

Amend SB 1742 (house committee printing) on third reading as follows:

(1) Add the following appropriately numbered ARTICLE heading to the bill, transfer SECTIONS 1, 2, 3, and 4 of the bill to that ARTICLE, and renumber those SECTIONS accordingly:

ARTICLE _____. PHYSICIAN AND HEALTH CARE PROVIDER DIRECTORIES

(2) On page 3, line 24, strike "Act" and substitute "article".

(3) Add the following appropriately numbered ARTICLES to the bill:

ARTICLE _____. REGULATION OF UTILIZATION REVIEW, INDEPENDENT REVIEW, AND PEER REVIEW AND PREAUTHORIZATION REQUIREMENTS

SECTION _____.01. Section 533.005, Government Code, is amended by adding Subsection (e) to read as follows:

(e) In addition to the requirements under Subsection (a), a contract described by that subsection must require the managed care organization to comply with Section 4201.156, Insurance Code.

SECTION _____.02. Section 843.348(b), Insurance Code, is amended to read as follows:

(b) A health maintenance organization that uses a preauthorization process for health care services shall provide each participating physician or provider, not later than the fifth [~~10th~~] business day after the date a request is made, a list of health care services that [~~do not~~] require preauthorization and information concerning the preauthorization process.

SECTION _____.03. Subchapter J, Chapter 843, Insurance Code, is amended by adding Sections 843.3481, 843.3482, 843.3483, and 843.3484 to read as follows:

Sec. 843.3481. POSTING OF PREAUTHORIZATION REQUIREMENTS.

(a) A health maintenance organization that uses a preauthorization process for health care services shall make the requirements and information about the preauthorization process readily accessible to enrollees, physicians, providers, and the general public by posting the requirements and information on the health maintenance organization's Internet website.

(b) The preauthorization requirements and information described by Subsection (a) must:

(1) be posted:

(A) conspicuously in a location on the Internet website that does not require the use of a log-in or other input of personal information to view the information; and

(B) in a format that is easily searchable and accessible;

(2) be written in plain language that is easily understandable by enrollees, physicians, providers, and the general public;

(3) include a detailed description of the preauthorization process and procedure; and

(4) include an accurate and current list of the health care services for which the health maintenance organization requires preauthorization that includes the following information specific to each service:

(A) the effective date of the preauthorization requirement;

(B) a list or description of any supporting documentation that the health maintenance organization requires from the physician or provider ordering or requesting the service to approve a request for that service;

(C) the applicable screening criteria using Current Procedural Terminology codes and International Classification of Diseases codes; and

(D) statistics regarding preauthorization approval and denial rates for the service in the preceding year and for each previous year the preauthorization requirement was in effect, including statistics in the following categories:

(i) physician or provider type and specialty, if any;

(ii) indication offered;

(iii) reasons for request denial;

(iv) denials overturned on internal appeal;

(v) denials overturned on external appeal;

and

(vi) total annual preauthorization requests, approvals, and denials for the service.

Sec. 843.3482. CHANGES TO PREAUTHORIZATION REQUIREMENTS.

(a) Except as provided by Subsection (b), not later than the 60th day before the date a new or amended preauthorization requirement takes effect, a health maintenance organization that uses a preauthorization process for health care services shall provide each participating physician or provider written notice of the new or amended preauthorization requirement and disclose the new or amended requirement in the health maintenance organization's newsletter or network bulletin, if any.

(b) For a change in a preauthorization requirement or process that removes a service from the list of health care services requiring preauthorization or amends a preauthorization requirement in a way that is less burdensome to enrollees or participating physicians or providers, a health maintenance organization shall provide each participating physician or provider written notice of the change in the preauthorization requirement and disclose the change in the health maintenance organization's newsletter or network bulletin, if any, not later than the fifth day before the date the change takes effect.

(c) Not later than the fifth day before the date a new or amended preauthorization requirement takes effect, a health maintenance organization shall update its Internet website to disclose the change to the health maintenance organization's preauthorization requirements or process and the date and time the change is effective.

Sec. 843.3483. REMEDY FOR NONCOMPLIANCE; AUTOMATIC WAIVER.

