

SENATE AMENDMENTS

2nd Printing

By: Bonnen of Galveston

H.B. No. 1621

A BILL TO BE ENTITLED

1 AN ACT
2 relating to utilization review and notice and appeal of certain
3 adverse determinations by utilization review agents.

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

5 SECTION 1. Section 4201.053, Insurance Code, is amended to
6 read as follows:

7 Sec. 4201.053. MEDICAID AND [~~CERTAIN~~] OTHER STATE HEALTH OR
8 MENTAL HEALTH PROGRAMS. (a) Except as provided by Section
9 4201.057, this chapter does not apply to:

- 10 (1) the state Medicaid program;
- 11 (2) the services program for children with special
12 health care needs under Chapter 35, Health and Safety Code;
- 13 (3) a program administered under Title 2, Human
14 Resources Code;
- 15 (4) a program of the Department of State Health
16 Services relating to mental health services;
- 17 (5) a program of the Department of Aging and
18 Disability Services relating to intellectual disability [~~mental~~
19 ~~retardation~~] services; or
- 20 (6) a program of the Texas Department of Criminal
21 Justice.

22 (b) Sections 4201.304(b), 4201.3555, and 4201.404 do not
23 apply to:

- 24 (1) the child health program under Chapter 62, Health

1 and Safety Code, or the health benefits plan for children under
2 Chapter 63, Health and Safety Code;

3 (2) the Employees Retirement System of Texas or
4 another entity issuing or administering a coverage plan under
5 Chapter 1551;

6 (3) the Teacher Retirement System of Texas or another
7 entity issuing or administering a plan under Chapter 1575 or 1579;
8 and

9 (4) The Texas A&M University System or The University
10 of Texas System or another entity issuing or administering coverage
11 under Chapter 1601.

12 SECTION 2. Section 4201.054, Insurance Code, is amended by
13 adding Subsection (b) to read as follows:

14 (b) Sections 4201.304(b), 4201.3555, and 4201.404 do not
15 apply to utilization review of a health care service provided to a
16 person eligible for workers' compensation benefits under Title 5,
17 Labor Code.

18 SECTION 3. Section 4201.304, Insurance Code, is amended to
19 read as follows:

20 Sec. 4201.304. TIME FOR NOTICE OF ADVERSE DETERMINATION.

21 (a) Subject to Subsection (b), a [A] utilization review agent shall
22 provide notice of an adverse determination required by this
23 subchapter as follows:

24 (1) with respect to a patient who is hospitalized at
25 the time of the adverse determination, within one working day by
26 either telephone or electronic transmission to the provider of
27 record, followed by a letter within three working days notifying

1 the patient and the provider of record of the adverse
2 determination;

3 (2) with respect to a patient who is not hospitalized
4 at the time of the adverse determination, within three working days
5 in writing to the provider of record and the patient; or

6 (3) within the time appropriate to the circumstances
7 relating to the delivery of the services to the patient and to the
8 patient's condition, provided that when denying poststabilization
9 care subsequent to emergency treatment as requested by a treating
10 physician or other health care provider, the agent shall provide
11 the notice to the treating physician or other health care provider
12 not later than one hour after the time of the request.

13 (b) A utilization review agent shall provide notice of an
14 adverse determination for a concurrent review of the provision of
15 prescription drugs or intravenous infusions not later than the 30th
16 day before the date on which the provision of prescription drugs or
17 intravenous infusions will be discontinued.

18 SECTION 4. Subchapter H, Chapter 4201, Insurance Code, is
19 amended by adding Section 4201.3555 to read as follows:

20 Sec. 4201.3555. CONTINUATION OF CONCURRENT PROVISION OF
21 PRESCRIPTION DRUGS OR INTRAVENOUS INFUSIONS. The procedures for
22 appealing an adverse determination for a concurrent review of the
23 provision of prescription drugs or intravenous infusions must
24 provide that:

25 (1) coverage or benefits for the contested
26 prescription drugs or intravenous infusions that are the basis of
27 the adverse determination continue under the enrollee's health

1 insurance policy or health benefit plan while the appeal is being
2 considered to the same extent and in the same manner as if there had
3 been no adverse determination;

4 (2) without regard to whether the adverse
5 determination is upheld on appeal, the payor shall cover the
6 contested prescription drugs or intravenous infusions received
7 during the period the appeal was considered to the same extent and
8 in the same manner, including the same benefit level, as if there
9 had been no adverse determination; and

10 (3) without regard to whether the adverse
11 determination is upheld on appeal, the payor may not recoup, based
12 on an adverse determination, any payment made to a physician or
13 health care provider for the continuation of coverage or benefits
14 under Subdivision (1) or (2).

