HOUSE BILL No. 5414

November 28, 1995, Introduced by Rep. Varga and referred to the Committee on Insurance.

A bill to amend Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, by adding section 2219.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Section 1. Act No. 218 of the Public Acts of 1956, as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, is amended by adding section 2219 to read as follows:

SEC. 2219. (1) AS USED IN THIS SECTION:

(A) "INDEPENDENT MEDICAL EXAMINATION" MEANS A HEALTH CARE PROVIDER'S DIRECT EXAMINATION OF A PATIENT TO EVALUATE THE APPROPRIATENESS OF TREATMENT OR CARE PROVIDED THAT PATIENT BY A TREATING HEALTH CARE PROVIDER.

(B) "UTILIZATION REVIEW" MEANS THE EVALUATION OF THE NECESSITY, APPROPRIATENESS, AND EFFICIENCY OF THE USE OF A HEALTH CARE SERVICE, PROCEDURE, OR FACILITY. UTILIZATION REVIEW DOES NOT INCLUDE TECHNICAL ANALYSIS OF A BILL FOR ACCURACY OR COMPLETENESS.

(2) A DISABILITY OR AUTOMOBILE INSURER REQUIRING A UTILIZATION REVIEW SHALL COMPLY WITH THIS SECTION.

(3) AN INDIVIDUAL WHO PERFORMS A UTILIZATION REVIEW FOR AN INSURER SHALL MEET ALL OF THE FOLLOWING REQUIREMENTS:

(A) POSSESS THE SAME TYPE OF HEALTH CARE PROVIDER LICENSE AS THE TREATING HEALTH CARE PROVIDER, AND ADDITIONALLY BE CERTIFIED IN THE TREATING HEALTH CARE PROVIDER'S SPECIALTY OR PRIMARY AREA OF PRACTICE BY AN ORGANIZATION OR EDUCATIONAL INSTITUTION APPROVED BY THE DEPARTMENT OF PUBLIC HEALTH.

(B) HAVE AT LEAST 7 YEARS' ACTIVE EXPERIENCE IN THE TYPE OF CLINICAL PRACTICE THAT IS BEING REVIEWED.

(C) DERIVE AT LEAST 65% OF HIS OR HER ANNUAL INCOME FROM ACTIVE PATIENT CARE, AND ENGAGE IN ACTIVE PATIENT CARE NOT LESS THAN AN AVERAGE OF 24 HOURS PER WEEK.

(D) HAVE COMPLETED AT LEAST 10 HOURS OF CONTINUING EDUCATION IN THE SPECIALTY OR PRIMARY AREA OF PRACTICE OF THE TREATING HEALTH CARE PROVIDER.

(E) NOT HAVE BEEN DETERMINED IN AN ADMINISTRATIVE OR OTHER PROCEEDING TO HAVE VIOLATED ANY LAW GOVERNING HIS OR HER PRACTICE OR SPECIALTY WITHIN THE 7-YEAR PERIOD PRECEDING THE INDEPENDENT MEDICAL EXAMINATION.

(4) AN INSURER SHALL NOT PROVIDE, AND AN INDIVIDUAL WHO PERFORMS A UTILIZATION REVIEW FOR AN INSURER SHALL NOT RECEIVE, ANY FINANCIAL INCENTIVE BASED UPON THE NUMBER OF ADVERSE UTILIZATION REVIEW DETERMINATIONS MADE BY THE INDIVIDUAL PERFORMING THE UTILIZATION REVIEW.

(5) AN INSURER SHALL INFORM A TREATING HEALTH CARE PROVIDER AND THE PATIENT IF A TREATMENT IS TO BE REVIEWED.

(6) THE TREATING HEALTH CARE PROVIDER OR HIS OR HER REPRESENTATIVE AND A REPRESENTATIVE OF THE PATIENT MAY BE PRESENT AT AN INDEPENDENT MEDICAL EXAMINATION AND MAY RECORD THE ENTIRE EXAMINATION BY ANY MEANS.

(7) THE PERSON CONDUCTING AN INDEPENDENT MEDICAL EXAMINATION MAY RECORD THE EXAMINATION AND MAY ADDITIONALLY REQUIRE A WITNESS TO BE PRESENT.

(8) IF AN INSURER REQUIRES AN INDEPENDENT MEDICAL EXAMINATION TO VERIFY THE APPROPRIATENESS OF TREATMENT BY A TREATING HEALTH CARE PROVIDER, ALL OF THE FOLLOWING APPLY:

(A) THE EXAMINATION MAY BE ORDERED SOLELY IF THE TREATMENT EXTENDS BEYOND ESTABLISHED PROTOCOLS.

(B) THE PATIENT SHALL RECEIVE NOTICE OF THE FIRST INDEPENDENT MEDICAL EXAMINATION AT LEAST 5 BUSINESS DAYS IN ADVANCE OF THAT EXAMINATION.

(C) INDEPENDENT MEDICAL EXAMINATIONS THAT ARE SUBSEQUENT TO THE FIRST EXAMINATION MAY BE ORDERED AT REASONABLE INTERVALS, BUT SHALL NOT EXCEED 1 PER MONTH FOR A MAXIMUM OF 6 PER YEAR FOR EACH CONDITION BEING TREATED, ABSENT THE CONSENT OF THE PATIENT AND THE TREATING HEALTH CARE PROVIDER.

(D) IF THE EXERCISE OF A PATIENT'S RIGHT CONFERRED UNDER THIS SECTION IS PROHIBITED BY THE PERSON DESIGNATED TO PERFORM THE EXAMINATION, THE PATIENT IS NOT REQUIRED TO SUBMIT TO THE EXAMINATION, AND AN INSURER THAT DENIED OR WITHHELD BENEFITS PENDING THE EXAMINATION SHALL IMMEDIATELY PROVIDE THE BENEFITS.

(9) IF THE RESULTS OF AN INDEPENDENT MEDICAL EXAMINATION ESTABLISH THAT THE HEALTH CARE PROVIDED BY THE TREATING HEALTH CARE PROVIDER WAS APPROPRIATE, AND THE INSURER FAILS TO PAY FOR THAT HEALTH CARE WITHIN 30 DAYS AFTER THE EXAMINATION, THE INSURER SHALL PAY TO THE TREATING HEALTH CARE PROVIDER A SUM EQUIVALENT TO TWICE THE TREATING HEALTH CARE PROVIDER'S FEE PLUS 10% FOR THE HEALTH CARE DETERMINED APPROPRIATE. ANY FEES INCURRED BEFORE NOTIFICATION OF AN INDEPENDENT MEDICAL EXAMINATION OR NOTIFICATION OF THE TERMINATION OF BENEFITS SHALL BE PAID IN FULL BEFORE THE INDEPENDENT MEDICAL EXAMINATION. IF TREATMENT OR CARE IS TERMINATED OR DENIED DUE TO AN INDEPENDENT MEDICAL EXAMINATION AND SUBSEQUENTLY DETERMINED TO HAVE BEEN APPROPRIATE, THE INSURER SHALL PAY ALL FEES, INCLUDING ATTORNEY FEES, INCURRED BY THE INSURED AS A RESULT OF THE TERMINATION OR DENIAL.

(10) THE PERSON CONDUCTING AN INDEPENDENT MEDICAL EXAMINATION OR UTILIZATION REVIEW SHALL PROVIDE THE PATIENT, THE PATIENT'S TREATING HEALTH CARE PROVIDER, AND THE PERSON REQUESTING THE EXAMINATION OR REVIEW A COPY OF THE EXAMINATION RESULTS NOT MORE THAN 14 DAYS AFTER THE EXAMINATION OR REVIEW.