In addition to any other penalty or remedy provided by law, a health maintenance organization that uses a preauthorization process for health care services that violates this subchapter with respect to a required publication, notice, or response regarding its preauthorization requirements, including by failing to comply with any applicable deadline for the publication, notice, or response, waives the health maintenance organization's preauthorization requirements with respect to any health care service affected by the violation, and any health care service affected by the violation is considered preauthorized by the health maintenance organization.

Sec. 843.3484. EFFECT OF PREAUTHORIZATION WAIVER. A waiver of preauthorization requirements under Section 843.3483 may not be construed to:

(1) authorize a physician or provider to provide health care services outside of the physician's or provider's applicable scope of practice as defined by state law; or

(2) require the health maintenance organization to pay for a health care service provided outside of the physician's or provider's applicable scope of practice as defined by state law.

SECTION _____.04. Section 1301.135(a), Insurance Code, is amended to read as follows:

(a) An insurer that uses a preauthorization process for medical care or ~~and~~ health care services shall provide to each preferred provider, not later than the fifth ~~10th~~ business day after the date a request is made, a list of medical care and health care services that require preauthorization and information concerning the preauthorization process.

SECTION _____.05. Subchapter C-1, Chapter 1301, Insurance Code, is amended by adding Sections 1301.1351, 1301.1352, 1301.1353, and 1301.1354 to read as follows:

Sec. 1301.1351. POSTING OF PREAUTHORIZATION REQUIREMENTS.

(a) An insurer that uses a preauthorization process for medical care or health care services shall make the requirements and information about the preauthorization process readily accessible to insureds, physicians, health care providers, and the general public by posting the requirements and information on the insurer's Internet website.

(b) The preauthorization requirements and information described by Subsection (a) must:

(1) be posted:

(A) conspicuously in a location on the Internet website that does not require the use of a log-in or other input of personal information to view the information; and

(B) in a format that is easily searchable and accessible;

(2) be written in plain language that is easily understandable by insureds, physicians, health care providers, and

the general public;

(3) include a detailed description of the preauthorization process and procedure; and

(4) include an accurate and current list of medical care and health care services for which the insurer requires preauthorization that includes the following information specific to each service:

(A) the effective date of the preauthorization requirement;

(B) a list or description of any supporting documentation that the insurer requires from the physician or health care provider ordering or requesting the service to approve a request for the service;

(C) the applicable screening criteria using Current Procedural Terminology codes and International Classification of Diseases codes; and

(D) statistics regarding the insurer's preauthorization approval and denial rates for the medical care or health care service in the preceding year and for each previous year the preauthorization requirement was in effect, including statistics in the following categories:

(i) physician or health care provider type and specialty, if any;

(ii) indication offered;

(iii) reasons for request denial;

(iv) denials overturned on internal appeal;

(v) denials overturned on external appeal;

and

(vi) total annual preauthorization requests, approvals, and denials for the service.

(c) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.1352. CHANGES TO PREAUTHORIZATION REQUIREMENTS.

(a) Except as provided by Subsection (b), not later than the 60th day before the date a new or amended preauthorization requirement takes effect, an insurer that uses a preauthorization process for medical care or health care services shall provide to each

preferred provider written notice of the new or amended preauthorization requirement and disclose the new or amended requirement in the insurer's newsletter or network bulletin, if any.

(b) For a change in a preauthorization requirement or process that removes a service from the list of medical care or health care services requiring preauthorization or amends a preauthorization requirement in a way that is less burdensome to insureds, physicians, or health care providers, an insurer shall provide each preferred provider written notice of the change in the preauthorization requirement and disclose the change in the insurer's newsletter or network bulletin, if any, not later than the fifth day before the date the change takes effect.

(c) Not later than the fifth day before the date a new or amended preauthorization requirement takes effect, an insurer shall update its Internet website to disclose the change to the insurer's preauthorization requirements or process and the date and time the change is effective.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.1353. REMEDY FOR NONCOMPLIANCE; AUTOMATIC WAIVER. (a) In addition to any other penalty or remedy provided by law, an insurer that uses a preauthorization process for medical care or health care services that violates this subchapter with respect to a required publication, notice, or response regarding its preauthorization requirements, including by failing to comply with any applicable deadline for the publication, notice, or response, waives the insurer's preauthorization requirements with respect to any medical care or health care service affected by the violation, and any medical care or health care service affected by the violation is considered preauthorized by the insurer.

