By: Buckingham, et al. S.B. No. 1187

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~~]

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

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

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

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

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

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

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

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

SECTION 5. Sections 4201.155, 4201.206, and 4201.251,

Insurance Code, are amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

Subsection (b) or (c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) be consistent with the licensing laws of this

state.

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

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

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

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

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

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

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

(4) "Utilization review agent" means:

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

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

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

(D) a workers' compensation health care network

certified under Chapter 1305, Insurance Code.

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

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

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

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

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

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

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

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

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

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

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

review is not considered an adverse determination.

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

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

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

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

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

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

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

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

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

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

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