

BY THE HESS COMMITTEE

1 IN THE SENATE

2

SENATE BILL NO. 550

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act providing for the licensing and regulation of  
7 private health care review agents; and providing for  
8 an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 18 is amended by adding a new chapter to read:

11

CHAPTER 24. PRIVATE REVIEW AGENTS.

12

Sec. 18.24.010. PURPOSE. The purpose of this chapter is to

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(1) promote the delivery of quality health care in a cost-  
14 effective and efficient manner;

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(2) foster greater coordination between those paying for  
16 health care services and health care providers in the conduct of  
17 utilization review activities;

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(3) protect patients, businesses, and health care providers  
19 by ensuring that private health care review agents are qualified to  
20 perform utilization review activities and to make informed decisions  
21 on the appropriateness of medical care; and

22

(4) ensure that private review agents maintain the confi-  
23 dentiality of medical records in accordance with applicable state and  
24 federal laws.

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Sec. 18.24.020. LICENSE REQUIRED. (a) A person who is not  
26 affiliated with a hospital, who is affiliated with, under contract  
27 with, or acting on behalf of a health care insurer or a person doing  
28 business in the state, whether or not for profit, may not perform a  
29 utilization review in this state unless a private review agent license

1 is held by the person, the person's employer, or another for whom the  
2 person is providing those services under contract.

3 (b) The department shall issue a license to an applicant that  
4 meets the requirements of this chapter and regulations adopted under  
5 this chapter.

6 (c) The department may delegate to the division of insurance,  
7 Department of Commerce and Economic Development, the authority to  
8 issue a license to a health care insurer regulated by the division or  
9 to the employee of a regulated health care insurer. The division  
10 shall follow the criteria established in (b) of this section and the  
11 requirements of AS 18.24.030(b).

12 (d) A license issued under this chapter is not transferable and  
13 expires two years after the date of issuance.

14 Sec. 18.24.030. APPLICATION FOR LICENSE. (a) An applicant for  
15 a private review agent license shall submit an application to the  
16 department and pay the appropriate application fee. The application  
17 must be on a form approved by the department.

18 (b) An applicant is entitled to a license if the applicant  
19 submits and the department approves

20 (1) a utilization review plan that includes

21 (A) the specific review standards, criteria, and  
22 procedures to be used in evaluating hospital or outpatient care  
23 that has been proposed or is being or has been delivered;

24 (B) those circumstances under which utilization review  
25 may be delegated to a hospital utilization review program; and

26 (C) the provisions by which patients or providers may  
27 seek reconsideration or appeal of adverse decisions by the pri-  
28 vate review agent and the time period in which the private review  
29 agent must respond to the request for reconsideration or appeal;

1           (2) the number, type, and qualifications of the personnel  
2 employed by or under contract with the private review agent to perform  
3 the utilization review;

4           (3) the procedures and policies to ensure that a represen-  
5 tative of the private review agent is reasonably accessible to pa-  
6 tients and providers at least five days a week during normal business  
7 hours;

8           (4) the procedures and policies to ensure that all appli-  
9 cable state and federal laws to protect the confidentiality of indi-  
10 vidual medical records are followed;

11           (5) a copy of the written material intended to be sent to  
12 patients and providers to inform them of the requirements of the  
13 utilization review plan;

14           (6) a list of the health care insurers for which the pri-  
15 vate review agent is performing utilization review in the state and a  
16 brief description of the services it is providing for each client,  
17 including a copy of a payment incentive provision or plan designed to  
18 control the amount, duration, or setting in which services are ren-  
19 dered;

20           (7) evidence of liability insurance carried by the private  
21 review agent to cover potential liability from its activities under  
22 this chapter in an amount, type, nature, and carrier satisfactory to  
23 the department;

24           (8) copies of existing and proposed contracts between the  
25 private review agent and the clients for whom it purports to provide  
26 the services described in AS 18.24.020(a);

27           (9) other information the department determines to be  
28 appropriate.