(b) The provisions of this section may not be waived, voided, or nullified by contract.

Sec. 1301.1354. EFFECT OF PREAUTHORIZATION WAIVER. (a) A waiver of preauthorization requirements under Section 1301.1353 may not be construed to:

(1) authorize a physician or health care provider to

provide medical care or health care services outside of the physician's or health care provider's applicable scope of practice as defined by state law; or

(2) require the insurer to pay for a medical care or health care service provided outside of the physician's or health care provider's applicable scope of practice as defined by state law.

(b) The provisions of this section may not be waived, voided, or nullified by contract.

SECTION ____ .06. Section 4201.002(12), Insurance Code, is amended to read as follows:

(12) "Provider of record" means the physician or other health care provider with primary responsibility for the health care [~~, treatment, and~~] services provided to or requested on behalf of an enrollee or the physician or other health care provider that has provided or has been requested to provide the health care services to the enrollee. The term includes a health care facility where the health care services are [~~if treatment is~~] provided on an inpatient or outpatient basis.

SECTION ____ .07. Sections 4201.151 and 4201.152, Insurance Code, are amended to read as follows:

Sec. 4201.151. UTILIZATION REVIEW PLAN. A utilization review agent's utilization review plan, including reconsideration and appeal requirements, must be reviewed by a physician licensed to practice medicine in this state and conducted in accordance with standards developed with input from appropriate health care providers and approved by a physician licensed to practice medicine in this state.

Sec. 4201.152. UTILIZATION REVIEW UNDER [~~DIRECTION OF~~] PHYSICIAN. A utilization review agent shall conduct utilization review under the supervision and direction of a physician licensed to practice medicine in this [~~by a~~] state [~~licensing agency in the United States~~].

SECTION ____ .08. Subchapter D, Chapter 4201, Insurance Code, is amended by adding Section 4201.1525 to read as follows:

Sec. 4201.1525. UTILIZATION REVIEW BY PHYSICIAN. (a) A utilization review agent that uses a physician to conduct

utilization review may only use a physician licensed to practice medicine in this state.

(b) A payor that conducts utilization review on the payor's own behalf is subject to Subsection (a) as if the payor were a utilization review agent.

SECTION ____ .09. Section 4201.153(d), Insurance Code, is amended to read as follows:

(d) Screening criteria must be used to determine only whether to approve the requested treatment. Before issuing an adverse determination, a utilization review agent must obtain a determination of medical necessity by referring a proposed [A] denial of requested treatment [~~must be referred~~] to:

(1) an appropriate physician, dentist, or other health care provider; or

(2) if the treatment is requested, ordered, provided, or to be provided by a physician, a physician licensed to practice medicine in this state who is of the same or a similar specialty as that physician [~~to determine medical necessity~~].

SECTION ____ .10. Sections 4201.155, 4201.206, and 4201.251, Insurance Code, are amended to read as follows:

Sec. 4201.155. LIMITATION ON NOTICE REQUIREMENTS AND REVIEW PROCEDURES. (a) A utilization review agent may not establish or impose a notice requirement or other review procedure that is contrary to the requirements of the health insurance policy or health benefit plan.

(b) This section may not be construed to release a health insurance policy or health benefit plan from full compliance with this chapter or other applicable law.

Sec. 4201.206. OPPORTUNITY TO DISCUSS TREATMENT BEFORE ADVERSE DETERMINATION. (a) Subject to Subsection (b) and the notice requirements of Subchapter G, before an adverse determination is issued by a utilization review agent who questions the medical necessity, the [~~or~~] appropriateness, or the experimental or investigational nature[~~r~~] of a health care service, the agent shall provide the health care provider who ordered, requested, provided, or is to provide the service a reasonable opportunity to discuss with a physician licensed to practice

medicine in this state the patient's treatment plan and the clinical basis for the agent's determination.

(b) If the health care service described by Subsection (a) was ordered, requested, or provided, or is to be provided by a physician, the opportunity described by that subsection must be with a physician licensed to practice medicine in this state who is of the same or a similar specialty as that physician.

Sec. 4201.251. DELEGATION OF UTILIZATION REVIEW. A utilization review agent may delegate utilization review to qualified personnel in the hospital or other health care facility in which the health care services to be reviewed were or are to be provided. The delegation does not release the agent from the full responsibility for compliance with this chapter or other applicable law, including the conduct of those to whom utilization review has been delegated.

