

HOUSE BILL No. 5152

September 24, 1991, Introduced by Reps. Bennane, Hertel, Leland, Gire, DeMars, Varga, Emerson, Gubow, Palamara, Stallworth, Hunter, Wozniak and Yokich and referred to the Committee on Public Health:

A bill to license certain persons conducting utilization reviews of health care insurers in this state; to provide for certain powers and duties for certain state agencies; to provide for certain standards relative to certain persons and certain practices; to provide for the promulgation of rules; and to provide for penalties.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "utilization review licensure act".

3 Sec. 3. As used in this act:

4 (a) "Department" means the department of commerce.

5 (b) "Inpatient services" means services relating to the
6 admission to an inpatient facility for acute medical, surgical,
7 obstetrical, psychiatric, or chemical dependency inpatient
8 services.

1 (c) "Inpatient facility" means a hospital, skilled care
2 facility, nursing facility, residential treatment center, or
3 freestanding rehabilitation facility.

4 (d) "Insurer" means a person providing health care insurance
5 coverage and regulated by the insurance code of 1956, Act No. 218
6 of the Public Acts of 1956, being sections 500.100 to 500.8302 of
7 the Michigan Compiled Laws; the nonprofit health care corporation
8 reform act, Act No. 350 of the Public Acts of 1980, being sec-
9 tions 550.1101 to 550.1704 of the Michigan Compiled Laws; or
10 part 210 of the public health code, Act No. 368 of the Public
11 Acts of 1978, being sections 333.21001 to 333.21098 of the
12 Michigan Compiled Laws.

13 (e) "Person" means an individual, partnership, corporation,
14 or other legal entity.

15 (f) "Private review agent" means a nonhospital affiliated
16 person performing utilization review on behalf of an employer,
17 third party payer, insurer, health insurance service organi-
18 zation, or preferred provider organization.

19 (g) "Provider" means a health care professional or inpatient
20 facility which provides inpatient or outpatient services.

21 (h) "Utilization review" means a system for reviewing the
22 appropriate and efficient allocation of hospital resources given
23 or proposed to be given to a patient or a group of patients for
24 inpatient services and outpatient services to surgical
25 facilities.

26 (i) "Utilization review plan" means a reasonable description
27 of the standards, criteria, policies, procedures, reasonable

1 target review periods, employee training program, and
2 reconsideration and appeal mechanism governing a private review
3 agent.

4 Sec. 5. (1) A person shall not conduct a utilization review
5 unless licensed by the department as a private review agent.

6 (2) A person conducting a utilization review shall do so
7 only in compliance with standards approved by the department
8 under this act.

9 Sec. 7. (1) An applicant for licensure as a private review
10 agent shall apply on a form provided by the department which
11 shall be accompanied by an application fee of \$100.00.

12 (2) Upon receipt of a completed application and the applica-
13 tion fee, the department shall issue a license to a private
14 review agent who demonstrates, to the department's satisfaction,
15 both of the following:

16 (a) A utilization review plan in compliance with this act
17 and rules promulgated under this act.

18 (b) Staffing which meets the standards established in this
19 act and rules promulgated under this act relative to both
20 licensed health care professionals and nonlicensed administrative
21 personnel.

22 Sec. 9. Upon approval by the department for an application
23 for licensure under this act, the licensee shall pay an initial
24 license fee of \$500.00 for a license.

25 Sec. 11. (1) The department may promulgate rules setting
26 minimum standards regarding the appropriate training which health
27 care professionals licensed under part 170 of the public health

1 code, Act No. 368 of the Public Acts of 1978, being sections
2 333.17001 to 333.17088 of the Michigan Compiled Laws, should have
3 to conduct a utilization review.

4 (2) The department shall promulgate rules regarding minimum
5 education and experience standards regarding nonlicensed adminis-
6 trative personnel. Not later than 60 days after the effective
7 date of this act, the department shall submit these rules for
8 public hearings. These standards shall provide, at a minimum,
9 that the employee successfully completed high school and a train-
10 ing program approved by the department and sponsored by the
11 reviewer. Until such time as the rules described in this subsec-
12 tion are promulgated, nonlicensed administrative personnel shall
13 have at least successfully completed high school.

14 Sec. 13. (1) A change in the legal composition of a private
15 review agent or a change in the utilization review plan shall be
16 submitted to the department in writing within 30 days after the
17 change. Upon receipt of the notification of the change, the
18 department shall determine if the change complies with the
19 requirements of this act. If it does not, then the department
20 shall notify the private review agent of the noncompliance and
21 advise the private review agent that it has 30 days in which to
22 alter the proposed change in order to comply with this act. If
23 the private review agent has not complied within 30 days, then
24 the department shall revoke the license.

25 (2) A licensee shall notify the department and all insurers,
26 providers, and patients for whom the private review agent
27 provides utilization review or services as soon as possible, but

1 not later than 90 days before, of a change in its legal
2 composition or in the utilization review plan.

3 Sec. 15. (1) A utilization review plan shall comply with
4 the requirements imposed in this section and any other require-
5 ments imposed by the department pursuant to rules.

6 (2) A utilization review plan shall not provide that a pri-
7 vate review agent be compensated by an insurer based upon the
8 result recommended or upon the cost of the claim.

9 (3) A utilization review plan shall provide that the denial
10 of a claim be based upon the medical necessity of the procedure
11 or treatment represented by the claim except under any of the
12 following circumstances:

13 (a) Where a contractual requirement exists for a preauthori-
14 zation or a second opinion as a condition precedent for allowance
15 for the claim for services, the condition precedent has not been
16 satisfied, and the insurer has not waived the condition
17 precedent.