29           Sec. 18.24.040. RENEWAL OF LICENSE. (a) The department shall

1 renew the license of a private review agent holding a license under  
2 AS 18.24.020 if, before the license expires, the agent

3 (1) files an application for renewal, including the infor-  
4 mation required under AS 18.24.030(b), and submits the appropriate  
5 renewal fee; and

6 (2) meets the qualifications for issuance of a license  
7 under AS 18.24.020(b).

8 (b) An application for renewal of a private review agent license  
9 must include a list of all complaints made to the agent by patients or  
10 providers and a description of how the complaints were resolved,  
11 including the nature of the complaint, the review process, and the  
12 time between the filing of the complaint and its resolution.

13 (c) The department may delegate to the division of insurance,  
14 Department of Commerce and Economic Development, the authority to  
15 renew a license with respect to a health care insurer regulated by the  
16 division or to an employee of a regulated health care insurer. The  
17 division shall follow the criteria established in (a) of this section  
18 and the requirements of AS 18.24.030(b).

19 Sec. 18.24.050. DENIAL OF LICENSE OR RENEWAL APPLICATION. (a)

20 Before denying an application for a private review agent license or  
21 for renewal of a license, the department or, when appropriate, the  
22 division of insurance shall provide the applicant with reasonable time  
23 to supply additional documentation establishing that the applicant is  
24 entitled to a license or to renewal of a license.

25 (b) An applicant who is denied a license or renewal of a license  
26 shall be afforded the opportunity for a hearing. The hearing shall be  
27 conducted by the department, even if the decision to deny was made by  
28 the division of insurance, Department of Commerce and Economic Devel-  
29 opment. The hearing shall be held in accordance with AS 44.62.330 -

1 44.62.630.

2 Sec. 18.24.060. REVOCATION OF LICENSE. (a) The department may  
3 revoke a license if the holder violates a provision of this chapter or  
4 a regulation adopted under this chapter.

5 (b) Before revoking a license under this section, the department  
6 shall provide the license holder with reasonable time to supply addi-  
7 tional information demonstrating the holder's compliance with the  
8 requirements of this chapter.

9 (c) A license holder whose license is proposed for revocation by  
10 the department shall be afforded the opportunity for a hearing. The  
11 hearing shall be held in accordance with AS 44.62.330 - 44.62.630.

12 Sec. 18.24.070. COMPLAINTS AGAINST LICENSE HOLDER. (a) A  
13 patient or provider may file a complaint with the department alleging  
14 that a private review agent is not in compliance with this chapter or  
15 the regulations adopted under this chapter, or with other applicable  
16 federal or state law. The complaint may request that the department  
17 revoke the license of the agent or require that the agent demonstrate  
18 to the department proof of compliance.

19 (b) Proceedings under this section shall be conducted in accor-  
20 dance with AS 44.62.330 - 44.62.630.

21 (c) If the department fails to render a decision on a complaint  
22 brought by a patient or provider within 90 days, the patient or pro-  
23 vider shall have the right to bring suit in the superior court to  
24 compel the department to take an action specified in (a) of this  
25 section.

26 (d) This section may not be construed to deprive a patient, a  
27 provider, a private review agent, or a health care insurer of a right  
28 available under other provisions of law.

29 Sec. 18.24.080. REGULATIONS. The department, after consultation

1 with the division of insurance in the Department of Commerce and  
2 Economic Development, providers, and health care insurers, shall adopt  
3 regulations to implement the provisions of this chapter, including  
4 regulations

5 (1) requiring that a private review agent provide patients  
6 and providers with its utilization review plan, including the specific  
7 review standards, criteria, procedures, and methods to be used in  
8 evaluating hospital or outpatient care that has been proposed or is  
9 being or has been delivered;

10 (2) defining circumstances under which utilization review  
11 may be delegated to a hospital utilization review program;

12 (3) requiring that patients and providers be able to obtain  
13 a prompt reconsideration or appeal of an adverse decision by a private  
14 review agent;