SECTION ____ .11. Subchapter D, Chapter 4201, Insurance Code, is amended by adding Section 4201.156 to read as follows:

Sec. 4201.156. REVIEW PROCEDURES FOR EMERGENCY CARE CLAIMS.

(a) Utilization review of an emergency care claim must be made by a utilization review agent who is a physician licensed under Subtitle B, Title 3, Occupations Code.

(b) With respect to an enrollee's emergency medical condition that is the basis for an emergency care claim, a utilization review agent:

(1) may not make an adverse determination for the emergency care claim predominantly based on the condition's classification under a Current Procedural Terminology or International Classification of Diseases code; and

(2) must review the enrollee's medical records.

SECTION ____ .12. Sections 4201.252(a) and (b), Insurance Code, are amended to read as follows:

(a) Personnel employed by or under contract with a utilization review agent to perform utilization review must be appropriately trained and qualified and meet the requirements of this chapter and other applicable law, including licensing requirements.

(b) Personnel, other than a physician licensed to practice

medicine in this state, who obtain oral or written information directly from a patient's physician or other health care provider regarding the patient's specific medical condition, diagnosis, or treatment options or protocols must be a nurse, physician assistant, or other health care provider qualified and licensed or otherwise authorized by law and the appropriate licensing agency in this state to provide the requested service.

SECTION ____ .13. Section 4201.356, Insurance Code, is amended to read as follows:

Sec. 4201.356. DECISION BY PHYSICIAN REQUIRED; SPECIALTY REVIEW. (a) The procedures for appealing an adverse determination must provide that a physician licensed to practice medicine in this state makes the decision on the appeal, except as provided by Subsection (b) or (c).

(b) For a health care service ordered, requested, provided, or to be provided by a physician, the procedures for appealing an adverse determination must provide that a physician licensed to practice medicine in this state who is of the same or a similar specialty as that physician makes the decision on appeal, except as provided by Subsection (c).

(c) If not later than the 10th working day after the date an appeal is denied the enrollee's health care provider states in writing good cause for having a particular type of specialty provider review the case, a health care provider who 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 consideration for review and who is licensed or otherwise authorized by the appropriate licensing agency in this state to manage the medical or dental condition, procedure, or treatment shall review the decision denying the appeal. The specialty review must be completed within 15 working days of the date the health care provider's request for specialty review is received.

SECTION ____ .14. Sections 4201.357(a), (a-1), and (a-2), Insurance Code, are amended to read as follows:

(a) The procedures for appealing an adverse determination must include, in addition to the written appeal, a procedure for an

expedited appeal of a denial of emergency care or a denial of continued hospitalization. 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; and

(3) for a review of a health care service:

(A) ordered, requested, provided, or to be provided by a health care provider who is not a physician, is licensed or otherwise authorized by the appropriate licensing agency in this state to provide the service in this state; or

(B) ordered, requested, provided, or to be provided by a physician, is licensed to practice medicine in this state.

(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; and

(3) for a review of a health care service:

(A) ordered, requested, provided, or to be provided by a health care provider who is not a physician, is licensed or otherwise authorized by the appropriate licensing agency in this state to provide the service in this state; or

(B) ordered, requested, provided, or to be provided by a physician, is licensed to practice medicine in this state.

(a-2) An adverse determination under Section 1369.0546 is entitled to an expedited appeal. The physician or, if appropriate, other health care provider deciding the appeal must consider

atypical diagnoses and the needs of atypical patient populations. The physician must be licensed to practice medicine in this state and the health care provider must be licensed or otherwise authorized by the appropriate licensing agency in this state.

SECTION ____ .15. Section 4201.359, Insurance Code, is amended by adding Subsection (c) to read as follows:

(c) A physician described by Subsection (b)(2) must comply with this chapter and other applicable laws and be licensed to practice medicine in this state. A health care provider described by Subsection (b)(2) must comply with this chapter and other applicable laws and be licensed or otherwise authorized by the appropriate licensing agency in this state.