18 (b) Where denial is based upon the failure of the insured to
19 pay the policy or certificate premium.

20 (c) Where denial is based upon the omission of certain
21 information.

22 (4) A utilization review plan shall provide either or both
23 of the following relative to a denial of a claim in whole or in
24 part:

25 (a) That the review of the claim has been conducted by a
26 licensed health care professional practicing in the same
27 profession as the licensed health care professional who rendered

1 or prescribed the services and is accompanied by a detailed
2 explanation of the grounds for the denial sent not more than 30
3 days after the request for payment or preauthorization.

4 Explanation of denial must be sent to the patient, provider, and
5 facility and include the name of the denying party including a
6 telephone number where questions on the denial may be directed.

7 The denial must include rationale and facts why denial occurred
8 including at a minimum all of the following:

9 (i) Show why hospital care or medical services requested are
10 not medically necessary.

11 (ii) Demonstrate that the patient's condition will not dete-
12 riorate in the foreseeable future based on the denial of inpa-
13 tient or outpatient services.

14 (iii) Describe inpatient or outpatient services that they
15 will authorize for the medical condition.

16 (b) That the review of the claim, when conducted by a person
17 who is not a licensed health care professional or who is a
18 licensed health care professional from a field or discipline
19 other than the field or discipline of which the rendering or pre-
20 scribing health care professional is a member, is accompanied by
21 the grounds for denial and the review criteria specific to the
22 particular claim sent not more than 30 days after the request for
23 payment or preauthorization. If an appeal is requested, the
24 appeal shall include a review conducted by a licensed health care
25 professional who is licensed and practicing in the same field or
26 discipline as the rendering or prescribing professional.

1 (5) The utilization review plan must include a copy of the
2 training program that will be provided by the private review
3 agent for personnel who will be responsible for review activities
4 for the purpose of determining reimbursement.

5 (6) As used in this section, "practicing" means licensed in
6 this state and possessing at least 5 years' experience in that
7 particular field or discipline.

8 Sec. 17. (1) A private review agent shall not review the
9 medical records of a patient unless a written consent is obtained
10 from the patient. The consent form shall explain the purpose of
11 the request. A copy of the request form shall be presented to
12 the provider before the private review agent makes any request
13 for information.

14 (2) A private review agent may request a personal interview
15 with a patient concerning his or her treatment plan. If such a
16 request is made, the individual conducting the interview shall be
17 a licensed provider in the same profession as the provider pro-
18 viding the treatment.

19 (3) A private review agent shall use the least intrusive
20 method of obtaining information. As used in this subsection,
21 "least intrusive method of obtaining information" includes, but
22 is not limited to, obtaining information telephonically from a
23 records clerk who is reading the information contained in the
24 patient file and who provides his or her name and employment
25 position with the provider or obtaining information from personal
26 contact by an agent of the provider who is employed at an

1 educational level comparable to the person seeking the
2 information on behalf of the private review agent.

3 (4) An employee of a private review agent shall disclose his
4 or her full name, the name of the private review agent, and the
5 address and telephone number of the private review agent before
6 conducting a utilization review.

7 (5) A claim submitted to a private review agent that is not
8 denied within 10 business days after submission in the manner
9 provided for in this act is considered approved.

10 (6) The private review agent shall make available an indi-
11 vidual to answer questions regarding a claim or the utilization
12 review plan by telephone or otherwise for at least 40 hours per
13 week during normal business hours. When an insurer requires that
14 notification be made within a certain number of hours for emer-
15 gency services, then communication must be available during that
16 time period in order to receive authorization.

17 (7) A private review agent shall provide, upon request, a
18 written statement of the appeals process.

19 (8) A private review agent shall only request that informa-
20 tion regarding a claim which is specifically required to prove or
21 justify coverage pursuant to the insurance contract. The infor-
22 mation provided to the private review agent is confidential and
23 may not be used for any purpose other than for the review of pay-
24 ment requests and for reporting the allowance or denial of a pay-
25 ment request to the insurer on whose behalf the private review
26 agent is acting.

1 Sec. 19. (1) The department may promulgate rules under this
2 act pursuant to the administrative procedures act of 1969, Act
3 No. 306 of the Public Acts of 1969, being sections 24.201 to
4 24.328 of the Michigan Compiled Laws, for the administration and
5 enforcement of this act.

6 (2) The department shall do all of the following:

7 (a) Approve training programs sponsored and conducted by
8 private review agents.

9 (b) Provide a model for a training program for employees of
10 a private review agent and provide a model utilization review
11 plan.

12 (c) Investigate complaints regarding violations of this act
13 and rules promulgated pursuant to this act.

14 (d) Issue a report every 2 years describing the number of
15 private review agents licensed by the state, the number of com-
16 plaints received by the department and the number of sanctions
17 issued as a result of these complaints, and any other information
18 the department considers necessary and relevant to the adminis-
19 tration of this act.

20 Sec. 21. (1) The department may suspend or revoke the
21 license of a private review agent, or deny the application of an
22 applicant, for a violation of this act.

23 (2) An action for violation of this act shall be conducted
24 pursuant to the administrative procedures act of 1969, Act
25 No. 306 of the Public Acts of 1969, being sections 24.201 to
26 24.328 of the Michigan Compiled Laws.

1 Sec. 23. (1) A person found violating section 17(8) is
2 guilty of a misdemeanor, punishable by imprisonment of not more
3 than 1 year, a fine of not more than \$10,000.00 per violation, or
4 both.

5 (2) A private review agent that fails to certify treatment
6 solely by reason of the provider not being a participant of a
7 plan of health insurance coverage of an insurer is guilty of a
8 misdemeanor punishable by a \$100.00 fine.