any holder of the applicant's bonds or
3-22 notes that exceed \$100,000;
3-23 (3) the name and type of business of each corporation
3-24 or other organization described by Subdivision (4) that the
3-25 applicant controls or is affiliated with and the nature and extent
3-26 of the control or affiliation;
3-27 (4) the name and a biographical sketch of each
3-28 director, officer, and executive of the applicant and of any entity
3-29 listed under Subdivision (3) and a description of any relationship
3-30 the applicant or the named individual has with:
3-31 (A) a health benefit plan;
3-32 (B) a health maintenance organization;
3-33 (C) an insurer;
3-34 (D) a utilization review agent;
3-35 (E) a nonprofit health corporation;
3-36 (F) a payor;
3-37 (G) a health care provider; [~~or~~]
3-38 (H) a group representing any of the entities
3-39 described by Paragraphs (A) through (G); or
3-40 (I) any other independent review organization in
3-41 the state;
3-42 (5) the percentage of the applicant's revenues that
3-43 are anticipated to be derived from independent reviews conducted
3-44 under Subchapter I, Chapter 4201;
3-45 (6) a description of:
3-46 (A) the areas of expertise of the physicians or
3-47 other health care providers making review determinations for the
3-48 applicant;
3-49 (B) the procedures used by the applicant to
3-50 verify physician and provider credentials, including the computer
3-51 processes, electronic databases, and records, if any, used; and
3-52 (C) the software used by the credentialing
3-53 manager for managing the processes, databases, and records
3-54 described by Paragraph (B); [~~and~~]
3-55 (7) the procedures to be used by the applicant in
3-56 making independent review determinations under Subchapter I,
3-57 Chapter 4201; and
3-58 (8) a description of the applicant's use of
3-59 communications, records, and computer processes to manage the
3-60 independent review process.
3-61 (b) The commissioner shall establish certifications for
3-62 independent review of health care services provided to persons
3-63 eligible for workers' compensation medical benefits and other
3-64 health care services after considering accreditation, if any, by a
3-65 nationally recognized accrediting organization that imposes
3-66 requirements for accreditation that are the same as, substantially
3-67 similar to, or more stringent than the department's requirements
3-68 for accreditation.
3-69 (c) The department shall make available to applicants

4-1 applications for certification to review health care services
4-2 provided to persons eligible for workers' compensation medical
4-3 benefits and other health care services.

4-4 (d) The commissioner shall require that each officer of the
4-5 applicant and each owner or shareholder of the applicant or, if the
4-6 purchaser is publicly held, each owner or shareholder described by
4-7 Subsection (a)(1) submit a complete and legible set of fingerprints
4-8 to the department for the purpose of obtaining criminal history
4-9 record information from the Department of Public Safety and the
4-10 Federal Bureau of Investigation. The department shall conduct a
4-11 criminal history check of each applicant using information:

4-12 (1) provided under this section; and
4-13 (2) made available to the department by the Department
4-14 of Public Safety, the Federal Bureau of Investigation, and any
4-15 other criminal justice agency under Chapter 411, Government Code.

4-16 (e) An application for certification for review of health
4-17 care services must require an organization that is accredited by an
4-18 organization described by Subsection (b) to provide the department
4-19 evidence of the accreditation. The commissioner shall consider the
4-20 evidence if the accrediting organization published and made
4-21 available to the commissioner the organization's requirements for
4-22 and methods used in the accreditation process. An independent
4-23 review organization that is accredited by an organization described
4-24 by Subsection (b) may request that the department expedite the
4-25 application process.

4-26 (f) A certified independent review organization that
4-27 becomes accredited by an organization described by Subsection (b)
4-28 may provide evidence of that accreditation to the department that
4-29 shall be maintained in the department's file related to the
4-30 independent review organization's certification.

4-31 (g) Certification must be renewed biennially.
4-32 SECTION 4. Section 4202.005, Insurance Code, is amended to
4-33 read as follows:

4-34 Sec. 4202.005. PERIODIC REPORTING OF INFORMATION; BIENNIAL
4-35 [ANNUAL] DESIGNATION; UPDATES AND INSPECTION. (a) An independent
4-36 review organization shall biennially [annually] submit the
4-37 information required in an application for certification under
4-38 Section 4202.004. Anytime there is a material change in the
4-39 information the organization included in the application, the
4-40 organization shall submit updated information to the commissioner.