SECTION ____ .16. Sections 4201.453 and 4201.454, Insurance Code, are amended to read as follows:

Sec. 4201.453. UTILIZATION REVIEW PLAN. A specialty utilization review agent's utilization review plan, including reconsideration and appeal requirements, must be:

(1) reviewed by a health care provider of the appropriate specialty who is licensed or otherwise authorized to provide the specialty health care service in this state; and

(2) conducted in accordance with standards developed with input from a health care provider of the appropriate specialty who is licensed or otherwise authorized to provide the specialty health care service in this state.

Sec. 4201.454. UTILIZATION REVIEW UNDER DIRECTION OF PROVIDER OF SAME SPECIALTY. A specialty utilization review agent shall conduct utilization review under the direction of a health care provider who is of the same specialty as the agent and who is licensed or otherwise authorized to provide the specialty health care service in this ~~[by a] state [licensing agency in the United States]~~.

SECTION ____ .17. Sections 4201.455(a) and (b), Insurance Code, are amended to read as follows:

(a) Personnel who are employed by or under contract with a specialty utilization review agent to perform utilization review must be appropriately trained and qualified and meet the requirements of this chapter and other applicable law of this

state, including licensing laws.

(b) Personnel who obtain oral or written information directly from a physician or other health care provider must be a nurse, physician assistant, or other health care provider of the same specialty as the agent and who are licensed or otherwise authorized to provide the specialty health care service in this [~~by~~ a] state [~~licensing agency in the United States~~].

SECTION ____ .18. Sections 4201.456 and 4201.457, Insurance Code, are amended to read as follows:

Sec. 4201.456. OPPORTUNITY TO DISCUSS TREATMENT BEFORE ADVERSE DETERMINATION. Subject to the notice requirements of Subchapter G, before an adverse determination is issued by a specialty utilization review agent who questions the medical necessity, the [~~or~~] appropriateness, or the experimental or investigational nature[~~r~~] of a health care service, the agent shall provide the health care provider who ordered, requested, provided, or is to provide the service a reasonable opportunity to discuss the patient's treatment plan and the clinical basis for the agent's determination with a health care provider who is:

(1) of the same specialty as the agent; and

(2) licensed or otherwise authorized to provide the specialty health care service in this state.

Sec. 4201.457. APPEAL DECISIONS. A specialty utilization review agent shall comply with the requirement that a physician or other health care provider who makes the decision in an appeal of an adverse determination must be:

(1) of the same or a similar specialty as the health care provider who would typically manage the specialty condition, procedure, or treatment under review in the appeal; and

(2) licensed or otherwise authorized to provide the health care service in this state.

SECTION ____ .19. Section 4202.002, Insurance Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) The standards adopted under Subsection (b)(3) must:

(1) ensure that personnel conducting independent review for a health care service are licensed or otherwise authorized to provide the same or a similar health care service in

this state; and

(2) be consistent with the licensing laws of this state.

SECTION _____.20. Section 408.0043, Labor Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (b), if a health care service is requested, ordered, provided, or to be provided by a physician, a person described by Subsection (a)(1), (2), or (3) who reviews the service with respect to a specific workers' compensation case must be of the same or a similar specialty as that physician.

SECTION _____.21. Subchapter B, Chapter 151, Occupations Code, is amended by adding Section 151.057 to read as follows:

Sec. 151.057. APPLICATION TO UTILIZATION REVIEW. (a) In this section:

(1) "Adverse determination" means a determination that health care services provided or proposed to be provided to an individual in this state by a physician or at the request or order of a physician are not medically necessary or are experimental or investigational.

(2) "Payor" has the meaning assigned by Section 4201.002, Insurance Code.

(3) "Utilization review" has the meaning assigned by Section 4201.002, Insurance Code, and the term includes a review of:

(A) a step therapy protocol exception request under Section 1369.0546, Insurance Code; and

(B) prescription drug benefits under Section 1369.056, Insurance Code.

(4) "Utilization review agent" means:

(A) an entity that conducts utilization review under Chapter 4201, Insurance Code;

(B) a payor that conducts utilization review on the payor's own behalf or on behalf of another person or entity;

(C) an independent review organization certified under Chapter 4202, Insurance Code; or

(D) a workers' compensation health care network

certified under Chapter 1305, Insurance Code.

