

By: Bonnen of Galveston

H.B. No. 2387

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of utilization review and independent review for health benefit plan coverage.

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

SECTION 1. 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 2. 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~~]

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

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

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

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

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

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

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

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

27 SECTION 5. Sections 4201.155, 4201.206, and 4201.251,

1 Insurance Code, are amended to read as follows:

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

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

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

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

26 Sec. 4201.251. DELEGATION OF UTILIZATION REVIEW. A
27 utilization review agent may delegate utilization review to

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

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

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

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

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

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

1 Subsection (b) or (c).

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

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

21 SECTION 8. Sections 4201.357(a), (a-1), and (a-2),
22 Insurance Code, are amended to read as follows:

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

- 1 (1) has not previously reviewed the case; [~~and~~]
2 (2) is of the same or a similar specialty as the health
3 care provider who would typically manage the medical or dental
4 condition, procedure, or treatment under review in the appeal; and
5 (3) for a review of a health care service:

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

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

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

- 19 (1) has not previously reviewed the case; [~~and~~]
20 (2) is of the same or a similar specialty as the health
21 care provider who would typically manage the medical or dental
22 condition, procedure, or treatment under review in the appeal; and
23 (3) for a review of a health care service:

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

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

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

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

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

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

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

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

26 (2) conducted in accordance with standards developed
27 with input from a health care provider of the appropriate specialty

1 who is licensed or otherwise authorized to provide the specialty
2 health care service in this state.

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

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

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

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

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

25 Sec. 4201.456. OPPORTUNITY TO DISCUSS TREATMENT BEFORE
26 ADVERSE DETERMINATION. Subject to the notice requirements of
27 Subchapter G, before an adverse determination is issued by a

1 specialty utilization review agent who questions the medical
2 necessity, the [~~or~~] appropriateness, or the experimental or
3 investigational nature[~~r~~] of a health care service, the agent shall
4 provide the health care provider who ordered, requested, or
5 provided the service a reasonable opportunity to discuss the
6 patient's treatment plan and the clinical basis for the agent's
7 determination with a health care provider who is:

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

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

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

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

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

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

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

23 (1) ensure that personnel conducting independent
24 review for a health care service are licensed or otherwise
25 authorized to provide the same or similar health care service in
26 this state; and

27 (2) be consistent with the licensing laws of this

1 state.

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

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

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

11 (2) "Payor" has the meaning assigned by Section
12 4201.002, Insurance Code.

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

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

18 (B) prescription drug benefits under Section
19 1369.056, Insurance Code.

20 (4) "Utilization review agent" means:

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

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

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

27 (D) a workers' compensation health care network

1 certified under Chapter 1305, Insurance Code.

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

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

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

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

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

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

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

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

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

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

26 (c) For purposes of Subsection (b), a denial of health care
27 services based on the failure to request prospective or concurrent

1 review is not considered an adverse determination.

2 SECTION 15. Section 1305.351(d), Insurance Code, is amended
3 to read as follows:

4 (d) A [~~Notwithstanding Section 4201.152, a~~] utilization
5 review agent or an insurance carrier that uses doctors to perform
6 reviews of health care services provided under this chapter,
7 including utilization review, or peer reviews under Section
8 408.0231(g), Labor Code, may only use doctors licensed to practice
9 in this state.

10 SECTION 16. Section 1305.355(d), Insurance Code, is amended
11 to read as follows:

12 (d) The department shall assign the review request to an
13 independent review organization. An [~~Notwithstanding Section~~
14 ~~4202.002, an~~] independent review organization that uses doctors to
15 perform reviews of health care services under this chapter may only
16 use doctors licensed to practice in this state.

17 SECTION 17. Section 408.023(h), Labor Code, is amended to
18 read as follows:

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

24 SECTION 18. Section 413.031(e-2), Labor Code, is amended to
25 read as follows:

26 (e-2) An [~~Notwithstanding Section 4202.002, Insurance Code,~~
27 ~~an~~] independent review organization that uses doctors to perform

1 reviews of health care services provided under this title may only
2 use doctors licensed to practice in this state.

3 SECTION 19. The change in law made by this Act applies only
4 to utilization or independent review that was requested on or after
5 the effective date of this Act. Utilization or independent review
6 requested before the effective date of this Act is governed by the
7 law as it existed immediately before the effective date of this Act,
8 and that law is continued in effect for that purpose.

9 SECTION 20. This Act takes effect September 1, 2019.