

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 1559

BY: JOHNSON (Rob), TYLER and
BOYD of the HOUSE

and

HOBSON of the SENATE

(INSURANCE - HOSPITAL AND MEDICAL SERVICES
UTILIZATION REVIEW ACT - PROHIBITING DISCLOSURE
OR PUBLICATION OF CERTAIN RECORDS -
EMERGENCY)

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

[INSURANCE - CREATING HOSPITAL AND MEDICAL SERVICES
UTILIZATION REVIEW ACT - CODIFICATION - EFFECTIVE
DATE -

EMERGENCY]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 6551 of Title 36, unless there
is created a duplication in numbering, reads as follows:

This act shall constitute a part of the Insurance Code and shall
be known and may be cited as the "Hospital and Medical Services
Utilization Review Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6552 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Hospital and Medical Services Utilization Review Act:

1. "Utilization review" means a system for prospectively, concurrently and retrospectively reviewing the appropriate and efficient allocation of hospital resources and medical services given or proposed to be given to a patient or group of patients. It does not include an insurer's normal claim review process to determine compliance with the specific terms and conditions of the insurance policy;

2. "Private review agent" means a person or entity who performs utilization review on behalf of:

- a. an employer in this state, or
- b. a third party that provides or administers hospital and medical benefits to citizens of this state, including, but not limited to:

- (1) a health maintenance organization issued a license pursuant to Section 2501 et seq. of Title 63 of the Oklahoma Statutes, unless the health maintenance organization is federally regulated and licensed and has on file with the Commissioner of Health a plan of utilization review carried out by health care professionals and providing for complaint and appellate procedures for claims,

- (2) a health insurer, not-for-profit hospital service or medical plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts or benefits in this state, or

(3) the State and Education Employees Group Insurance Plan;

3. "Utilization review plan" means a description of the utilization review procedures of a private review agent;

4. "Commissioner" means the Insurance Commissioner; and

5. "Certificate" means a certificate of registration granted by the Insurance Commissioner to a private review agent.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6553 of Title 36, unless there is created a duplication in numbering, reads as follows:

A private review agent who approves or denies payment or who recommends approval or denial of payment for hospital or medical services or whose review results in approval or denial of payment for hospital or medical services on a case-by-case basis shall not conduct utilization review in this state unless the Insurance Commissioner has granted the private review agent a certificate.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6554 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner shall waive the requirements of the Hospital and Medical Services Utilization Review Act for the activities of a private review agent in connection with a contract with the federal or state government for utilization review of patients eligible for hospital and medical services under the Social Security Act.

B. No certificate is required for those private review agents conducting general in-house utilization review for hospitals, home health agencies, preferred provider organizations, or other managed care entities, clinics, private offices or any other health facility or entity, so long as the review does not result in the approval or denial of payment for hospital or medical services for a particular case. Such general in-house utilization review shall be exempt from

all provisions of the Hospital and Medical Services Utilization Review Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6555 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may promulgate and adopt rules to implement the provisions of this section.

B. The Commissioner shall develop standardized forms for registration, performing and implementing certification requirements pursuant to the Hospital and Medical Services Utilization Review Act.

C. The Commissioner shall issue a certificate to an applicant that has met all the requirements of the Hospital and Medical Services Utilization Review Act and applicable rules.

D. The Commissioner may establish reporting requirements to:

1. Evaluate, based upon the information furnished pursuant to the provisions of this act, the effectiveness of private review agents; and

2. Determine if the utilization review programs are in compliance with the provisions of the Hospital and Medical Services Utilization Review Act and applicable rules.

E. Any information required by the Commissioner with respect to customers, patients or utilization review procedures of a private review agent shall be held in confidence and shall not be disclosed to the public. However, a patient or a person with financial responsibility for a patient's bill shall be entitled to information and documents relating to them and their claim.

F. A certificate issued pursuant to the Hospital and Medical Services Utilization Review Act is not transferable.

G. No individual conducting utilization review shall be required to be certified if such utilization review is performed

within the scope of such person's employment with an entity already certified pursuant to the Hospital and Medical Services Review Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6556 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every health insurance plan or every insurer, including, but not limited to, those entities set out in subparagraph b of paragraph 2 of Section 2 of this act, which proposes to issue or deliver in this state a health insurance policy or contract or administer a health benefits program which provides for the coverage of hospital and/or medical benefits and the utilization review of those benefits shall:

1. Be certified in accordance with the Hospital and Medical Services Utilization Review Act; or
2. Contract with a private review agent who is certified in accordance with the Hospital and Medical Services Utilization Review Act.

B. If a claim is made and the medical necessity of the provision of a covered benefit is disputed, a health service plan or insurer that has not made a good faith effort to meet, or does not meet the requirements of subsection A of this section shall pay any person or hospital entitled to reimbursement under the policy or contract.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6557 of Title 36, unless there is created a duplication in numbering, reads as follows:

- A. An applicant for a certificate shall:
1. Submit an application to an Insurance Commissioner; and
 2. Pay to the Commissioner an application fee in an amount of Four Hundred Dollars (\$400.00), which shall be sufficient to pay for the administrative cost of the certification program and any other

cost associated with carrying out the provisions of the Hospital and Medical Services Utilization Review Act.

