

**CS FOR HOUSE BILL NO. 269 (L&C)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered: 4/22/92**  
**Referred: Finance**

**Sponsor(s): REPRESENTATIVES BOYER, Navarre**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act providing for the regulation of private health care review agents; and providing  
2 for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 18.23 is amended by adding new sections to read:

5 **ARTICLE 2. PRIVATE REVIEW AGENTS.**

6 **Sec. 18.23.100. PURPOSE.** The purpose of AS 18.23.100 - 18.23.190 is to

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

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

11 (3) assure protection for patients, employers in the state, and health care providers  
12 by ensuring that private health care review agents meet certain minimum standards in the  
13 performance of utilization review activities and in making informed decisions on the  
14 appropriateness of medical care; and

1 (4) ensure that private review agents maintain the confidentiality of medical  
2 records in accordance with applicable state and federal laws.

3 Sec. 18.23.110. REGISTRATION REQUIRED. (a) A person who is affiliated with,  
4 under contract to, or acting on behalf of a health care insurer or a person doing business in the  
5 state, whether or not for profit, may not perform a utilization review in this state unless the  
6 person has

7 (1) registered as a private review agent on a form provided by the department;

8 (2) provided the department a list of all health care insurers for which the person  
9 is providing utilization review services in this state and a brief description of the services  
10 provided to the insurer;

11 (3) filed with the department at the time of registration an affirmation that the  
12 person is aware of, and will comply with, the requirements of AS 18.23.100 - 18.23.190,  
13 including a statement that the person has a utilization review plan under AS 18.23.120 and that  
14 the person will perform utilization reviews as provided in the plan;

15 (4) provided the department with evidence acceptable to the department of  
16 liability insurance carried by the private review agent to cover potential liability from its activities  
17 under AS 18.23.100 - 18.23.190 in an amount, type, nature, and carrier satisfactory to the  
18 department;

19 (5) filed with the department a description of the appeal procedures available to  
20 patients and providers under AS 18.23.120(3).

21 (b) A person required to be registered under (a) of this section shall report to the  
22 department a material change in the information required under (a)(1) - (5) of this section within  
23 30 days of the change.

24 (c) A registration under (a) of this section shall be renewed biennially on a date and in  
25 a manner set by the department.

26 (d) The department may set by regulation a fee for the registration and renewals of  
27 registration of private review agents and other fees the department finds necessary to implement  
28 AS 18.23.100 - 18.23.190.

29 (e) This section does not apply to a person affiliated with a hospital who provides only  
30 internal utilization review activities.

31 Sec. 18.23.120. UTILIZATION REVIEW PLAN. A private review agent registered

1 under AS 18.23.110 shall have a utilization review plan that is available to patients and providers  
2 that includes

3 (1) the review standards, criteria, and procedures to be used in evaluating hospital  
4 or outpatient care that has been proposed or is being or has been delivered; however, if the  
5 applicant uses a software package or other published standards, criteria, and procedures that are  
6 available to the public, the applicant may identify the system and distributor and specifically  
7 identify all alterations, additions, or deletions from the published system;

8 (2) the circumstances under which utilization review may be delegated to a  
9 hospital utilization review program;

10 (3) the provisions by which patients or providers may seek prompt reconsideration  
11 or appeal of adverse decisions by the private review agent and the time period in which the  
12 private review agent must respond to the request for reconsideration or appeal;

13 (4) the number, type, and qualifications of the personnel employed by or under  
14 contract with the private review agent to perform the utilization review; individual biographies  
15 or resumes of the personnel are not required;

16 (5) the requirement that a private review agent have available the services of  
17 sufficient numbers of registered nurses or mental health professionals, as appropriate, supported  
18 and supervised by physicians trained in the appropriate specialty area, to carry out its utilization  
19 review activities, or have available appropriate numbers of physicians trained in the appropriate  
20 specialties for which utilization review is being conducted; and

21 (6) a requirement that only a physician trained in a relevant specialty or  
22 subspecialty be permitted to make a final determination that care rendered, being rendered, or to  
23 be rendered in that specialty or subspecialty is medically inappropriate;

24 (7) the procedures and policies to ensure that a representative of the private  
25 review agent is reasonably accessible to patients and providers at least five days a week during  
26 normal business hours in this state and that payment will not be denied for treatment rendered  
27 that is found to be medically appropriate and within policy coverage;

28 (8) the requirement that, except in exceptional circumstances or when an attending  
29 physician is not reasonably available to confer, a determination that care rendered, being  
30 rendered, or to be rendered is medically inappropriate may not be made until an appropriately  
31 qualified review physician has conferred with the patient's attending physician and reviewed

1       pertinent information concerning the medical care delivered or proposed;

2                   (9) the requirement that a determination that care rendered, being rendered, or to  
3 be rendered is medically inappropriate must include the principle reason for the determination  
4 of the reviewing physician;

5                   (10) the procedures and policies to ensure that all applicable state and federal laws  
6 to protect the confidentiality of individual medical records are followed;

7                   (11) prohibitions against a private review agent entering a hospital to interview  
8 a patient unless the attending physician is advised of the interview with reasonable advance  
9 notice, and the attending physician or the physician's designee is allowed to attend the interview;  
10 this paragraph does not apply to an on-site review agent;

11                   (12) a prohibition against an incentive payment provision or plan contained in a  
12 private review agent's contract with an entity paying for health care services under which the  
13 agent's compensation is based on controlling the amount charged for services, duration of  
14 services, or setting in which services are rendered and a prohibition against the agent receiving  
15 the incentive payment;

16                   (13) provisions that, in the absence of fraudulent information or material  
17 misrepresentation, prohibit retrospective denial of payment for treatment, except in cases of  
18 policy limitations or exclusions, after it has been initially approved by the private review agent;

19                   (14) other information the department determines to be appropriate.

