

By: Bonnen of Galveston

H.B. No. 2387

Substitute the following for H.B. No. 2387:

By: Lucio III

C.S.H.B. No. 2387

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of utilization review, independent
3 review, and peer review for health benefit plan and workers'
4 compensation coverage.

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

6 SECTION 1. Section 4201.002(12), Insurance Code, is amended
7 to read as follows:

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

16 SECTION 2. Sections 4201.151 and 4201.152, Insurance Code,
17 are amended to read as follows:

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

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

6 SECTION 3. Subchapter D, Chapter 4201, Insurance Code, is
7 amended by adding Section 4201.1525 to read as follows:

8 Sec. 4201.1525. UTILIZATION REVIEW BY PHYSICIAN. (a) A
9 utilization review agent that uses a physician to conduct
10 utilization review may only use a physician licensed to practice
11 medicine in this state.

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

15 SECTION 4. Section 4201.153(d), Insurance Code, is amended
16 to read as follows:

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

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

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

1 SECTION 5. Sections 4201.155, 4201.206, and 4201.251,
2 Insurance Code, are amended to read as follows:

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

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

11 Sec. 4201.206. OPPORTUNITY TO DISCUSS TREATMENT BEFORE
12 ADVERSE DETERMINATION. (a) Subject to Subsection (b) and the
13 notice requirements of Subchapter G, before an adverse
14 determination is issued by a utilization review agent who questions
15 the medical necessity, the [~~or~~] appropriateness, or the
16 experimental or investigational nature[~~r~~] of a health care service,
17 the agent shall provide the health care provider who ordered,
18 requested, provided, or is to provide the service a reasonable
19 opportunity to discuss with a physician licensed to practice
20 medicine in this state the patient's treatment plan and the
21 clinical basis for the agent's determination.

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

27 Sec. 4201.251. DELEGATION OF UTILIZATION REVIEW. A

1 utilization review agent may delegate utilization review to
2 qualified personnel in the hospital or other health care facility
3 in which the health care services to be reviewed were or are to be
4 provided. The delegation does not release the agent from the full
5 responsibility for compliance with this chapter or other applicable
6 law, including the conduct of those to whom utilization review has
7 been delegated.

8 SECTION 6. Sections 4201.252(a) and (b), Insurance Code,
9 are amended to read as follows:

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

15 (b) Personnel, other than a physician licensed to practice
16 medicine in this state, who obtain oral or written information
17 directly from a patient's physician or other health care provider
18 regarding the patient's specific medical condition, diagnosis, or
19 treatment options or protocols must be a nurse, physician
20 assistant, or other health care provider qualified and licensed or
21 otherwise authorized by law and the appropriate licensing agency in
22 this state to provide the requested service.

23 SECTION 7. Section 4201.356, Insurance Code, is amended to
24 read as follows:

25 Sec. 4201.356. DECISION BY PHYSICIAN REQUIRED; SPECIALTY
26 REVIEW. (a) The procedures for appealing an adverse determination
27 must provide that a physician licensed to practice medicine in this

1 state makes the decision on the appeal, except as provided by
2 Subsection (b) or (c).

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

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

22 SECTION 8. Sections [4201.357\(a\)](#), (a-1), and (a-2),
23 Insurance Code, are amended to read as follows:

24 (a) The procedures for appealing an adverse determination
25 must include, in addition to the written appeal, a procedure for an
26 expedited appeal of a denial of emergency care or a denial of
27 continued hospitalization. That procedure must include a review by

1 a health care provider who:

2 (1) has not previously reviewed the case; ~~and~~

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

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

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

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

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

21 (1) has not previously reviewed the case; ~~and~~

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

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

26 (A) ordered, requested, provided, or to be
27 provided by a health care provider who is not a physician, is

1 licensed or otherwise authorized by the appropriate licensing
2 agency in this state to provide the service in this state; or
3 (B) ordered, requested, provided, or to be
4 provided by a physician, is licensed to practice medicine in this
5 state.

6 (a-2) An adverse determination under Section 1369.0546 is
7 entitled to an expedited appeal. The physician or, if appropriate,
8 other health care provider deciding the appeal must consider
9 atypical diagnoses and the needs of atypical patient populations.
10 The physician must be licensed to practice medicine in this state
11 and the health care provider must be licensed or otherwise
12 authorized by the appropriate licensing agency in this state.

