

LEGISLATIVE BILL 428

Approved by the Governor April 15, 1992

Introduced by Kristensen, 37; Lindsay, 9; Rasmussen, 20

AN ACT relating to health care services; to adopt the Utilization Review Certification Act; and to provide severability.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 15 of this act shall be known and may be cited as the Utilization Review Certification Act.

Sec. 2. The purpose of the Utilization Review Certification Act is to establish requirements and standards of operation for certification of medical utilization review agents. It is proper for the state to oversee utilization review agents as a part of the state's regulation and supervision of the business of insurance and to encourage effective, efficient, and consistent utilization review.

Sec. 3. For purposes of the Utilization Review Certification Act, the definitions found in sections 4 to 8 of this act shall be used.

Sec. 4. Director shall mean the Director of Insurance.

Sec. 5. Enrollee shall mean an individual who has contracted for or who participates in coverage under an insurance policy, a sickness and accident insurance plan, an employee benefit plan, a hospital or medical services plan contract, a health maintenance organization plan, a limited health service organization plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for an individual or his or her eligible dependents.

Sec. 6. Significant beneficial interest shall mean the ownership of any financial interest that is greater than the lesser of (1) five percent of the whole or (2) five thousand dollars.

Sec. 7. Utilization review shall mean a system for prospective and concurrent review of the necessity and appropriateness of the allocation of health care resources and services given or proposed to be given to an enrollee within this state upon an inpatient admission to a hospital and other inpatient facilities as well as to outpatient admission to surgical facilities. Utilization review shall not

include elective requests for clarification of coverage.

Sec. 8. Utilization review agent shall mean any person, company, organization, or other entity performing utilization review. The following shall not be considered utilization review agents:

- (1) An agency of the federal government;
- (2) An agent acting on behalf of the federal government or the State of Nebraska but only to the extent that the agent is providing services to the federal government or the State of Nebraska;
- (3) Any agency of the State of Nebraska;
- (4) Internal quality assurance programs conducted by hospitals, home health agencies, preferred provider organizations, health maintenance organizations, other managed care entities, clinics, or private offices for purposes other than for allowing, denying, or making a recommendation on allowing or denying an enrollee's claim for payment;
- (5) Nebraska licensed pharmacists, pharmacies, or organizations thereof while engaged in the practice of pharmacy, including the dispensing of drugs, participating in drug utilization reviews, and monitoring of patient drug therapy;
- (6) Any person performing utilization review of workers' compensation benefits but only to the extent that the person is providing utilization review of workers' compensation benefits;
- (7) Any individual or group employed or used by a utilization review agent certified under the Utilization Review Certification Act when performing utilization review for or on behalf of such agent, including nurses and physicians; and
- (8) An employee benefit plan or any person on behalf of an employee benefit plan to the extent that the activities of such plan or person are exempt from state regulation of the business of insurance pursuant to the federal Employee Retirement Income Security Act of 1974, as amended.

Sec. 9. On or after July 1, 1993, a utilization review agent may not conduct utilization review upon an enrollee in this state unless the agent is granted a certificate by the director. Certificates granted under the Utilization Review Certification Act shall be valid for two years from the date of issuance.

Sec. 10. (1) An applicant for a certificate as a utilization review agent shall submit an application to the Department of Insurance upon a form which may be obtained from the department. The application shall be signed and verified by the

applicant.

Along with the application, the applicant shall pay the application fee of three hundred dollars.

(2) As a part of the application, the applicant shall submit the following:

(a) Documentation that the applicant has received approval or accreditation by the Utilization Review Accreditation Commission, Inc., or a similar organization which has standards for utilization review agents that are substantially similar to the standards of the Utilization Review Accreditation Commission, Inc., and which has been approved by the director;

(b) A statement of the street and mailing address of the entity, telephone number of the entity, and a list of the principal officers of the entity responsible for its operation, management, and control; and

(c) Such other reasonable information or documentation as the department requires for enforcement of the Utilization Review Certification Act.

Sec. 11. The director shall grant or deny a certificate within forty-five days of receipt of a completed application under section 10 of this act. The director shall deny a certificate if the applicant does not meet the requirements of the Utilization Review Certification Act. If a certificate is denied, the director shall notify the applicant by certified mail and shall specify the reasons for denial in the notice. The applicant shall have ten days from the date of receipt of the notice to request a hearing before the director pursuant to the Administrative Procedure Act, or he or she may reapply and respond to the reasons for the denial.

