
By: **Delegate Donoghue**

Introduced and read first time: February 18, 1999

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Utilization Review - Qualifications of Physicians Making Adverse Decisions**

3 FOR the purpose of requiring, for purposes of utilization review of services related to
4 the treatment of alcoholism, drug abuse, or mental illness and for purposes of
5 utilization review generally, that all adverse decisions be made by a physician
6 who is board certified or eligible in the same specialty as the treatment under
7 review under certain circumstances; requiring that the final determination of
8 the appeal of certain adverse decisions be made based on the professional
9 judgment of a physician, or a certain panel that includes a physician, who is
10 board certified or eligible in the same specialty as the treatment under review
11 under certain circumstances; and generally relating to the qualifications of
12 physicians who perform utilization review of health care services.

13 BY repealing and reenacting, with amendments,
14 Article - Insurance
15 Section 15-10B-06 and 15-10B-07
16 Annotated Code of Maryland
17 (1997 Volume and 1998 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Insurance**

21 15-10B-06.

22 (a) In this section, "utilization review" means a system for reviewing the
23 appropriate and efficient allocation of health care resources and services given or
24 proposed to be given to a patient or group of patients by a health care provider,
25 including a hospital or an intermediate care facility described under § 8-403(e) of the
26 Health - General Article.

27 (b) In addition to any other requirements under this subtitle, a private review
28 agent performing utilization review of services related to the treatment of alcoholism,
29 drug abuse, or mental illness shall meet the requirements of this section.

1 (c) All adverse decisions shall be made by a physician WHO IS BOARD
2 CERTIFIED OR ELIGIBLE IN THE SAME SPECIALTY AS THE TREATMENT UNDER
3 REVIEW, or a panel of other appropriate health care providers with at least 1
4 physician, selected by the private review agent who is:

5 (1) (i) board certified or eligible in the same specialty as the treatment
6 under review; or

7 (ii) actively practicing, or has demonstrated expertise, in the
8 alcohol, drug abuse, or mental health service or treatment under review; and

9 (2) not compensated by the private review agent in a manner that
10 provides a financial incentive directly or indirectly to deny or reduce coverage.

11 (d) If a course of treatment has been preauthorized or approved for a patient,
12 a private review agent may not revise or modify the specific criteria or standards used
13 for the utilization review to make an adverse decision regarding the services delivered
14 to that patient.

15 (e) (1) In the event a patient or health care provider, including a physician,
16 intermediate care facility described under § 8-403(e) of the Health - General Article,
17 or hospital seeks reconsideration or appeal of an adverse decision by a private review
18 agent, the final determination of the appeal of the adverse decision shall be made
19 based on the professional judgment of a physician WHO IS BOARD CERTIFIED OR
20 ELIGIBLE IN THE SAME SPECIALTY AS THE TREATMENT UNDER REVIEW, or a panel of
21 other appropriate health care providers with at least 1 physician, selected by the
22 private review agent who is:

23 (i) 1. board certified or eligible in the same specialty as the
24 treatment under review; or

25 2. actively practicing or has demonstrated expertise in the
26 alcohol, drug abuse, or mental health service or treatment under review; and

27 (ii) not compensated by the private review agent in a manner that
28 provides a financial incentive directly or indirectly to deny or reduce coverage.

29 (2) In the event a patient or health care provider, including a physician,
30 intermediate care facility described under § 8-403(e) of the Health - General Article,
31 or hospital seeks reconsideration or appeal of an adverse decision by a private review
32 agent, the final determination of the appeal of the adverse decision shall be stated in
33 writing and shall reference the specific criteria and standards, including interpretive
34 guidelines, upon which the denial or reduction in coverage is based.

35 (f) A private review agent may not charge a fee to a patient or health care
36 provider for an appeal of an adverse decision.