20       Sec. 18.23.130.   CRIMINAL AND CIVIL PENALTIES; SUSPENSION AND  
21 REVOCATION OF REGISTRATION; INJUNCTIONS. (a) A person who knowingly violates  
22 a provision of AS 18.23.100 - 18.23.190 is guilty of a class B misdemeanor.

23                   (b) Notwithstanding (a) of this section, after a hearing the department may revoke or  
24 suspend the registration of a person, or place a person on probation under terms and conditions  
25 as the department may set, and may levy a civil penalty of up to \$5,000 against a person who  
26 knowingly violates a provision of AS 18.23.100 - 18.23.190, a regulation adopted under  
27 AS 18.23.100 - 18.23.190, or an order issued under AS 18.23.100 - 18.23.190.

28                   (c) The department may bring an action in the superior court to enjoin a violation of  
29 AS 18.23.100 - 18.23.190, to enforce compliance with a regulation adopted under AS 18.23.100 -  
30 18.23.190, or to enforce an order issued under AS 18.23.100 - 18.23.190. Evidence of a single  
31 act is sufficient to justify an injunction without evidence of a general course of conduct.

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

3 Sec. 18.23.140. REGULATIONS. The department shall adopt regulations under  
4 AS 44.62 (Administrative Procedure Act) to implement the provisions of AS 18.23.100 -  
5 18.23.190.

6 Sec. 18.23.150. EXEMPTION. A private review agent that operates solely under contract  
7 with the federal government or an agency of the federal government for utilization review of  
8 patients eligible for health related services under 42 U.S.C. 1395 - 1395ccc (Subchapter XVIII  
9 of the Social Security Act), 42 U.S.C. 1396 - 1396s (Subchapter XIX of the Social Security Act),  
10 and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) is exempt  
11 from the licensing requirements of AS 18.23.100 - 18.23.190.

12 Sec. 18.23.160. LIST OF PRIVATE REVIEW AGENTS. The department shall provide  
13 a list of private review agents on request to all hospital utilization review programs and to other  
14 individuals or organizations. The department may charge a reasonable fee for providing the list.

15 Sec. 18.23.170. PATIENT CONFIDENTIALITY AND RECORDS. (a) A private review  
16 agent may not disclose or publish individual medical records or other confidential information  
17 obtained in the performance of activities as a private review agent, except that an agent may  
18 provide patient information to a third party to which the agent is under contract or with which  
19 it is affiliated.

20 (b) A person seeking payment of a reimbursement for hospital or medical services may  
21 not invoke the privilege of confidentiality arising from a physician-patient relationship to  
22 withhold pertinent information from review of those services by a private review agent.

23 (c) Notwithstanding the provisions of AS 18.23.100 - 18.23.190 or another law, a patient  
24 is entitled to inspect and copy records developed or maintained by a private review agent  
25 pertaining to the health care rendered, being rendered, or proposed to be rendered to the patient.

26 (d) AS 18.23.100 - 18.23.190 may not be construed to allow a private review agent to  
27 take actions that violate a state or federal statute or regulation concerning confidentiality of  
28 patient records.

29 Sec. 18.23.190. DEFINITIONS. In AS 18.23.100 - 18.23.190,

30 (1) "department" means the Department of Commerce and Economic  
31 Development;

1                   (2) "health care insurer" means a person in the business of making payments for  
2 the medical care of others, and includes an insurance company, a nonprofit health service plan,  
3 a health maintenance organization, a preferred provider organization, an employee assistance  
4 program, and a health insurance service organization;

5                   (3) "private review agent" means a person who performs a utilization review and  
6 who is affiliated with, under contract to, or acting on behalf of a person doing business in the  
7 state, whether or not for profit, or of a health care insurer, but who is not affiliated with a  
8 hospital;

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

10                  (5) "utilization review" means a system for reviewing the appropriate and efficient  
11 allocation of hospital and outpatient resources and services given, being given, or proposed to  
12 be given to a patient or group of patients, including the approval or denial, or recommendation  
13 of approval or denial, of payment for hospital or medical services;

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

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

17                   (57) Department of Commerce and Economic Development concerning the  
18 regulation of private review agents under AS 18.23.100 - 18.23.190.

19 \* Sec. 3. In AS 18.23.010 - 18.23.070, the revisor of statutes shall replace each reference to "this  
20 chapter" with a reference to "AS 18.23.010 - 18.23.070."

21 \* Sec. 4. AS 18.23.140 and 18.23.190, enacted by sec. 1 of this Act, take effect immediately under  
22 AS 01.10.070(c).

23 \* Sec. 5. Except as provided in sec. 4 of this Act, this Act takes effect January 1, 1993.