

By: Representative Hogue

"AN ACT TO REQUIRE CERTAIN PERSONS OR ENTITIES TO OBTAIN A CERTIFICATE FROM THE STATE BOARD OF HEALTH BEFORE CONDUCTING UTILIZATION REVIEW; DEFINING CERTAIN TERMS; ESTABLISHING CERTAIN APPLICATION PROCEDURES AND STANDARDS FOR ADMINISTRATIVE REVIEW; PROVIDING FOR JUDICIAL APPEAL OF CERTAIN FINAL DECISIONS OF THE STATE BOARD OF HEALTH; AUTHORIZING THE ASSESSMENT OF CERTAIN APPLICATION AND RENEWAL FEES; AUTHORIZING THE ADOPTION OF REGULATIONS; AUTHORIZING THE REVOCATION OF A CERTIFICATE UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR CERTAIN CRIMINAL PENALTIES FOR VIOLATION OF THIS ACT; PROVIDING FOR THE RESOLUTION OF CERTAIN DISPUTES INVOLVING THE MEDICAL NECESSITY OF CERTAIN CLAIMS TO BE RESOLVED IN A CERTAIN MANNER; AND GENERALLY RELATING TO PRIVATE REVIEW AGENTS PERFORMING UTILIZATION REVIEW; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Definitions.

A. "Utilization review" means a system for review 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.

B. "Private review agent" means a nonhospital-affiliated person or entity performing utilization review on behalf of:

(1) An employer of employees in the state of Arkansas; or

(2) A third party that provides or administers hospital and medical benefits to citizens of this state, including:

a. A health maintenance organization issued a certificate of authority under and by virtue of the laws of the state of Arkansas.

b. A health insurer, nonprofit health service plan, health insurance service organization, or preferred provider organization or other entity offering health insurance policies, contracts or benefits in this state.

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

D. "Board" means the State Board of Health.

E. "Certificate" means a certificate of registration granted by the State Board of Health to a private review agent.

SECTION 2. Purpose of this act. The purpose of this act is to:

A. Promote the delivery of quality health care in a cost effective manner;

B. Foster greater coordination between payors and providers conducting utilization review activities;

C. Protect patients, business and providers by insuring that private review agents are qualified to perform utilization activities and to make informed decisions on the appropriateness of medical care; and

D. Ensure that private review agents maintain the confidentiality of medical records.

SECTION 3. Certificate Required for Utilization Review.

A. 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, may not conduct utilization review in this state unless the Arkansas Board of Health has granted the private review agent a certificate.

B. The Arkansas State Board of Health shall issue a certificate to an applicant that has met all the requirements of this subtitle and all applicable regulations of the State Board of Health.

C. A certificate issued under this subtitle is not transferrable.

D. The State Board of Health in accordance with the Administrative Procedure Act, shall adopt regulations to implement the provisions of this subtitle. Regulations governing utilization review plans under this act shall impose no greater requirements than those required for utilization review activities for state certified health maintenance organizations under the laws of this state, as amended from time to time. Any information required by the board with respect to customers, patients or utilization review procedures of a private review agent shall be held in confidence and not disclosed to the public.

SECTION 4. Exemptions.

A. 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 is completely exempt from the provisions of this act.

B. No certificate is required for utilization review by any Arkansas licensed pharmacist or pharmacy, organizations of either, while engaged in the practice of pharmacy, including but not limited to dispensing of drugs, participation in drug utilization reviews and monitoring patient drug therapy.

SECTION 5. Procedure for Certification.

A. An applicant for a certificate shall:

- (1) Submit an application to the board; and
- (2) Pay to the board the application fee established by the board

through regulation.

B. The application shall:

- (1) Be on a form and accompanied by any supporting documentation that the board requires; and
- (2) Be signed and verified by the applicant.

C. The application fee required under this subsection shall be sufficient to pay for the administrative cost of the certification program and any other cost associated with carrying out the provisions of this subtitle.

SECTION 6. Information required for application.