Sec. 12. (1) Utilization review agents operating in this state shall comply with the following provisions:

(a) A utilization review agent, employees of a utilization review agent, or persons acting on behalf of a utilization review agent may not refer a patient who has undergone utilization review by that utilization review agent, employee, or person to:

(i) A health care facility or other provider in which the utilization review agent owns a significant beneficial interest; or

(ii) The utilization review agent's own health care practice;

(b) A utilization review agent, employees of a utilization review agent, or persons acting on behalf of a utilization review agent shall not accept or agree to

accept any sum from any person for bringing or referring a patient to a health care provider;

(c) A utilization review agent shall not compensate employees or persons acting on behalf of the utilization review agent based directly on the number of denials of claims;

(d) A utilization review agent shall allow a minimum of twenty-four hours following an emergency admission, service, or procedure for an enrollee or his or her representative to notify the utilization review agent and request certification or continuing treatment for the condition;

(e) An enrollee or an attending physician on behalf of an enrollee may request an appeal of a decision not to approve or certify for clinical reasons. For such appeal, an enrollee or attending physician on behalf of an enrollee shall, upon request, have timely access to the clinical basis for the decision, including any criteria, standards, or clinical indicators used as a basis for such recommendation or decision;

(f) During a final appeal of a decision not to certify or approve for clinical reasons, a utilization review agent shall assure that a physician is reasonably available to review the case, except that if the health care services were provided or authorized by a provider other than a physician, such appeal may be reviewed by a nonphysician provider whose scope of practice includes the treatment or services. Hospitals, health care providers, or representatives of the enrollee may assist in an appeal; and

(g) A utilization review agent shall comply with the standards adopted by the organization that has granted the agent approval or accreditation and upon which the certificate was granted by the director, whether or not action is taken by such organization to enforce the standards.

(2) Subdivisions (1)(a) and (b) of this section shall not apply to a utilization review agent, employees of the utilization review agent, or other persons acting on behalf of such utilization review agent who refer a patient to:

(a) The health care provider or facility that participates in a health maintenance organization in which the patient is enrolled; or

(b) A preferred provider network of participating health care providers or facilities to which the patient would otherwise be referred as part of the patient's insurance contract or policy.

Sec. 13. A utilization review agent shall

notify the director within five working days of any change of the agent's approval or accreditation status or of any material change in the information contained in the agent's application or renewal or that the agent no longer meets the requirements of the Utilization Review Certification Act.

Sec. 14. Certificates granted under the Utilization Review Certification Act may be renewed prior to their expiration date upon the filing of the following with the Department of Insurance (1) a renewal fee of one hundred dollars, (2) a statement detailing any changes in the information or documentation filed with the initial application, and (3) such other reasonable information as the department requires for enforcement of the act.

Sec. 15. (1) The Department of Insurance shall receive and refer to the applicable accreditation organization all grievances filed against a utilization review agent and may investigate such grievances as provided in this section.

(2) Whenever the director has reason to believe that a utilization review agent subject to the Utilization Review Certification Act has been or is engaging in conduct in violation of the act and that an action by the state with respect to such violation would be in the interest of the public, the director shall issue and serve upon the utilization review agent a notice of a hearing to be held at a time and place fixed in the notice, which shall not be less than thirty days after the date of service. At the time and place fixed for such hearing, the utilization review agent shall have an opportunity to be heard and to show cause why an order should not be made by the director requiring the utilization review agent to cease and desist from the alleged conduct. If the director determines that the utilization review agent has engaged in a violation of the act, he or she shall reduce his or her findings to writing and shall issue and cause to be served upon the utilization review agent a copy of such findings and an order requiring the utilization review agent to cease and desist from engaging in the violation. The director may, in his or her discretion, order suspension or revocation of the utilization review agent's certificate to do business in this state if the utilization review agent reasonably should have known that a violation occurred.

(3) Any utilization review agent who violates a cease and desist order of the director may, after notice and hearing and upon order of the director, be

subject to:

(a) A fine of one thousand dollars per violation not to exceed an aggregate penalty of ten thousand dollars; or

(b) Suspension or revocation of the utilization review agent's certificate to do business in this state.

(4) The director may also order payment of such reasonable expenses as may be necessary to compensate the department in connection with the proceedings under this section, which reimbursement shall be dedicated exclusively to the regulation of utilization review agents.

(5) Any order or decision of the director may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 16. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.