

SENATE BILL 93

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(PRE-FILED)

4r1215
CF HB 110

By: **Senator Augustine**

Requested: October 27, 2023

Introduced and read first time: January 10, 2024

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Health Insurance – Utilization Review – Private Review Agents**

3 FOR the purpose of requiring that certain criteria and standards used by private review
4 agents for health insurance utilization review relating to mental health and
5 substance use disorder benefits meet certain requirements; requiring a private
6 review agent to take certain actions before issuing an adverse decision; specifying
7 the procedure for private review agents to follow when making decisions related to
8 mental health and substance use disorder benefits; and generally relating to health
9 insurance and utilization review by private review agents.

10 BY repealing and reenacting, with amendments,
11 Article – Insurance
12 Section 15–10B–02 and 15–10B–05
13 Annotated Code of Maryland
14 (2017 Replacement Volume and 2023 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article – Insurance
17 Section 15–10B–06
18 Annotated Code of Maryland
19 (2017 Replacement Volume and 2023 Supplement)
20 (As enacted by Chapters 364 and 365 of the Acts of the General Assembly of 2023)

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

23 **Article – Insurance**

24 15–10B–02.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 The purpose of this subtitle is to:

2 (1) promote the delivery of quality health care in a cost effective manner
3 **THAT ENSURES TIMELY ACCESS TO HEALTH CARE SERVICES;**

4 (2) foster greater coordination, **COMMUNICATION, AND TRANSPARENCY**
5 between payors and providers conducting utilization review activities;

6 (3) protect patients, business, and providers by ensuring that private
7 review agents are qualified to perform utilization review activities and to make informed
8 decisions on the appropriateness of medical care; **[and]**

9 **(4) SPECIFY UTILIZATION REVIEW CRITERIA, INCLUDING CRITERIA**
10 **TO BE USED FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS; AND**

11 **[(4)] (5)** ensure that private review agents maintain the confidentiality of
12 medical records in accordance with applicable State and federal laws.

13 15–10B–05.

14 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
15 **INDICATED.**

16 **(2) (I) “GENERALLY ACCEPTED STANDARDS OF CARE” MEANS**
17 **STANDARDS OF CARE AND CLINICAL PRACTICE THAT ARE GENERALLY RECOGNIZED**
18 **BY HEALTH CARE PROVIDERS PRACTICING IN THE RELEVANT CLINICAL**
19 **SPECIALTIES.**

20 **(II) “GENERALLY ACCEPTED STANDARDS OF CARE” INCLUDES**
21 **STANDARDS REFLECTED IN:**

22 **1. PEER–REVIEWED SCIENTIFIC STUDIES AND MEDICAL**
23 **LITERATURE;**

24 **2. RECOMMENDATIONS OF NONPROFIT HEALTH CARE**
25 **PROVIDER PROFESSIONAL ASSOCIATIONS AND SPECIALTY SOCIETIES, INCLUDING**
26 **PATIENT PLACEMENT CRITERIA AND CLINICAL PRACTICE GUIDELINES;**

27 **3. RECOMMENDATIONS OF FEDERAL AGENCIES; AND**

28 **4. DRUG LABELING APPROVED BY THE U.S. FOOD AND**
29 **DRUG ADMINISTRATION.**

1 **(3) “MENTAL HEALTH DISORDER” MEANS A DISORDER THAT FALLS**
2 **UNDER A DIAGNOSTIC CATEGORY LISTED IN THE MENTAL, BEHAVIORAL, AND**
3 **NEURODEVELOPMENTAL DISORDERS CHAPTER, OR EQUIVALENT CHAPTER, OF THE**
4 **CURRENT VERSION OF:**

5 **(I) THE WORLD HEALTH ORGANIZATION’S INTERNATIONAL**
6 **STATISTICAL CLASSIFICATION OF DISEASE AND RELATED HEALTH PROBLEMS; OR**

7 **(II) THE AMERICAN PSYCHIATRIC ASSOCIATION’S DIAGNOSTIC**
8 **AND STATISTICAL MANUAL OF MENTAL DISORDERS.**

9 **(4) (I) “SUBSTANCE USE DISORDER” MEANS A DISORDER THAT**
10 **FALLS UNDER A DIAGNOSTIC CATEGORY LISTED IN THE MENTAL, BEHAVIORAL, AND**
11 **NEURODEVELOPMENTAL DISORDERS CHAPTER, OR EQUIVALENT CHAPTER, OF THE**
12 **CURRENT VERSION OF:**