4-41 (b) The commissioner shall designate biennially [annually]
4-42 each organization that meets the standards for an independent
4-43 review organization adopted under Section 4202.002.

4-44 (c) Information regarding a material change must be
4-45 submitted on a form adopted by the commissioner not later than the
4-46 30th day after the date the material change occurs. If the material
4-47 change is a relocation of the organization:

4-48 (1) the organization must inform the department that
4-49 the location is available for inspection before the date of the
4-50 relocation by the department; and

4-51 (2) on request of the department, an officer shall
4-52 attend the inspection.

4-53 SECTION 5. Chapter 4202, Insurance Code, is amended by
4-54 adding Sections 4202.011, 4202.012, 4202.013, and 4202.014 to read
4-55 as follows:

4-56 Sec. 4202.011. ADVISORY GROUP. (a) The commissioner shall
4-57 establish a group to advise the department and make recommendations
4-58 related to the efficiency of independent review.

4-59 (b) The commissioner shall appoint as a member of the group
4-60 a department employee to report to the commissioner group
4-61 recommendations and policies. The commissioner shall appoint as
4-62 members of the group individuals who have applied for membership,
4-63 including:

4-64 (1) two officers of different independent review
4-65 organizations certified under this chapter;

4-66 (2) an officer of a utilization review organization
4-67 certified under Chapter 4201;

4-68 (3) an officer or representative of an association of
4-69 physicians with knowledge of and interest in the independent review

5-1 process;
5-2 (4) an officer or representative of an association of
5-3 insurance carriers with knowledge of and interest in the
5-4 independent review process; and

5-5 (5) two officers or representatives of different
5-6 patient advocacy associations with knowledge of and interest in the
5-7 independent review process.

5-8 (c) A recommendation of the advisory group does not bind the
5-9 commissioner.

5-10 (d) Members of the group serve two-year terms. The
5-11 commissioner shall appoint a replacement member in the event of a
5-12 vacancy to serve the remainder of the unexpired term.

5-13 (e) The commissioner shall designate one member to serve as
5-14 presiding member of the group. A member may serve more than one
5-15 term as presiding member.

5-16 (f) The advisory group shall meet annually and otherwise at
5-17 the request of the presiding member or the commissioner. The group
5-18 shall make recommendations at least annually to the commissioner.

5-19 (g) A member of the group may not receive compensation for
5-20 service as a group member.

5-21 Sec. 4202.012. REFERRAL. The commissioner by rule shall
5-22 require referral by random assignment of adverse determinations
5-23 under Subchapter I, Chapter 4201, to independent review
5-24 organizations. On referral of a determination, the commissioner
5-25 shall notify:

5-26 (1) the utilization review agent;

5-27 (2) the payor;

5-28 (3) the independent review organization;

5-29 (4) the patient, as defined by Section 4201.002, or
5-30 the patient's representative; and

5-31 (5) the provider of record as defined by Section
5-32 4201.002.

5-33 Sec. 4202.013. PRIMARY OFFICE IN THIS STATE REQUIRED. An
5-34 independent review organization operating under this chapter must
5-35 maintain the organization's primary office in this state.

5-36 Sec. 4202.014. PREEMPTION. The commissioner shall suspend
5-37 enforcement of any provision of this chapter that the commissioner
5-38 determines to be preempted by 42 U.S.C. Section 300gg-19.

5-39 SECTION 6. Chapter 4202, Insurance Code, as amended by this
5-40 Act, applies only to an independent review organization that
5-41 applies for an initial certification or renewal certification on or
5-42 after January 1, 2014. An organization certified before that date
5-43 is governed by the law as it existed immediately before the
5-44 effective date of this Act, and that law is continued in effect for
5-45 that purpose.

5-46 SECTION 7. This Act takes effect September 1, 2013.

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