

## **BILL ANALYSIS**

C.S.H.B. 3721  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been suggested that the review process for disputes challenging a medical necessity determination under the Medicaid managed care program could be improved. C.S.H.B. 3721 seeks to address this issue by requiring the Health and Human Services Commission to contract with an independent review organization to make such determinations, thereby improving the review process and making it more efficient.

### **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 rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 3721 amends the Government Code to require the Health and Human Services Commission (HHSC) to contract with an independent review organization to make review determinations with respect to disputes at issue in requests for appeal submitted to HHSC challenging a medical necessity determination of a managed care organization (MCO) that contracts with HHSC under Medicaid. The bill requires the executive commissioner of HHSC by rule to determine the manner in which an independent review organization is to settle disputes, when an organization may be accessed in the appeals process, and the recourse available after the organization makes a review determination. The bill requires HHSC to ensure that such a contract does the following:

- requires an independent review organization to make a review determination in a timely manner;
- provides procedures to protect the confidentiality of medical records transmitted to the organization for use in conducting an independent review;
- sets minimum qualifications for and requires the independence of each physician or other health care provider making a review determination on behalf of the organization;
- specifies the procedures to be used by the organization in making review determinations;
- requires the timely notice to a recipient of the results of an independent review, including the clinical basis for the review determination;
- requires that the organization report certain aggregate information to HHSC in the specified form and manner and at the times prescribed by HHSC; and
- requires that, in addition to the required aggregate information, the organization include

in the report the required information categorized by MCO.

The bill requires an independent review organization with which HHSC contracts to do the following:

- obtain all information relating to the dispute at issue from the MCO and the provider in accordance with time frames prescribed by HHSC;
- assign a physician or other health care provider with appropriate expertise as a reviewer to make a review determination;
- perform a check for each review to ensure that the organization and the physician or other health care provider assigned to make a review determination do not have a conflict of interest, as defined in the contract entered into between HHSC and the organization;
- communicate procedural rules, approved by HHSC, and other information regarding the appeals process to all parties; and
- render a timely review determination, as determined by HHSC.

C.S.H.B. 3721 requires HHSC to ensure that the MCO, the provider, and the recipient involved in a dispute do not have a choice in the reviewer who is assigned to perform the review. The bill requires HHSC, in selecting an independent review organization with which to contract, to avoid conflicts of interest by considering and monitoring existing relationships between independent review organizations and MCOs. The bill makes its provisions inapplicable to, and prohibits an independent review organization from making a review determination with respect to, a dispute involving the HHSC office of inspector general or an action taken at the direction of that office, including a dispute relating to an action taken by an MCO at the direction of the office under the lock-in program established in accordance with federal law or the termination or potential termination of a provider's enrollment in an MCO's provider network at the direction of the office. The bill requires the executive commissioner to adopt rules necessary to implement the bill's provisions.

#### **EFFECTIVE DATE**

September 1, 2019.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3721 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 does not include complaints as part of the review process for challenging a medical necessity determination under the Medicaid managed care program. The substitute makes the bill's provisions inapplicable to, and prohibits an independent review organization from making a review determination with respect to, certain disputes involving the HHSC office of inspector general or an action taken at the office's direction.