15 SECTION 5. Subchapter I, Chapter 4201, Insurance Code, is
16 amended by adding Section 4201.404 to read as follows:

17 Sec. 4201.404. CONTINUATION OF CONCURRENT PROVISION OF
18 PRESCRIPTION DRUGS OR INTRAVENOUS INFUSIONS. The procedures for an
19 independent review of an appeal of an adverse determination for a
20 concurrent review of the provision of prescription drugs or
21 intravenous infusions must provide that:

22 (1) coverage or benefits for the contested
23 prescription drugs or intravenous infusions that are the basis of
24 the adverse determination continue under the enrollee's health
25 insurance policy or health benefit plan while the review is being
26 considered to the same extent and in the same manner as if there had
27 been no adverse determination;

1 (2) without regard to whether the adverse
2 determination is upheld on review, the payor shall cover the
3 contested prescription drugs or intravenous infusions received
4 during the period the review was considered to the same extent and
5 in the same manner, including the same benefit level, as if there
6 had been no adverse determination; and

7 (3) without regard to whether the adverse
8 determination is upheld on review, the payor may not recoup, based
9 on an adverse determination, any payment made to a physician or
10 health care provider for the continuation of coverage or benefits
11 under Subdivision (1) or (2).

12 SECTION 6. This Act applies only to an adverse
13 determination made in relation to coverage or benefits under a
14 health insurance policy or health benefit plan delivered, issued
15 for delivery, or renewed on or after January 1, 2016. An adverse
16 determination made in relation to coverage or benefits under a
17 policy or plan delivered, issued for delivery, or renewed before
18 January 1, 2016, is governed by the law as it existed immediately
19 before the effective date of this Act, and that law is continued in
20 effect for that purpose.

21 SECTION 7. This Act takes effect September 1, 2015.

ADOPTED

MAY 27 2015

Atty. Gen. Paul
Secretary of the Senate

By: *Seliger*

__ .B. No. 1621

Substitute the following for H.B. No. 1621:

By: *Kel Seliger*

C.S. __ .B. No. ____

A BILL TO BE ENTITLED

AN ACT

relating to utilization review and notice and appeal of certain adverse determinations by utilization review agents.

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

SECTION 1. Section 4201.053, Insurance Code, is amended to read as follows:

Sec. 4201.053. MEDICAID AND ~~CERTAIN~~ OTHER STATE HEALTH OR MENTAL HEALTH PROGRAMS. (a) Except as provided by Section 4201.057, this chapter does not apply to:

- (1) the state Medicaid program;
- (2) the services program for children with special health care needs under Chapter 35, Health and Safety Code;
- (3) a program administered under Title 2, Human Resources Code;
- (4) a program of the Department of State Health Services relating to mental health services;
- (5) a program of the Department of Aging and Disability Services relating to intellectual disability [~~mental retardation~~] services; or
- (6) a program of the Texas Department of Criminal Justice.

(b) Sections 4201.303(c), 4201.304(b), 4201.357(a-1), and

4201.3601 do not apply to:

(1) the child health program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code;

(2) the Employees Retirement System of Texas or another entity issuing or administering a coverage plan under Chapter 1551;

(3) the Teacher Retirement System of Texas or another entity issuing or administering a plan under Chapter 1575 or 1579;

(4) The Texas A&M University System or The University of Texas System or another entity issuing or administering coverage under Chapter 1601; and

(5) a managed care organization providing a Medicaid managed care plan under Chapter 533, Government Code.

SECTION 2. Section 4201.054, Insurance Code, is amended by adding Subsection (b) to read as follows:

(b) Sections 4201.303(c), 4201.304(b), 4201.357(a-1), and 4201.3601 do not apply to utilization review of a health care service provided to a person eligible for workers' compensation benefits under Title 5, Labor Code.

SECTION 3. Section 4201.303, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) For an enrollee who is denied the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy, the notice required by Subsection (a)(4) must include a description of the

enrollee's right to an immediate review by an independent review organization and of the procedures to obtain that review.

SECTION 4. Section 4201.304, Insurance Code, is amended to read as follows:

Sec. 4201.304. TIME FOR NOTICE OF ADVERSE DETERMINATION. (a) Subject to Subsection (b), a [A] utilization review agent shall provide notice of an adverse determination required by this subchapter as follows:

(1) with respect to a patient who is hospitalized at the time of the adverse determination, within one working day by either telephone or electronic transmission to the provider of record, followed by a letter within three working days notifying the patient and the provider of record of the adverse determination;

(2) with respect to a patient who is not hospitalized at the time of the adverse determination, within three working days in writing to the provider of record and the patient; or

(3) within the time appropriate to the circumstances relating to the delivery of the services to the patient and to the patient's condition, provided that when denying poststabilization care subsequent to emergency treatment as requested by a treating physician or other health care provider, the agent shall provide the notice to the treating physician or other health care provider not later than one hour after the time of the request.

