

SUBJECT: Limiting insurer access to therapy sessions and notes

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Smithee, Eiland, Burnam, G. Lewis, J. Moreno, Olivo, Seaman, Wise
0 nays
1 absent — Thompson

WITNESSES: None

BACKGROUND: Utilization review (UR) agents are employees of health insurers authorized to determine whether health care services are medically necessary and covered by a policy. These agents are certified by the commissioner of insurance and regulated through Art. 21.58A of the Insurance Code. The Code requires UR agents to be physicians, nurses, physician assistants, or other qualified medical providers unless they perform purely clerical or administrative tasks.

The Insurance Code, Art. 21.58A, Sec. 4(e) generally prohibits a utilization review agent from observing, participating in, or otherwise being present during a patient's examination, treatment, procedure, or therapy.

DIGEST: CSHB 1750 would prohibit utilization review agents from requiring that they observe a psychotherapy session or review a therapist's process or progress notes as a condition of treatment approval or for any other reason. It would allow an agent to require submission of a patient's medical records.

The bill would take effect September 1, 1999, and apply to utilization reviews conducted on or after that date.

SUPPORTERS SAY: Under current law, utilization review agents could refuse to approve treatment unless they were allowed to watch psychotherapy sessions. Because this threat exists, it could discourage patients either from seeking needed treatment or from seeking insurance coverage for that treatment. Threatening to invade an extremely personal psychotherapy session would put enormous pressure on a patient and should not be allowed.

CSHB 1750 would remove that threat from the hands of unscrupulous insurers or utilization review agents. It would follow the intent of current law, closing a loophole by specifically adding psychotherapy sessions to prohibitions preventing UR agents from being present at treatments, procedures, and therapy.

The bill also would protect patients against abuse by agents of session notes. While current law does impose confidentiality requirements on agents with access to a patient's medical records, there is no limitation on an agent's access to the process or progress notes of a mental health therapist. These notes may contain the initial impressions of the therapist taken during a psychotherapy session which may not be relevant to the final diagnosis or recommended treatment.

Without this prohibition, an agent might try to deny coverage based on a premature diagnosis made by the therapist that later investigation did not bear out. Again, such notes recording private interaction between therapist and patient should not be made available to third parties. All of the documents that are necessary for a utilization review are easily found in a patient's medical records.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The original bill would have applied to issuers of health benefit plans rather than UR agents. In addition to limits on access to psychotherapy sessions and notes, the bill would have prohibited denial of benefits for group and family therapy sessions or because a patient refused to take medication.

The companion bill, SB 569 by Nelson, passed the Senate by voice vote on April 14 and was reported favorably, as amended, by the House Insurance Committee on May 5, making it eligible to be considered in lieu of HB 1750.