15 (4) defining the type, qualifications, and numbers of  
16 personnel required to perform utilization review, and including a  
17 requirement that only a physician trained in a relevant specialty or  
18 subspecialty and licensed in the state be permitted to make a final  
19 determination that care rendered, being rendered, or to be rendered in  
20 that specialty or subspecialty is medically inappropriate;

21 (5) requiring that, except in exceptional circumstances, a  
22 determination that care rendered, being rendered, or to be rendered is  
23 medically inappropriate may not be made until an appropriately quali-  
24 fied review physician has spoken to the patient's attending physician  
25 concerning the medical care;

26 (6) requiring that a determination that care rendered,  
27 being rendered, or to be rendered is medically inappropriate must  
28 include the written evaluation and findings of the reviewing physi-  
29 cian;

1           (7) requiring that a representative of the private review  
2 agent be reasonably accessible to patients, patients' families, and  
3 providers at least five days a week during normal business hours, and  
4 that payment shall not be denied for treatment rendered during a  
5 period when the private review agent is not accessible or when the  
6 appeal of an adverse decision is pending;

7           (8) prescribing procedures and policies to ensure that all  
8 applicable state and federal laws to protect the confidentiality of  
9 individual medical records are followed;

10           (9) prohibiting a private review agent from entering a  
11 hospital to interview a patient unless the interview is approved in  
12 advance by the patient's attending physician, and the attending physi-  
13 cian or the physician's designee is allowed to attend the interview;

14           (10) requiring that a private review agent disclose an  
15 incentive payment provision or plan contained in its contract with an  
16 entity paying for health care services under which the agent's compen-  
17 sation is based on controlling the amount charged for services, dura-  
18 tion of services, or setting in which services are rendered;

19           (11) requiring a private review agent to have available the  
20 services of sufficient numbers of registered nurses with masters  
21 degrees, or similarly qualified persons, supported and supervised by  
22 physicians trained in the appropriate specialty area, to carry out its  
23 utilization review activities, or to have appropriate numbers of  
24 physicians trained in the appropriate specialties for which utiliza-  
25 tion review is being conducted;

26           (12) establishing license application and renewal fees in an  
27 amount sufficient to pay for the costs to the department of adminis-  
28 tering this chapter;

29           (13) establishing rules of procedure consistent with AS

1 44.62.330 - 44.62.630;

2 (14) requiring private review agents to make reports to the  
3 department to enable the department to evaluate the effectiveness of  
4 private review agents and to determine if the utilization review  
5 programs are in compliance with the provisions of this chapter and  
6 regulations adopted under it.

7 Sec. 18.24.090. WAIVER. The department may waive the require-  
8 ments of this chapter for a private review agent that operates solely  
9 under contract with the federal government or an agency of the federal  
10 government for utilization review of patients eligible for health  
11 related services under 42 U.S.C. 1395 - 1395ccc (Subchapter XVIII of  
12 the Social Security Act), 42 U.S.C. 1396 - 1396s (Subchapter XIX of  
13 the Social Security Act), and the Civilian Health and Medical Program  
14 of the Uniformed Services (CHAMPUS).

15 Sec. 18.24.100. LIST OF PRIVATE REVIEW AGENTS. The department  
16 shall periodically provide a list of licensed private review agents  
17 and the expiration date for their licenses to all hospital utilization  
18 review programs and to other individuals or organizations requesting  
19 the list. The department may charge a reasonable fee for providing  
20 the list.

21 Sec. 18.24.110. PATIENT CONFIDENTIALITY AND RECORDS. (a) A  
22 private review agent may not disclose or publish individual medical  
23 records or other confidential information obtained in the performance  
24 of activities as a private review agent, except that an agent may  
25 provide patient information to a third party to which the agent is  
26 under contract or with which it is affiliated.

