

BILL ANALYSIS

C.S.H.B. 2387
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Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that the utilization review process for health care benefit plan coverage is burdensome to physicians and providers and may have the potential to prevent patients from receiving the care they need. C.S.H.B. 2387 seeks to address this issue by ensuring that physicians who are the most familiar with the delivery of health care in Texas are involved in utilization reviews for health benefit plan coverage.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2387 amends the Insurance Code to require a utilization review agent that uses a physician to conduct utilization review for health benefit plan coverage to use a physician licensed to practice medicine in Texas and to subject a payor that conducts a utilization review on the payor's own behalf to this requirement as if the payor were a utilization agent. The bill expressly requires certain physicians involved in the process of utilization review by a utilization review agent to be licensed to practice medicine in Texas and specifies that such review must be conducted under the supervision of a physician. The bill requires certain other health care providers involved in that process to be licensed or otherwise authorized by the appropriate licensing agency in Texas. The bill expands the definition of "provider of record" for purposes of statutory provisions governing utilization review agents to include a health care provider with primary responsibility for health care services requested on behalf of an enrollee and a health care provider that has provided or has been requested to provide such services.

C.S.H.B. 2387 clarifies that a determination of medical necessity must be obtained for a proposed denial of requested treatment before issuance of an adverse determination. The bill requires a health care provider to whom a utilization review agent refers a proposed denial of treatment requested, ordered, provided, or to be provided by a physician for such a determination to be a physician licensed to practice medicine in Texas who is of the same or a similar specialty as the physician that requested, ordered, or provided the treatment.

C.S.H.B. 2387 prohibits the prohibition against a utilization review agent establishing or imposing a notice requirement and or other review procedure that is contrary to the requirements of a health insurance policy or health benefit plan from being construed to release a policy or plan from full compliance with applicable law. The bill clarifies that the authorized delegation of

utilization review does not release a utilization review agent from the full responsibility for compliance with any applicable law.

C.S.H.B. 2387 requires a physician with whom a utilization review agent gives a health care provider an opportunity to discuss treatment before issuing an adverse determination related to a health care service ordered, requested, provided, or to be provided by a physician to be of the same or a similar specialty as that physician. The bill similarly requires a physician who makes the decision on an appeal of an adverse determination related to a health care service ordered, requested, provided, or to be provided by a physician to be of the same or a similar specialty as that physician. The bill requires a physician or health care provider who denies an appeal of an adverse determination to comply with applicable laws.

C.S.H.B. 2387 requires certain health care providers involved in the process of utilization review by a specialty utilization review agent to be licensed or otherwise authorized to provide the specialty health care service in Texas.

C.S.H.B. 2387 requires personnel employed by or under contract with a utilization review agent or a specialty utilization review agent for the purpose of performing utilization review to meet the requirements of applicable state law, including licensing requirements or laws. The bill requires the standards adopted by the commissioner of insurance with regard to the qualifications and independence of each physician or other health care provider making a review determination for an independent review organization to be consistent with state licensing laws and to 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 Texas.

C.S.H.B. 2387 amends the Labor Code to require a doctor performing peer review or a utilization review or independent review of a health care service requested, ordered, provided, or to be provided by a physician with respect to a specific workers' compensation case to be of the same or a similar specialty as that physician.

C.S.H.B. 2387 amends the Occupations Code to establish that a person who does the following is considered to be engaged in the practice of medicine in Texas and is subject to appropriate regulation by the Texas Medical Board:

- makes on behalf of a utilization review agent or directs a utilization review agent to make an adverse determination, which does not include a denial of health care services based on the failure to request prospective or concurrent review;
- serves as a medical director of a certified independent review organization;
- reviews or approves a utilization review plan;
- supervises and directs utilization review; or
- discusses a patient's treatment plan and the clinical basis for an adverse determination before the adverse determination is issued.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2387 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute makes the bill's provisions applicable also to treatment and health care services to be provided by a physician.

The substitute includes a requirement for a doctor who performs certain reviews of a health care service requested, ordered, provided, or to be provided by a physician with respect to a specific workers' compensation case to be of the same or a similar specialty as that physician.