INSURANCE CODE

TITLE 14. UTILIZATION REVIEW AND INDEPENDENT REVIEW

CHAPTER 4202. INDEPENDENT REVIEW ORGANIZATIONS

Sec. 4202.001. DEFINITION. In this chapter, "payor" has the meaning assigned by Section 4201.002.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.002. ADOPTION OF STANDARDS FOR INDEPENDENT REVIEW ORGANIZATIONS. (a) The commissioner shall adopt standards and rules for:

(1) the certification, selection, and operation of independent review organizations to perform independent review described by Subchapter I, Chapter 4201; and

(2) the suspension and revocation of the certification.

(b) The standards adopted under this section must ensure:

(1) the timely response of an independent review organization selected under this chapter;

(2) the confidentiality of medical records transmitted to an independent review organization for use in conducting an independent review;

(3) the qualifications and independence of each physician or other health care provider making a review determination for an independent review organization;

(4) the fairness of the procedures used by an independent review organization in making review determinations; and

(5) the timely notice to an enrollee of the results of an independent review, including the clinical basis for the review determination.

(c) In addition to the standards described by Subsection (b), the commissioner shall adopt standards and rules that:

(1) prohibit:

(A) more than one independent review organization from operating out of the same office or other

facility;

(B) an individual or entity from owning more than one independent review organization;

(C) an individual from owning stock in or serving on the board of more than one independent review organization;

(D) an individual who has served on the board of an independent review organization whose certification was revoked for cause from serving on the board of another independent review organization before the fifth anniversary of the date on which the revocation occurred;

(E) an individual who serves as an officer, director, manager, executive, or supervisor of an independent review organization from serving as an officer, director, manager, executive, supervisor, employee, agent, or independent contractor of another independent review organization; and

(F) an independent review organization from:

(i) publicly disclosing patient information protected by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.); or

(ii) transmitting the information to a subcontractor involved in the independent review process that has not signed an agreement similar to the business associate agreement required by regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.); and

(2) require:

(A) an independent review organization to:

(i) maintain a physical address and a mailing address in this state;

(ii) be incorporated in this state;

(iii) be in good standing with the comptroller; and

(iv) be based and certified in this state and to locate the organization's primary offices in this state;

(B) an independent review organization to surrender the organization's certification as part of an agreed order; and

(C) an independent review organization to:

(i) notify the department of an agreement to sell the organization or shares in the organization;

(ii) not later than the 60th day before the date of the sale, submit the name of the purchaser and a complete and legible set of fingerprints for each officer of the purchaser and for each owner or shareholder of the purchaser or, if the purchaser is publicly held, each owner or shareholder described by Section 4202.004(a)(1), and any additional information necessary to comply with Section 4202.004(d); and

(iii) complete the transfer of ownership after the department has sent written confirmation in accordance with Subsection (d) that the requirements of this chapter have been satisfied.

(d) The department shall send the written confirmation required by Subsection (c)(2)(C)(iii) not later than the expiration of the fourth week after the date the department determines the requirements are satisfied.

(e) Standards to ensure the confidentiality of medical records transmitted to an independent review organization under Subsection (b)(2) must require organizations and utilization review agents to transmit and store records in compliance with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the regulations and standards adopted under that Act.

(f) The commissioner shall adopt standards requiring that:

(1) on application for certification, an officer of the organization attest that the office is located at a physical address;

(2) the office be equipped with a computer system capable of:

(A) processing requests for independent review; and

(B) accessing all electronic records related to the review and the independent review process;

(3) all records be maintained electronically and made available to the department on request; and

(4) in the case of an office located in a residence, the working office be located in a room set aside for independent review business purposes and in a manner to ensure confidentiality in accordance with Subsection (e).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1332 (H.B. 4519), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 1, eff. September 1, 2013.

Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF DETERMINATION. The standards adopted under Section 4202.002 must require each independent review organization to make the organization's determination:

(1) for a life-threatening condition as defined by Section 4201.002, the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy, or a review of a step therapy protocol exception request under Section 1369.0546, not later than the earlier of the third day after the date the organization receives the information necessary to make the determination or, with respect to:

(A) a review of a health care service provided to a person with a life-threatening condition eligible for workers' compensation medical benefits, the eighth day after the date the organization receives the request that the determination be made; or

(B) a review of a health care service other than a service described by Paragraph (A), the third day after the date the organization receives the request that the determination be made; or

(2) for a situation other than a situation described by Subdivision (1), not later than the earlier of:

(A) the 15th day after the date the organization receives the information necessary to make the determination; or

(B) the 20th day after the date the organization receives the request that the determination be made.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 8, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 103 (S.B. 680), Sec. 4, eff. September 1, 2017.