27 (b) A person seeking payment of a reimbursement for hospital or  
28 medical services may not invoke the privilege of confidentiality  
29 arising from a physician-patient relationship to withhold pertinent

1 information from review of those services by a private review agent.

2 (c) Notwithstanding the provisions of this chapter or another  
3 law, a patient is entitled to inspect and copy records developed or  
4 maintained by a private review agent pertaining to the health care  
5 rendered, being rendered, or proposed to be rendered to the patient.

6 (d) This chapter may not be construed to allow a private review  
7 agent to take actions that violate a state or federal statute or  
8 regulation concerning confidentiality of patient records.

9 Sec. 18.24.120. VIOLATIONS. A person who violates a provision  
10 of this chapter or a regulation adopted under this chapter, or who  
11 submits false information in an application or other document submit-  
12 ted to the department under this chapter, is guilty of a class A  
13 misdemeanor. Each day a violation continues is a separate offense.

14 Sec. 18.24.130. ANNUAL REPORT BY DEPARTMENT. The department  
15 shall issue an annual report to the governor and the legislature  
16 concerning the conduct of utilization review in the state. The report  
17 must include a description of utilization review programs and the  
18 services they provide, an analysis of complaints filed against private  
19 review agents by patients or providers together with a discussion of  
20 complaint resolution, and an evaluation of the effect of utilization  
21 review programs on patients' access to care.

22 Sec. 18.24.140. LIABILITY RELATED TO ACTIONS OF PRIVATE REVIEW  
23 AGENTS. (a) If a private review agent holding a license under this  
24 chapter refuses to authorize payment for a medical service, treatment,  
25 or procedure that has been recommended by a patient's provider and, as  
26 a result of this refusal, the patient declines to receive the service  
27 or treatment or undergo the procedure, the provider that has recom-  
28 mended the service, treatment, or procedure shall not be liable to the  
29 patient for injury or death proximately caused by the failure of the

1 patient to receive the service or treatment or undergo the procedure.

2 (b) A private review agent, whether or not it has received a  
3 license issued under this chapter, that negligently refuses to au-  
4 thorize payment for a medical service, treatment, or procedure that  
5 has been recommended by a patient's provider, is liable to the patient  
6 or the patient's personal representative if, as a result of a refusal,  
7 the patient declines to receive the service or treatment or undergo  
8 the procedure, and if the failure of the patient to receive the ser-  
9 vice or treatment or undergo the procedure is a proximate cause of  
10 injury to or death of the patient.

11 Sec. 18.24.200. DEFINITIONS. In this chapter,

12 (1) "department" means the Department of Health and Social  
13 Services;

14 (2) "health care insurer" means a person in the business of  
15 making payments for the medical care of others, and includes an insur-  
16 ance company, a nonprofit health service plan, a health maintenance  
17 organization, a preferred provider organization, an employee assis-  
18 tance program, and a health insurance service organization;

19 (3) "private review agent" means a person who is not affil-  
20 iated with a hospital, who is affiliated with, under contract with, or  
21 acting on behalf of a person doing business in the state, whether or  
22 not for profit, or of a health care insurer, and who performs a utili-  
23 zation review;

24 (4) "provider" means a health care provider as defined in  
25 AS 18.23.070;

26 (5) "utilization review" means a system for reviewing the  
27 appropriate and efficient allocation of hospital and outpatient re-  
28 sources and services given, being given, or proposed to be given to a  
29 patient or group of patients, including the approval or denial, or

1 recommendation of approval or denial, of payment for hospital or  
2 medical services;

3 (6) "utilization review plan" means a description of the  
4 criteria, procedures, and standards governing utilization review  
5 activities performed by a private review agent.

6 \* Sec. 2. AS 44.62.330(a) is amended by adding a new paragraph to read:

7 (55) Department of Health and Social Services concerning the  
8 licensing and regulation of private review agents under AS 18.24.

9 \* Sec. 3. AS 18.24.080 and 18.24.200, as enacted by sec. 1 of this Act,  
10 take effect immediately under AS 01.10.070(c).