

- SUBJECT:** Requiring an independent review of certain Medicaid determinations
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 7 ayes — Frank, Hinojosa, Clardy, Deshotel, Klick, Meza, Noble
- 0 nays
- 2 absent — Miller, Rose
- WITNESSES:** For — Rebecca Galinsky, Protect TX Fragile Kids; Douglas McLean, Protect TX Fragile Kids, Texas CHARGERS; Laurie Vanhose, Texas Association of Health Plans; Samuel Galinsky; (*Registered, but did not testify*: Amanda Fredriksen, AARP; Cynthia Humphrey, Association of Substance Abuse Programs; Anne Dunkelberg, Center for Public Policy Priorities; Anna Gu, Children's Defense Fund Texas; Dennis Borel, Coalition of Texans with Disabilities; Roberto Haddad, Doctor's Hospital at Renaissance; Greg Hansch and Alissa Sughrue, National Alliance on Mental Illness-Texas; Will Francis, National Association of Social Workers-Texas Chapter; Natalie Gregory, Jennifer Hall, Preston Hall, Rebecca Harkleroad, Suzette Fields, Protect TX Fragile Kids; Adriana Kohler, Texans Care for Children; Sarah Mills, Texas Association for Home Care and Hospice; Lee Johnson, Texas Council of Community Centers; Michelle Romero, Texas Medical Association; and 21 individuals)
- Against — (*Registered, but did not testify*: Bill Kelberlau)
- On — (*Registered, but did not testify*: Juliet Charron and Stephanie Muth, Health and Human Services Commission)
- BACKGROUND:** It has been suggested that the review process for disputes challenging a medical necessity determination under the Medicaid managed care program could be improved.
- DIGEST:** CSHB 3721 would require an independent review process for disputes and

complaints challenging medical necessity determinations under the Medicaid managed care program.

Independent review organization contract. The Health and Human Services Commission (HHSC) would be required to contract with an independent review organization (IRO) to review disputes challenging a medical necessity determination by a managed care organization (MCO) that contracted with HHSC.

The executive commissioner of HHSC would have to determine the manner in which an IRO was to settle disputes, when an IRO could be accessed in the appeals process, and the recourse available after the IRO made a review determination.

HHSC would have to ensure that the contract:

- required an IRO to make a timely review determination;
- provided procedures to protect the confidentiality of medical records used in the review;
- set minimum qualifications for and required the independence of each physician or other health care provider in making a review determination on behalf of the IRO;
- specified the procedures to be used by the IRO in making review determinations; and
- required the timely notice to a recipient of the results of a review, including the clinical basis for the determination.

IRO report. The IRO would have to report to HHSC:

- the number of reviews requested, conducted, and determined in favor of the MCO and in favor of the recipient;
- the number of review determinations that resulted in an MCO covering the service at issue;
- a summary of disputes and services; and
- the average time the IRO took to complete a review and make a determination.

The above information would have to be categorized by MCO.

Dispute review process. An IRO would have to:

- obtain all information relating to the dispute from the MCO and provider according to a time frame set by HHSC;
- assign a physician or other expert as a reviewer;
- perform a check to ensure the IRO and health care provider did not have a conflict of interest;
- communicate procedural rules approved by HHSC and other information on the process to all parties; and
- render a timely review determination.

Conflicts of interest. HHSC would ensure that the MCO, provider, and recipient did not have a choice in the reviewer assigned to their case and would avoid conflicts of interest in choosing an IRO by considering and monitoring existing relationships between IROs and MCOs.

Other provisions. The bill would not apply to a dispute involving HHSC's office of inspector general or an action taken at the direction of that office, including an action taken by an MCO at the direction of the office under the federal lock-in program or the termination or potential termination of a provider's enrollment in an MCO's provider network at the direction of the office.

The executive commissioner of HHSC would adopt rules necessary to implement the bill.

If a state agency determined that a waiver or authorization from a federal agency was necessary to implement any provision of the bill, the state agency would be required to request the waiver and would be permitted to delay implementation of the waiver or authorization until granted.

The bill would take effect September 1, 2019.