13 **1. THE WORLD HEALTH ORGANIZATION’S**
14 **INTERNATIONAL STATISTICAL CLASSIFICATION OF DISEASE AND RELATED**
15 **HEALTH PROBLEMS; OR**

16 **2. THE AMERICAN PSYCHIATRIC ASSOCIATION’S**
17 **DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS.**

18 **(II) “SUBSTANCE USE DISORDER” INCLUDES A**
19 **SUBSTANCE-RELATED AND ADDICTIVE DISORDER.**

20 **[(a)] (B)** In conjunction with the application, the private review agent shall
21 submit information that the Commissioner requires including:

22 (1) a utilization review plan that includes:

23 (i) the specific criteria and standards to be used in conducting
24 utilization review of proposed or delivered health care services **IN ACCORDANCE WITH**
25 **ITEM (11) OF THIS SUBSECTION;**

26 **(II) THE PROCESS FOR CONFIRMING THAT THE SPECIFIC**
27 **CRITERIA AND STANDARDS TO BE USED IN CONDUCTING UTILIZATION REVIEW OF**
28 **PROPOSED OR DELIVERED MENTAL HEALTH AND SUBSTANCE USE DISORDER**
29 **BENEFITS COMPLY WITH ITEM (11) OF THIS SUBSECTION;**

30 **[(ii)] (III)** those circumstances, if any, under which utilization
31 review may be delegated to a hospital utilization review program; and

1 [(iii)] (IV) if applicable, any provisions by which patients, physicians,
2 or hospitals may seek reconsideration;

3 (2) the type and qualifications of the personnel either employed or under
4 contract to perform the utilization review;

5 (3) a copy of the private review agent's internal grievance process if a
6 carrier delegates its internal grievance process to the private review agent in accordance
7 with § 15-10A-02(l) of this title;

8 (4) the procedures and policies to ensure that a representative of the
9 private review agent is reasonably accessible to patients and health care providers 7 days
10 a week, 24 hours a day in this State;

11 (5) if applicable, the procedures and policies to ensure that a representative
12 of the private review agent is accessible to health care providers to make all determinations
13 on whether to authorize or certify an emergency inpatient admission, or an admission for
14 residential crisis services as defined in § 15-840 of this title, for the treatment of a mental,
15 emotional, or substance [abuse] USE disorder within 2 hours after receipt of the
16 information necessary to make the determination;

17 (6) the policies and procedures to ensure that all applicable State and
18 federal laws to protect the confidentiality of individual medical records are followed;

19 (7) a copy of the materials designed to inform applicable patients and
20 providers of the requirements of the utilization review plan;

21 (8) a list of the third party payors for which the private review agent is
22 performing utilization review in this State;

23 (9) the policies and procedures to ensure that the private review agent has
24 a formal program for the orientation and training of the personnel either employed or under
25 contract to perform the utilization review;

26 (10) a list of the persons involved in establishing the specific criteria and
27 standards to be used in conducting utilization review; and

28 (11) certification by the private review agent that the criteria and standards
29 to be used in conducting utilization review [are]:

30 (i) **FOR PHYSICAL HEALTH CONDITIONS, ARE:**

31 1. objective;

32 [(ii)] 2. clinically valid;

1 [(iii)] 3. compatible with established principles of health care; and

2 [(iv)] 4. flexible enough to allow deviations from norms when
3 justified on a case by case basis;

4 (II) FOR SUBSTANCE USE DISORDERS, ARE IN COMPLIANCE
5 WITH § 15–802(D)(5) OF THIS TITLE; AND

6 (III) FOR MENTAL HEALTH DISORDERS:

7 1. ARE EVIDENCE–BASED, PEER–REVIEWED,
8 CONSISTENT WITH GENERALLY ACCEPTED STANDARDS OF CARE, AND DEVELOPED
9 BY:

10 A. A NONPROFIT PROFESSIONAL CLINICAL SPECIALTY
11 SOCIETY FOR MENTAL HEALTH; OR

12 B. FOR CRITERIA NOT WITHIN THE SCOPE OF THE
13 RELEVANT NONPROFIT PROFESSIONAL CLINICAL SPECIALTY SOCIETY, AN
14 ORGANIZATION THAT WORKS DIRECTLY WITH HEALTH CARE PROVIDERS IN THE
15 SAME SPECIALTY FOR THE DESIGNATED CRITERIA WHO ARE EMPLOYED OR
16 ENGAGED WITHIN THE ORGANIZATION OR OUTSIDE THE ORGANIZATION TO
17 DEVELOP CLINICAL CRITERIA, PROVIDED THAT THE ORGANIZATION DOES NOT
18 RECEIVE DIRECT PAYMENTS BASED ON THE OUTCOME OR PRIOR AUTHORIZATION
19 DECISIONS AND DEMONSTRATES THAT ITS CLINICAL CRITERIA ARE CONSISTENT
20 WITH GENERALLY ACCEPTED STANDARDS OF CARE;

21 2. TAKE INTO ACCOUNT THE NEEDS OF ATYPICAL
22 PATIENT POPULATIONS AND DIAGNOSES;

23 3. ENSURE QUALITY OF CARE AND ACCESS TO NEEDED
24 HEALTH CARE SERVICES;

25 4. ARE SUFFICIENTLY FLEXIBLE TO ALLOW DEVIATIONS
26 FROM NORMS WHEN JUSTIFIED ON A CASE BY CASE BASIS;

27 5. ARE AGE–APPROPRIATE, CONSIDERING THE UNIQUE
28 NEEDS OF CHILDREN, ADOLESCENTS, AND OLDER ADULTS; AND

29 6. ARE EVALUATED AT LEAST ANNUALLY AND UPDATED
30 AS NECESSARY.

31 [(b)] (C) On the written request of any person or health care facility, the private
32 review agent shall provide 1 copy of the specific criteria and standards to be used in

1 conducting utilization review of proposed or delivered services and any subsequent
2 revisions, modifications, or additions to the specific criteria and standards to be used in
3 conducting utilization review of proposed or delivered services to the person or health care
4 facility making the request.

5 [(c)] (D) The private review agent may charge a reasonable fee for a copy of the
6 specific criteria and standards or any subsequent revisions, modifications, or additions to
7 the specific criteria to any person or health care facility requesting a copy under subsection
8 [(b)] (C) of this section.

9 [(d)] (E) A private review agent shall advise the Commissioner, in writing, of a
10 change in:

11 (1) ownership, medical director, or chief executive officer within 30 days of
12 the date of the change;

13 (2) the name, address, or telephone number of the private review agent
14 within 30 days of the date of the change; or

15 (3) the private review agent's scope of responsibility under a contract.

16 15–10B–06.

17 (a) (1) Except as provided in paragraph (4) of this subsection, a private review
18 agent shall:

19 (i) make all initial determinations on whether to authorize or certify
20 a nonemergency course of treatment for a patient within 2 working days after receipt of the
21 information necessary to make the determination;

22 (ii) make all determinations on whether to authorize or certify an
23 extended stay in a health care facility or additional health care services within 1 working
24 day after receipt of the information necessary to make the determination; and

25 (iii) promptly notify the health care provider of the determination.

26 (2) If within 3 calendar days after receipt of the initial request for health
27 care services the private review agent does not have sufficient information to make a
28 determination, the private review agent shall inform the health care provider that
29 additional information must be provided.

30 (3) If a private review agent requires prior authorization for an emergency
31 inpatient admission, or an admission for residential crisis services as defined in § 15–840
32 of this title, for the treatment of a mental, emotional, or substance [abuse] USE disorder,
33 the private review agent shall:

1 (i) make all determinations on whether to authorize or certify an
2 inpatient admission, or an admission for residential crisis services as defined in § 15–840
3 of this title, within 2 hours after receipt of the information necessary to make the
4 determination; and

5 (ii) promptly notify the health care provider of the determination.

6 (4) For a step therapy exception request submitted electronically in
7 accordance with a process established under § 15–142(f) of this title or a prior authorization
8 request submitted electronically for pharmaceutical services, a private review agent shall
9 make a determination:

10 (i) in real time if:

11 1. no additional information is needed by the private review
12 agent to process the request; and

13 2. the request meets the private review agent’s criteria for
14 approval; or

15 (ii) if a request is not approved under item (i) of this paragraph,
16 within 1 business day after the private review agent receives all of the information
17 necessary to make the determination.