13 SECTION 9. Section 4201.359, Insurance Code, is amended by
14 adding Subsection (c) to read as follows:

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

21 SECTION 10. Sections 4201.453 and 4201.454, Insurance Code,
22 are amended to read as follows:

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

26 (1) reviewed by a health care provider of the
27 appropriate specialty who is licensed or otherwise authorized to

1 provide the specialty health care service in this state; and

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

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

13 SECTION 11. Sections 4201.455(a) and (b), Insurance Code,
14 are amended to read as follows:

15 (a) Personnel who are employed by or under contract with a
16 specialty utilization review agent to perform utilization review
17 must be appropriately trained and qualified and meet the
18 requirements of this chapter and other applicable law of this
19 state, including licensing laws.

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

26 SECTION 12. Sections 4201.456 and 4201.457, Insurance Code,
27 are amended to read as follows:

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

- 11 (1) of the same specialty as the agent; and
12 (2) licensed or otherwise authorized to provide the
13 specialty health care service in this state.

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

- 18 (1) of the same or a similar specialty as the health
19 care provider who would typically manage the specialty condition,
20 procedure, or treatment under review in the appeal; and
21 (2) licensed or otherwise authorized to provide the
22 health care service in this state.

23 SECTION 13. Section 4202.002, Insurance Code, is amended by
24 adding Subsection (b-1) to read as follows:

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

- 26 (1) ensure that personnel conducting independent
27 review for a health care service are licensed or otherwise

1 authorized to provide the same or a similar health care service in
2 this state; and

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

5 SECTION 14. Section 408.0043, Labor Code, is amended by
6 adding Subsection (c) to read as follows:

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

13 SECTION 15. Subchapter B, Chapter 151, Occupations Code, is
14 amended by adding Section 151.057 to read as follows:

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

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

22 (2) "Payor" has the meaning assigned by Section
23 4201.002, Insurance Code.

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

27 (A) a step therapy protocol exception request

1 under Section 1369.0546, Insurance Code; and

2 (B) prescription drug benefits under Section
3 1369.056, Insurance Code.

4 (4) "Utilization review agent" means:

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

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

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

11 (D) a workers' compensation health care network
12 certified under Chapter 1305, Insurance Code.

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

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

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

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

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

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

27 (2) serves as a medical director of an independent

1 review organization certified under Chapter 4202, Insurance Code;
2 (3) reviews or approves a utilization review plan
3 under Section 4201.151, Insurance Code;
4 (4) supervises and directs utilization review under
5 Section 4201.152, Insurance Code; or
6 (5) discusses a patient's treatment plan and the
7 clinical basis for an adverse determination before the adverse
8 determination is issued, as provided by Section 4201.206, Insurance
9 Code.

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

13 SECTION 16. Section 1305.351(d), Insurance Code, is amended
14 to read as follows:

15 (d) A [~~Notwithstanding Section 4201.152, a~~] utilization
16 review agent or an insurance carrier that uses doctors to perform
17 reviews of health care services provided under this chapter,
18 including utilization review, or peer reviews under Section
19 408.0231(g), Labor Code, may only use doctors licensed to practice
20 in this state.

21 SECTION 17. Section 1305.355(d), Insurance Code, is amended
22 to read as follows:

23 (d) The department shall assign the review request to an
24 independent review organization. An [~~Notwithstanding Section~~
25 ~~4202.002, an~~] independent review organization that uses doctors to
26 perform reviews of health care services under this chapter may only
27 use doctors licensed to practice in this state.

1 SECTION 18. Section 408.023(h), Labor Code, is amended to
2 read as follows:

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

8 SECTION 19. Section 413.031(e-2), Labor Code, is amended to
9 read as follows:

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

14 SECTION 20. The change in law made by this Act applies only
15 to utilization, independent, or peer review that was requested on
16 or after the effective date of this Act. Utilization, independent,
17 or peer review requested before the effective date of this Act is
18 governed by the law as it existed immediately before the effective
19 date of this Act, and that law is continued in effect for that
20 purpose.

21 SECTION 21. This Act takes effect September 1, 2019.