A. In conjunction with the application, the private review agent shall submit information that the board requires including:

- (1) A utilization review plan that includes:
 - a. A description of review standards and procedures to be used in evaluating proposed or delivered hospital and medical care;
 - b. The provisions by which patients, physicians 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 insure that a representative of the private review agent is reasonably accessible to patients and providers five days a week during normal business hours in this state;

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

(5) A copy of the materials designed to inform applicable patients and providers of the requirements of the utilization review plan; and

(6) A list of the third party payors for which the private review agent is performing utilization review in this state.

SECTION 7. Expiration and Renewal of Certificate.

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 board the renewal fee set by the board through regulation;

and

(3) Submits to the board:

a. A renewal application on the form that the board requires; and

b. Satisfactory evidence of compliance with any requirement of this subtitle for certificate renewal.

SECTION 8. Denial of Certificate.

A. The board shall deny a certificate to any applicant if, upon review of the application, the board finds that the applicant proposing to conduct utilization review does not:

(1) Have available the services of sufficient number of qualified medical professionals supported and supervised by appropriate physicians to carry out its utilization review activities;

(2) Meet any applicable regulations the board adopted under this subtitle relating to the qualifications of private review agents or the performance of utilization review; and

(3) Provide assurances satisfactory to the board that:

a. The procedure and policies of the private review agent will protect the confidentiality of medical records; and

b. The private review agent will be reasonably accessible to patients and providers for five working days a week during normal business hours in this state.

B. The board may revoke or deny a certificate if the holder does not comply with performance assurances under this section, violates any provision of this act, or violates any regulation adopted pursuant to this act.

C. Before denying or revoking a certificate under this section, the board shall provide the applicant or certificate holder with reasonable time to supply additional information demonstrating compliance with the requirements of this subtitle and the opportunity to request a hearing. If an applicant or certificate holder requests a hearing, the board shall send a hearing notice and conduct a hearing in accordance with the Arkansas Administrative Procedure Act.

SECTION 9. Waiver of Certificate. The board may waive the requirements of this act for the activities of a private review agent in connection with a

contract with the federal government for utilization review of patients eligible for hospital and medical services under the Social Security Act.

SECTION 10. Reporting Requirements. The board may establish reporting requirements to:

- A. Evaluate the effectiveness of private review agents; and
- B. Determine if the utilization review programs are in compliance with the provisions of this section and applicable regulations.

SECTION 11. Confidentiality. A private review agent may 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 this act shall prohibit private review agents from providing patient information to a third party with whom the private review agent is affiliated, under contract or acting on behalf of.

SECTION 12. Penalty for Violation. A person who violates any provision of this act or any regulation adopted under this act is guilty of a misdemeanor and on conviction is subject to a penalty not exceeding one thousand dollars (\$1,000). Each day a violation is continued after the first conviction is a separate offense.

SECTION 13. Appeal by Aggrieved Party. Any person aggrieved by a final decision of the board in a contested case under this act may take a direct judicial appeal as provided for in the Arkansas Administrative Procedure Act.

SECTION 14. Health Insurance Plan.

A. Every health insurance plan proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of those benefits shall:

- (1) Have a certificate in accordance with this act; or
- (2) Contract with a private review agent who has a certificate in accordance with this act.

B. Notwithstanding any other provisions of this article, for claims where the medical necessity of the provision of a covered benefit is disputed, a health service plan that 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 15. Insurer Issuing Health Insurance Policy.

A. Every insurer proposing to issue or deliver a health insurance policy or contract or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

- (1) Have a certificate in accordance with this act; or
- (2) Contract with a private review agent that has a certificate in accordance with this act.

B. Notwithstanding any provision of this act, for claims where the medical necessity of the provision of a covered benefit is disputed, an insurer that 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 16. Group or Blanket Health Insurance Policy.

A. Any health insurer proposing to issue or deliver in this state a group or blanket health insurance policy or administer a health benefit program which provides for the coverage of hospital and medical benefits and the utilization review of such benefits shall:

(1) Have a certificate in accordance with this act; or

(2) Contract with a private review agent that has a certificate in accordance with this act.

B. Notwithstanding any provision of this article, for claims where the medical necessity of the provision of a covered benefit is disputed, a health insurer that 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 17. Nothing in this 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 18. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 19. The effective date of this act shall be January 1, 1990.

APPROVED: March 14, 1989