(b) A utilization review agent shall provide notice of an adverse determination for a concurrent review of the provision of

prescription drugs or intravenous infusions for which the patient is receiving health benefits under the health insurance policy not later than the 30th day before the date on which the provision of prescription drugs or intravenous infusions will be discontinued.

SECTION 5. The heading to Section 4201.357, Insurance Code, is amended to read as follows:

Sec. 4201.357. EXPEDITED APPEAL FOR DENIAL OF EMERGENCY CARE, [ØR] CONTINUED HOSPITALIZATION, PRESCRIPTION DRUGS OR INTRAVENOUS INFUSIONS.

SECTION 6. Section 4201.357, Insurance Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) The procedures for appealing an adverse determination must include, in addition to the written appeal and the appeal described by Subsection (a), a procedure for an expedited appeal of a denial of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy. That procedure must include a review by a health care provider who:

(1) has not previously reviewed the case; and

(2) is of the same or a similar specialty as the health care provider who would typically manage the medical or dental condition, procedure, or treatment under review in the appeal.

SECTION 7. Subchapter H, Chapter 4201, Insurance Code, is amended by adding Section 4201.3601 to read as follows:

Sec. 4201.3601. IMMEDIATE APPEAL TO INDEPENDENT REVIEW

ORGANIZATION FOR DENIAL OF PRESCRIPTION DRUGS OR INTRAVENOUS INFUSIONS. Notwithstanding any other law, in a circumstance involving the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy, the enrollee is:

(1) entitled to an immediate appeal to an independent review organization as provided by Subchapter I; and

(2) not required to comply with procedures for an internal review of the utilization review agent's adverse determination.

SECTION 8. Section 4202.003, Insurance Code, is amended to read as follows:

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

(1) for a life-threatening condition as defined by Section 4201.002 or the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy, not later than the earlier of the third 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 with a life-threatening condition 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) for a situation [~~condition~~] other than a situation described by Subdivision (1) [~~life-threatening condition~~], not later than the earlier of:

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

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

SECTION 9. This Act applies only to an adverse determination made in relation to coverage or benefits under a health insurance policy or health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2016. An adverse determination made in relation to coverage or benefits under a policy or plan delivered, issued for delivery, or renewed before January 1, 2016, 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 10. This Act takes effect September 1, 2015.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 28, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1621 by Bonnen, Greg (Relating to utilization review and notice and appeal of certain adverse determinations by utilization review agents.), **As Passed 2nd House**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Insurance Code relating to notice and appeal of an adverse determination by utilization review agents.

Based on information provided by the Teacher Retirement System, Employees Retirement System, Texas Department of Insurance, Texas A&M University System Administration, and the University of Texas System Administration, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, SD, ER, CL, EMO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1621 by Bonnen, Greg (Relating to utilization review and notice and appeal of certain adverse determinations by utilization review agents.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to notice and appeal of an adverse determination by utilization review agents.

Based on information provided by the Teacher Retirement System, Employees Retirement System, Texas Department of Insurance, Texas A&M University System Administration, and the University of Texas System Administration, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, ER, CL, EMo

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 13, 2015

TO: Honorable Kevin Eltife, Chair, Senate Committee on Business & Commerce

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1621 by Bonnen, Greg (Relating to utilization review and notice and appeal of certain adverse determinations by utilization review agents.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to notice and appeal of an adverse determination by utilization review agents.

Based on information provided by the Teacher Retirement System, Employees Retirement System, Texas Department of Insurance, Texas A&M University System Administration, and the University of Texas System Administration, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, ER, EMO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 20, 2015

TO: Honorable René Oliveira, Chair, House Committee on Business & Industry

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1621 by Bonnen, Greg (Relating to utilization review and notice and appeal of certain adverse determinations by utilization review agents.), **Committee Report 1st House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Insurance Code relating to notice and appeal of an adverse determination by utilization review agents.

Based on information provided by the Teacher Retirement System, Employees Retirement System, Texas Department of Insurance, Texas A&M University System Administration, and the University of Texas System Administration, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, ER, EMO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 6, 2015

TO: Honorable René Oliveira, Chair, House Committee on Business & Industry

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1621 by Bonnen, Greg (Relating to notice and appeal of an adverse determination by utilization review agents.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to notice and appeal of an adverse determination by utilization review agents.

Based on information provided by the Teacher Retirement System, Employees Retirement System, Texas Department of Insurance, Texas A&M University System Administration, and the University of Texas System Administration, it is assumed that all duties and responsibilities necessary to implement the provisions of the bill could be accomplished within existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System, 327 Employees Retirement System, 454 Department of Insurance, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, ER, EMo