B. The application shall:

1. Be on a form approved by the Commissioner and accompanied by any supporting documentation that the Commissioner requires; and
2. Be signed and verified by the applicant.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6558 of Title 36, unless there is created a duplication in numbering, reads as follows:

In conjunction with an application, the private review agent shall submit information that the Insurance Commissioner requires, including, but not limited to:

1. A utilization review plan that includes:

- a. an adequate summary description of review standards, protocol and procedures to be used in evaluating proposed or delivered hospital and medical care,
- b. assurances that the standards and criteria to be applied in review determinations are established with input from health care providers representing major areas of specialty and certified by the boards of the various American medical specialties. The entity shall provide the Commissioner with a list of such representatives and their major areas of specialty upon request, and
- c. the provisions by which patients, health care providers or hospitals may seek reconsideration or appeal of adverse decisions by the private review agent;

2. The type and qualifications of the personnel either employed or under contract to perform the utilization review;

3. The procedures and policies to ensure that a representative of the private review agent is reasonably accessible, if domiciled

in this state, to patients, hospitals and health care providers five (5) days a week during normal business hours, such procedures and policies to include as a requirement a toll-free telephone number to be available during said business hours; provided, in the alternative, the out-of-state private review agent shall be available or make staff available by toll-free telephone for at least forty (40) hours per week during normal business hours and shall have a telephone system which is capable of accepting or recording incoming telephone calls during other than normal hours, and shall respond to such calls within two (2) working days;

4. The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;

5. The policies and procedures to verify the identity and authority of personnel performing utilization review by telephone;

6. A copy of the materials designed to inform applicable patients, hospitals and health care providers of the requirements of the utilization review plan;

7. A list of the third party payors for which the private review agent is performing utilization review in this state. Said list may be deemed confidential by the Commissioner for the purpose of protecting competition between agents;

8. The procedures for receiving and handling complaints by patients, hospitals and health care providers concerning utilization review; and

9. Procedures to ensure that after a claim or any part of a claim has been rejected and in the event a copy of the report on said claim or part of said claim is requested, a copy of the report of a private review agent concerning the claim shall be mailed by the insurer, postage prepaid, to the ill or injured person, the treating health care provider, hospital or to the person financially

responsible for the patient's bill within five (5) business days after receipt of the request for the report.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6559 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A certificate expires on the second anniversary of its effective date unless the certificate is renewed for a two-year term as provided in this section.

B. Before the certificate expires, a certificate may be renewed for an additional two-year term, if the applicant:

1. Otherwise is entitled to the certificate;
2. Pays the Insurance Commissioner a renewal fee in the amount of Four Hundred Dollars (\$400.00);

3. Submits to the Commissioner:

- a. a renewal application on the form that the Commissioner requires, and
- b. satisfactory evidence of compliance with any requirement for certificate renewal;

4. Establishes and maintains a complaint system which has been approved by the Commissioner and which provides reasonable procedures for the resolution of written complaints concerning utilization review; and

5. Maintains records of written complaints for five (5) years from the time the complaints are filed and submits to the Commissioner a summary report at such times and in such format as the Commissioner may require.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6560 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may refuse to issue or renew or may suspend or revoke a certificate if the holder does not comply with performance assurances under this section, violates any

provision of the Hospital and Medical Services Utilization Review Act, or violates any rule adopted pursuant thereto.

B. The Commissioner shall deny or refuse to renew a certificate to any applicant if, upon review of the application, the Commissioner finds that the applicant proposing to conduct utilization review does not:

1. Have available the services of a sufficient number of qualified medical professionals supervised by appropriate health care providers to carry out the applicant's utilization review activities. Said sufficiency shall be based on standards and criteria pursuant to the provisions of subparagraph b of paragraph 1 of Section 8 of this act;

2. Meet any applicable rules the Commissioner adopted pursuant to the Hospital and Medical Services Utilization Review Act relating to the qualifications of private review agents or the performance of utilization review; and

3. Provide assurances satisfactory to the Commissioner that:

- a. the procedure and policies of the private review agent shall protect the confidentiality of medical records, and
- b. the review agent shall be reasonably accessible in this state to patients, hospitals and health care providers as required by this act.

C. Before denying, not renewing, or revoking a certificate, the Commissioner shall provide the applicant or certificate holder with reasonable time to supply additional information demonstrating compliance with the requirements of the Hospital and Medical Services Utilization Review Act and the opportunity to request a hearing. If an applicant or certificate holder requests a hearing, the Commissioner shall send a hearing notice and conduct a hearing in accordance with the Administrative Procedures Act.

D. Any person aggrieved by a final decision of the Commissioner in a contested case may appeal the decision as provided for in the Administrative Procedures Act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6561 of Title 36, unless there is created a duplication in numbering, reads as follows:

A private review agent shall not disclose or publish individual medical records or any other confidential medical information obtained in the performance of utilization review activities without the appropriate procedures for protecting the patient's confidentiality. Provided, however, that nothing in the Hospital and Medical Services Utilization Review Act shall prohibit a private review agent from providing patient information to a third party with whom the private review agent is affiliated, under contract, or for whom the agent is acting.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6562 of Title 36, unless there is created a duplication in numbering, reads as follows:

Nothing in the Hospital and Medical Services Utilization Review Act shall be deemed to reduce or expand the liability of any person or entity for any actions or activities with respect to utilization review.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6563 of Title 36, unless there is created a duplication in numbering, reads as follows:

Any person or entity examined pursuant to the provisions of this act shall pay the proper charges incurred for such examination, including the actual expenses of the Insurance Commissioner or the expenses and compensation of his authorized representative and the expenses and compensation of assistants and examiners employed therein.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6564 of Title 36, unless there is created a duplication in numbering, reads as follows:

For any violation of the provisions of the Hospital and Medical Services Utilization Review Act or any rule adopted pursuant thereto, the Insurance Commissioner may, upon notice and hearing, subject a person or entity to a civil fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each occurrence.

SECTION 15. This act shall become effective November 1, 1991.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the Senate the 9th day of April, 1991.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1991.

Speaker of the House of Representatives