37 (g) (1) A private review agent that requires a health care provider to submit
38 a treatment plan in order for the private review agent to conduct utilization review of

1 proposed or delivered services for the treatment of a mental illness, emotional
2 disorder, or a drug abuse or alcohol abuse disorder:

3 (i) shall accept the uniform treatment plan form adopted by the
4 Commissioner under § 15-10B-03(d) of this subtitle as a properly submitted
5 treatment plan form; and

6 (ii) may not impose any requirement to:

7 1. modify the uniform treatment plan form or its content; or

8 2. submit additional treatment plan forms.

9 (2) A uniform treatment plan form submitted under the provisions of
10 this subsection:

11 (i) shall be properly completed by the health care provider; and

12 (ii) may be submitted by electronic transfer.

13 15-10B-07.

14 (a) Except as specifically provided in § 15-10B-06 of this subtitle:

15 (1) except as provided in paragraph (2) of this subsection, all adverse
16 decisions shall be made by a physician WHO IS BOARD CERTIFIED OR ELIGIBLE IN
17 THE SAME SPECIALTY AS THE TREATMENT UNDER REVIEW, or a panel of other
18 appropriate health care providers with at least 1 physician WHO IS BOARD CERTIFIED
19 OR ELIGIBLE IN THE SAME SPECIALTY AS THE TREATMENT UNDER REVIEW on the
20 panel.

21 (2) when the health care service under review is a dental service, the
22 adverse decision shall be made by a licensed dentist or a panel of other appropriate
23 health care providers with at least 1 licensed dentist on the panel.

24 (3) in the event a patient or health care provider, including a physician,
25 intermediate care facility described in § 8-403(e) of the Health - General Article, or
26 hospital seeks reconsideration or appeal of an adverse decision by a private review
27 agent, the final determination of the appeal of the adverse decision shall be made
28 based on the professional judgment of:

29 (i) a physician WHO IS BOARD CERTIFIED OR ELIGIBLE IN THE
30 SAME SPECIALTY AS THE TREATMENT UNDER REVIEW, or a panel of other
31 appropriate health care providers with at least 1 physician on the panel who is board
32 certified or eligible in the same speciality as the treatment under review; or

33 (ii) when the adverse decision involves a dental service, a licensed
34 dentist, or a panel of appropriate health care providers with at least 1 dentist on the
35 panel who is a licensed dentist, who shall consult with a dentist who is board certified
36 or eligible in the same speciality as the service under review.

1 (4) in the event a patient or health care provider, including a physician,
2 intermediate care facility described in § 8-403(e) of the Health - General Article, or
3 hospital seeks reconsideration or appeal of an adverse decision by a private review
4 agent, the final determination of the appeal of the adverse decision shall:

5 (i) be stated in writing and provide an explanation of the reason for
6 the adverse decision; and

7 (ii) reference the specific criteria and standards, including
8 interpretive guidelines, upon which the adverse decision is based.

9 (b) A private review agent may not charge a fee to a patient or health care
10 provider for an appeal of an adverse decision.

11 (c) (1) Except as provided in paragraph (2) of this subsection, if a course of
12 treatment has been preauthorized or approved for a patient, a private review agent
13 may not retrospectively render an adverse decision regarding the preauthorized or
14 approved services delivered to that patient.

15 (2) A private review agent may retrospectively render an adverse
16 decision regarding preauthorized or approved services delivered to a patient if:

17 (i) the patient, on the date the services were rendered, was not
18 insured by or an enrollee, subscriber, or member of the entity that the private review
19 agent is affiliated with, under contract with, or acting on behalf of;

20 (ii) the information submitted to the private review agent
21 regarding the services to be delivered to the patient was fraudulent or intentionally
22 misrepresentative or critical information requested by the private review agent
23 regarding services to be delivered to the patient was omitted such that the private
24 review agent's determination would have been different had it known the critical
25 information;

26 (iii) except for determinations of appropriateness or medical
27 necessity of the covered services that were preauthorized, the services would not be
28 covered in whole or in part under the policy or contract; or

29 (iv) the planned course of treatment for the patient that was
30 approved by the private review agent was not substantially followed by the provider.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 1999.