Sec. 4202.004. CERTIFICATION. (a) To be certified as an independent review organization under this chapter, an organization must submit to the commissioner an application in the form required by the commissioner. The application must include:

(1) for an applicant that is publicly held, the name of each shareholder or owner of more than five percent of any of the applicant's stock or options;

(2) the name of any holder of the applicant's bonds or notes that exceed $100,000;

(3) the name and type of business of each corporation or other organization described by Subdivision (4) that the applicant controls or is affiliated with and the nature and extent of the control or affiliation;

(4) the name and a biographical sketch of each director, officer, and executive of the applicant and of any entity listed under Subdivision (3) and a description of any relationship the applicant or the named individual has with:

(A) a health benefit plan;

(B) a health maintenance organization;

(C) an insurer;

(D) a utilization review agent;

(E) a nonprofit health corporation;

(F) a payor;

(G) a health care provider;

(H) a group representing any of the entities

described by Paragraphs (A) through (G); or

(I) any other independent review organization in the state;

(5) the percentage of the applicant's revenues that are anticipated to be derived from independent reviews conducted under Subchapter I, Chapter 4201;

(6) a description of:

(A) the areas of expertise of the physicians or other health care providers making review determinations for the applicant;

(B) the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used; and

(C) the software used by the credentialing manager for managing the processes, databases, and records described by Paragraph (B);

(7) the procedures to be used by the applicant in making independent review determinations under Subchapter I, Chapter 4201; and

(8) a description of the applicant's use of communications, records, and computer processes to manage the independent review process.

(b) The commissioner shall establish certifications for independent review of health care services provided to persons eligible for workers' compensation medical benefits and other health care services after considering accreditation, if any, by a nationally recognized accrediting organization that imposes requirements for accreditation that are the same as, substantially similar to, or more stringent than the department's requirements for accreditation.

(c) The department shall make available to applicants applications for certification to review health care services provided to persons eligible for workers' compensation medical benefits and other health care services.

(d) The commissioner shall require that each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by

Subsection (a)(1) submit a complete and legible set of fingerprints to the department for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The department shall conduct a criminal history check of each applicant using information:

(1) provided under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(e) An application for certification for review of health care services must require an organization that is accredited by an organization described by Subsection (b) to provide the department evidence of the accreditation. The commissioner shall consider the evidence if the accrediting organization published and made available to the commissioner the organization's requirements for and methods used in the accreditation process. An independent review organization that is accredited by an organization described by Subsection (b) may request that the department expedite the application process.

(f) A certified independent review organization that becomes accredited by an organization described by Subsection (b) may provide evidence of that accreditation to the department that shall be maintained in the department's file related to the independent review organization's certification.

(g) Certification must be renewed biennially.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 3, eff. September 1, 2013.

Sec. 4202.005. PERIODIC REPORTING OF INFORMATION; BIENNIAL DESIGNATION; UPDATES AND INSPECTION. (a) An independent review organization shall biennially submit the information required in an application for certification under Section 4202.004. Anytime there is a material change in the information the organization included in the application, the organization shall submit updated

information to the commissioner.

(b) The commissioner shall designate biennially each organization that meets the standards for an independent review organization adopted under Section 4202.002.

(c) Information regarding a material change must be submitted on a form adopted by the commissioner not later than the 30th day after the date the material change occurs. If the material change is a relocation of the organization:

(1) the organization must inform the department that the location is available for inspection before the date of the relocation by the department; and

(2) on request of the department, an officer shall attend the inspection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 4, eff. September 1, 2013.

Sec. 4202.006. PAYORS FEES. The commissioner shall charge payors fees in accordance with this chapter as necessary to fund the operations of independent review organizations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.007. OVERSIGHT. The commissioner shall provide ongoing oversight of the independent review organizations to ensure continued compliance with this chapter and the standards and rules adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.008. PROHIBITED OWNERSHIP OR CONTROL OF INDEPENDENT REVIEW ORGANIZATION. An independent review organization may not be a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.009. CONFIDENTIAL INFORMATION. Information that reveals the identity of a physician or other individual health care provider who makes a review determination for an independent review organization is confidential.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.010. IMMUNITY FROM LIABILITY. (a) An independent review organization conducting an independent review under Subchapter I, Chapter 4201, is not liable for damages arising from the review determination made by the organization.

(b) This section does not apply to an act or omission of the independent review organization that is made in bad faith or that involves gross negligence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.012. REFERRAL. The commissioner by rule shall require referral by random assignment of adverse determinations under Subchapter I, Chapter 4201, to independent review organizations. On referral of a determination, the commissioner shall notify:

(1) the utilization review agent;

(2) the payor;

(3) the independent review organization;

(4) the patient, as defined by Section 4201.002, or the patient's representative; and

(5) the provider of record as defined by Section 4201.002.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 5, eff. September 1, 2013.

Sec. 4202.013. PRIMARY OFFICE IN THIS STATE REQUIRED. An independent review organization operating under this chapter must

maintain the organization's primary office in this state.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 5, eff. September 1, 2013.

Sec. 4202.014. PREEMPTION. The commissioner shall suspend enforcement of any provision of this chapter that the commissioner determines to be preempted by 42 U.S.C. Section 300gg-19.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 5, eff. September 1, 2013.