(b) A person who does the following is considered to be engaged in the practice of medicine in this state and is subject to appropriate regulation by the board:

(1) makes on behalf of a utilization review agent or directs a utilization review agent to make an adverse determination, including:

(A) an adverse determination made on reconsideration of a previous adverse determination;

(B) an adverse determination in an independent review under Subchapter I, Chapter 4201, Insurance Code;

(C) a refusal to provide benefits for a prescription drug under Section 1369.056, Insurance Code; or

(D) a denial of a step therapy protocol exception request under Section 1369.0546, Insurance Code;

(2) serves as a medical director of an independent review organization certified under Chapter 4202, Insurance Code;

(3) reviews or approves a utilization review plan under Section 4201.151, Insurance Code;

(4) supervises and directs utilization review under Section 4201.152, Insurance Code; or

(5) discusses a patient's treatment plan and the clinical basis for an adverse determination before the adverse determination is issued, as provided by Section 4201.206, Insurance Code.

(c) For purposes of Subsection (b), a denial of health care services based on the failure to request prospective or concurrent review is not considered an adverse determination.

SECTION ____ .22. Section 1305.351(d), Insurance Code, is amended to read as follows:

(d) A [~~Notwithstanding Section 4201.152, a~~] utilization review agent or an insurance carrier that uses doctors to perform reviews of health care services provided under this chapter, including utilization review, or peer reviews under Section 408.0231(g), Labor Code, may only use doctors licensed to practice in this state.

SECTION ____ .23. Section 1305.355(d), Insurance Code, is

amended to read as follows:

(d) The department shall assign the review request to an independent review organization. An [~~Notwithstanding Section 4202.002, an~~] independent review organization that uses doctors to perform reviews of health care services under this chapter may only use doctors licensed to practice in this state.

SECTION _____.24. Section 408.023(h), Labor Code, is amended to read as follows:

(h) A [~~Notwithstanding Section 4201.152, Insurance Code, a~~] utilization review agent or an insurance carrier that uses doctors to perform reviews of health care services provided under this subtitle, including utilization review, may only use doctors licensed to practice in this state.

SECTION _____.25. Section 413.031(e-2), Labor Code, is amended to read as follows:

(e-2) An [~~Notwithstanding Section 4202.002, Insurance Code, an~~] independent review organization that uses doctors to perform reviews of health care services provided under this title may only use doctors licensed to practice in this state.

SECTION _____.26. The changes in law made by this article to Chapters 843 and 1301, Insurance Code, apply only to a request for preauthorization of medical care or health care services made on or after January 1, 2020, under a health benefit plan delivered, issued for delivery, or renewed on or after that date. A request for preauthorization of medical care or health care services made before January 1, 2020, or on or after January 1, 2020, under a health benefit plan delivered, issued for delivery, or renewed before that date 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 _____.27. The changes in law made by this article to Chapters 1305, 4201, and 4202, Insurance Code, Chapters 408 and 413, Labor Code, and Chapter 151, Occupations Code, apply only to utilization, independent, or peer review that was requested on or after the effective date of this Act. Utilization, independent, or peer review requested 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 _____.28. Section 4201.156, Insurance Code, as added by this article, applies only to a health benefit plan delivered, issued for delivery, or renewed on or after January 1, 2020. A health benefit plan delivered, issued for delivery, or renewed before January 1, 2020, 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 _____.29. If before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

ARTICLE _____. DISCLOSURES REGARDING CERTAIN PREAUTHORIZED MEDICAL
AND HEALTH CARE SERVICES

SECTION _____.01. Subchapter F, Chapter 843, Insurance Code, is amended by adding Section 843.2025 to read as follows:

Sec. 843.2025. DISCLOSURES CONCERNING CERTAIN
PREAUTHORIZED SERVICES. (a) In this section:

(1) "Elective" means non-emergent, medically necessary, and able to be scheduled at least 24 hours in advance.

(2) "Facility-based provider" means a physician or provider who provides a health care service to a patient of a licensed medical facility and bills for the service provided.

(3) "Licensed medical facility" means:

(A) a hospital licensed under Chapter 241, Health and Safety Code;

(B) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code; or

(C) a birthing center licensed under Chapter 244, Health and Safety Code.

(4) "Preauthorization" has the meaning assigned by Section 843.348.

(b) A health maintenance organization that preauthorizes an enrollee's health care service shall provide a disclosure to the

enrollee at the time the health maintenance organization issues a determination preauthorizing the service if the service:

(1) will be provided at a licensed medical facility;

(2) is elective; and

(3) must be preauthorized as a condition of payment by the health maintenance organization for the service.

