By: Buckingham, et al.

S.B. No. 1187

A BILL TO BE ENTITLED

1 AN ACT

- 2 relating to the regulation of utilization review and independent
- 3 review for health benefit plan coverage.
- 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
- 5 SECTION 1. Section 4201.002(12), Insurance Code, is amended
- 6 to read as follows:
- 7 (12) "Provider of record" means the physician or other
- 8 health care provider with primary responsibility for the health
- 9 care[treatment, and] services provided to or requested on behalf
- 10 of an enrollee or the physician or other health care provider that
- 11 has provided or has been requested to provide the health care
- 12 <u>services to the enrollee</u>. The term includes a health care facility
- 13 where the health care services are [if treatment is] provided on an
- 14 inpatient or outpatient basis.
- SECTION 2. Sections 4201.151 and 4201.152, Insurance Code,
- 16 are amended to read as follows:
- 17 Sec. 4201.151. UTILIZATION REVIEW PLAN. A utilization
- 18 review agent's utilization review plan, including reconsideration
- 19 and appeal requirements, must be reviewed by a physician <u>licensed</u>
- 20 to practice medicine in this state and conducted in accordance with
- 21 standards developed with input from appropriate health care
- 22 providers and approved by a physician <u>licensed to practice medicine</u>
- 23 in this state.
- Sec. 4201.152. UTILIZATION REVIEW UNDER [DIRECTION OF]

- S.B. No. 1187
- 1 PHYSICIAN. A utilization review agent shall conduct utilization
- 2 review under the <u>supervision and</u> 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.
- 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 <u>(1)</u> 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 <u>in this state who is of the same or similar specialty as that</u>
- 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 $[\tau]$ of a health care service,
- 16 the agent shall provide the health care provider who ordered $\underline{\prime}$
- 17 requested, or provided the service a reasonable opportunity to
- 18 discuss with a physician <u>licensed</u> 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 <u>described</u> 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.
- Sec. 4201.251. DELEGATION OF UTILIZATION REVIEW. A
- 27 utilization review agent may delegate utilization review to

- S.B. No. 1187
- 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 <u>requirements</u>.
- 14 (b) Personnel, other than a physician licensed to practice
- 15 <u>medicine in this state</u>, 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:
- 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:

S.B. No. 1187

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

- (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.
- SECTION 9. Section 4201.359, Insurance Code, is amended by
- 11 adding Subsection (c) to read as follows:
- (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:
- Sec. 4201.453. UTILIZATION REVIEW PLAN. A specialty
- 21 utilization review agent's utilization review plan, including
- 22 reconsideration and appeal requirements, must be $\underline{\cdot}$
- 23 <u>(1)</u> 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].
- 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:
- 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 $[\tau]$ 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 $\underline{\text{(1)}}$ 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.
- 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:
- (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

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   state.
          SECTION 14. Subchapter B, Chapter 151, Occupations Code, is
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    amended by adding Section 151.057 to read as follows:
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          Sec. 151.057. APPLICATION TO UTILIZATION REVIEW. (a) In
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   this section:
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               (1) "Adverse determination" means a determination
   that health care services provided or proposed to be provided to an
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    individual in this state by a physician or at the request or order
   of a physician are not medically necessary or are experimental or
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   investigational.
               (2) "Payor" has the meaning assigned by Section
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   4201.002, Insurance Code.
               (3) "Utilization review" has the meaning assigned by
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   Section 4201.002, Insurance Code, and the term includes a review
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15
   of:
                    (A) a step therapy protocol exception request
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   under Section 1369.0546, Insurance Code; and
                    (B) prescription drug benefits under Section
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    1369.056, Insurance Code.
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               (4) "Utilization review agent" means:
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21
                    (A) an entity that conducts utilization review
   under Chapter 4201, Insurance Code;
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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
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   under Chapter 4202, Insurance Code; or
                    (D) a worke<u>rs' compensation health care network</u>
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- 1 <u>certified under Chapter 1305</u>, 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 <u>directs a utilization review agent to make an adverse</u>
- 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.
- 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.
- SECTION 17. Section 408.023(h), Labor Code, is amended to
- 18 read as follows:
- (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.
- 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

S.B. No. 1187

- 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.