18 [(b) If an initial determination is made by a private review agent not to authorize
19 or certify a health care service and the health care provider believes the determination
20 warrants an immediate reconsideration, a private review agent may provide the health
21 care provider the opportunity to speak with the physician that rendered the determination,
22 by telephone on an expedited basis, within a period of time not to exceed 24 hours of the
23 health care provider seeking the reconsideration.]

24 **(B) BEFORE ISSUING AN ADVERSE DECISION, A PRIVATE REVIEW AGENT**
25 **SHALL:**

26 **(1) GIVE THE PATIENT’S TREATING PHYSICIAN, DENTIST, OR OTHER**
27 **HEALTH CARE PROVIDER THE OPPORTUNITY TO SPEAK ABOUT THE MEDICAL**
28 **NECESSITY OF THE TREATMENT REQUEST WITH THE PHYSICIAN, DENTIST, OR**
29 **PANEL RESPONSIBLE FOR THE ADVERSE DECISION; AND**

30 **(2) FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS,**
31 **EXPLAIN HOW THE SPECIFIC CRITERIA AND STANDARDS REQUIRED TO BE USED**
32 **UNDER § 15–10B–05(B)(11) OF THIS SUBTITLE ARE APPLIED IN THE INDIVIDUAL**
33 **CASE AND RESULT IN THE ADVERSE DECISION.**

34 (c) For emergency inpatient admissions, a private review agent may not render
35 an adverse decision solely because the hospital did not notify the private review agent of

1 the emergency admission within 24 hours or other prescribed period of time after that
2 admission if the patient's medical condition prevented the hospital from determining:

3 (1) the patient's insurance status; and

4 (2) if applicable, the private review agent's emergency admission
5 notification requirements.

6 (d) (1) Subject to paragraph (2) of this subsection, a private review agent may
7 not render an adverse decision as to an admission of a patient during the first 24 hours
8 after admission when:

9 (i) the admission is based on a determination that the patient is in
10 imminent danger to self or others;

11 (ii) the determination has been made by the patient's physician or
12 psychologist in conjunction with a member of the medical staff of the facility who has
13 privileges to make the admission; and

14 (iii) the hospital immediately notifies the private review agent of:

15 1. the admission of the patient; and

16 2. the reasons for the admission.

17 (2) A private review agent may not render an adverse decision as to an
18 admission of a patient to a hospital for up to 72 hours, as determined to be medically
19 necessary by the patient's treating physician, when:

20 (i) the admission is an involuntary admission under §§ 10–615 and
21 10–617(a) of the Health – General Article; and

22 (ii) the hospital immediately notifies the private review agent of:

23 1. the admission of the patient; and

24 2. the reasons for the admission.

25 (e) (1) A private review agent that requires a health care provider to submit a
26 treatment plan in order for the private review agent to conduct utilization review of
27 proposed or delivered services for the treatment of a mental illness, emotional disorder, or
28 a substance [abuse] USE disorder:

29 (i) shall accept:

1 1. the uniform treatment plan form adopted by the
2 Commissioner under § 15–10B–03(d) of this subtitle as a properly submitted treatment
3 plan form; or

4 2. if a service was provided in another state, a treatment plan
5 form mandated by the state in which the service was provided; 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 this
10 subsection:

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

12 (ii) may be submitted by electronic transfer.

13 **(F) FOR MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS, A**
14 **PRIVATE REVIEW AGENT:**

15 **(1) SHALL USE THE UTILIZATION REVIEW CRITERIA REQUIRED TO BE**
16 **USED UNDER § 15–10B–05(B)(11) OF THIS SUBTITLE FOR ANY DECISION RELATED**
17 **TO SERVICE INTENSITY, LEVEL OF CARE PLACEMENT, CONTINUED STAY, TRANSFER,**
18 **AND DISCHARGE;**

19 **(2) SHALL MAKE ALL DECISIONS CONSISTENT WITH THE REQUIRED**
20 **CRITERIA FOR CHRONIC CARE TREATMENT; AND**

21 **(3) MAY NOT LIMIT TREATMENT TO SERVICES FOR ACUTE CARE**
22 **TREATMENT.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 January 1, 2025.