(c) The disclosure provided to an enrollee under Subsection (b) must include:

(1) a statement of the name and network status of any facility-based provider that the health maintenance organization reasonably expects will provide and bill for the preauthorized service or any anesthesia, pathology, or radiology services associated with the preauthorized service;

(2) an estimate of:

(A) the payment that the health maintenance organization will make for the preauthorized service and any anesthesia, pathology, or radiology services associated with the preauthorized service; and

(B) the enrollee's financial responsibility, including any copayment or other out-of-pocket amount, for the preauthorized service and any anesthesia, pathology, or radiology services associated with the preauthorized service;

(3) a statement that the actual charges and payment for the preauthorized service and the enrollee's financial responsibility for the service may vary from the estimate provided by the health maintenance organization based on the enrollee's actual medical condition and other factors associated with the performance of the service;

(4) a statement substantially similar to the following: "This notice may not reflect all the physicians and health care providers who may be involved in and bill for your care. Despite your health maintenance organization's best efforts to disclose all physicians and health care providers who we reasonably expect to participate in your care, circumstances, including facility scheduling, staff changes, or complications, or other factors associated with your care, may result in different or additional physicians or health care providers providing and

billing for care provided to you."; and

(5) a statement that the enrollee may be personally liable for the amount charged for health care services provided to the enrollee depending on the enrollee's health benefit plan coverage.

(d) A general statement that some facility-based providers may be out-of-network does not satisfy the requirement in Subsection (c)(1).

SECTION ____ .02. Subchapter C-1, Chapter 1301, Insurance Code, is amended by adding Section 1301.1355 to read as follows:

Sec. 1301.1355. DISCLOSURES CONCERNING CERTAIN PREAUTHORIZED SERVICES. (a) In this section:

(1) "Elective" means non-emergent, medically necessary, and able to be scheduled at least 24 hours in advance.

(2) "Facility-based provider" means a physician or health care provider who provides a medical care or health care service to a patient of a licensed medical facility and bills for the service provided.

(3) "Licensed medical facility" means:

(A) a hospital licensed under Chapter 241, Health and Safety Code;

(B) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code; or

(C) a birthing center licensed under Chapter 244, Health and Safety Code.

(b) An insurer that preauthorizes an insured's medical care or health care service shall provide a disclosure to the insured at the time the insurer issues a determination preauthorizing the service if the service:

(1) will be provided at a licensed medical facility;

(2) is elective; and

(3) must be preauthorized as a condition of payment by the insurer for the service.

(c) The disclosure provided to an insured under Subsection (b) must include:

(1) a statement of the name and network status of any facility-based provider that the insurer reasonably expects will

provide and bill for the preauthorized service or any anesthesia, pathology, or radiology services associated with the preauthorized service;

(2) an estimate of:

(A) the payment that the insurer will make for the preauthorized service and any anesthesia, pathology, or radiology services associated with the preauthorized service; and

(B) the insured's financial responsibility, including any copayment or other out-of-pocket amount, for the preauthorized service and any anesthesia, pathology, or radiology services associated with the preauthorized service;

(3) a statement that the actual charges and payment for the preauthorized service and the insured's financial responsibility for the service may vary from the estimate provided by the insurer based on the insured's actual medical condition and other factors associated with the performance of the service;

(4) a statement substantially similar to the following: "This notice may not reflect all the physicians and health care providers who may be involved in and bill for your care. Despite your insurer's best efforts to disclose all physicians and health care providers who we reasonably expect to participate in your care, circumstances, including facility scheduling, staff changes, or complications, or other factors associated with your care, may result in different or additional physicians or health care providers providing and billing for care provided to you.";
and

(5) a statement that the insured may be personally liable for the amount charged for medical care or health care services provided to the insured depending on the insured's health benefit plan coverage.

(d) A general statement that some facility-based physicians or health care providers may be out-of-network does not satisfy the requirement in Subsection (c)(1).

SECTION ____ .03. The changes in law made by this article apply only to a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2020.

(4) Add the following appropriately numbered ARTICLE

heading to the bill, transfer SECTION 5 of the bill to that ARTICLE,
and renumber that SECTION accordingly:

ARTICLE _____. EFFECTIVE DATE