

SENATE BILL NO. 239

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Introduced: 4/5/91
Referred: HES, L&C, Finance

A BILL**FOR AN ACT ENTITLED**

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

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

4 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

5 (33) regulation of private review agents under AS 08.85.

6 * Sec. 2. AS 08 is amended by adding a new chapter to read:

7 CHAPTER 85. PRIVATE REVIEW AGENTS.

8 Sec. 08.85.010. PURPOSE. The purpose of this chapter is to

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

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

13 (3) assure protection for patients, state employers, and health care providers by
14 ensuring that private health care review agents are qualified to perform utilization review

1 activities and to make informed decisions on the appropriateness of medical care; and

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

4 Sec. 08.85.020. LICENSE REQUIRED. (a) A person who is affiliated with, under
5 contract to, or acting on behalf of a health care insurer or a person doing business in the state,
6 whether or not for profit, may not perform a utilization review in this state unless a private
7 review agent license is held by the person, the person's employer, or another for whom the
8 person is providing those services under contract. This section does not apply to a person
9 affiliated with a hospital.

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

12 (c) A license issued under this chapter is not transferable and expires biennially on a date
13 determined by the department.

14 Sec. 08.85.030. APPLICATION FOR LICENSE. (a) An applicant for a private review
15 agent license shall submit an application to the department and pay an application fee set by
16 regulation. The application must be on a form approved by the department.

17 (b) An applicant is entitled to a license if the applicant submits and the department
18 approves a utilization review plan that will be provided to patients and providers that includes

19 (1) the specific review standards, criteria, and procedures to be used in evaluating
20 hospital or outpatient care that has been proposed or is being or has been delivered;

21 (2) those circumstances under which utilization review may be delegated to a
22 hospital utilization review program;

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

26 (4) the number, type, and qualifications of the personnel employed by or under
27 contract with the private review agent to perform the utilization review including

28 (A) the requirement that a private review agent have available the services
29 of sufficient numbers of registered nurses with masters degrees, or similarly qualified
30 persons, supported and supervised by physicians trained in the appropriate specialty area,
31 to carry out its utilization review activities, or to have appropriate numbers of physicians

1 trained in the appropriate specialties for which utilization review is being conducted; and
2 (B) a requirement that only a physician trained in a relevant specialty or
3 subspecialty and licensed in the state be permitted to make a final determination that care
4 rendered, being rendered, or to be rendered in that specialty or subspecialty is medically
5 inappropriate;

6 (5) the procedures and policies to ensure that a representative of the private
7 review agent is reasonably accessible to patients and providers at least five days a week during
8 normal business hours and that payment will not be denied for treatment rendered

9 (A) during a period when a private review agent is not accessible; or

10 (B) when the appeal of an adverse decision is pending;

11 (6) the requirement that, except in exceptional circumstances, a determination that
12 care rendered, being rendered, or to be rendered is medically inappropriate may not be made until
13 an appropriately qualified review physician has conferred with the patient's attending physician
14 and reviewed all pertinent information concerning the medical care delivered or proposed;

15 (7) the requirement that a determination that care rendered, being rendered, or to
16 be rendered is medically inappropriate must include the written evaluation and findings of the
17 reviewing physician;

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

20 (9) prohibitions against a private review agent entering a hospital to interview a
21 patient unless the attending physician is advised of the interview with reasonable advance notice,
22 and the attending physician or the physician's designee is allowed to attend the interview;

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

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

30 (12) a list of the health care insurers for which the private review agent is
31 performing utilization review in the state and a brief description of the services it is providing

1 for each client, including an affirmation that a payment incentive provision or plan designed to
2 control the amount, duration, or setting in which services are rendered does not exist with respect
3 to each client;

4 (13) evidence of liability insurance carried by the private review agent to cover
5 potential liability from its activities under this chapter in an amount, type, nature, and carrier
6 satisfactory to the department;

7 (14) provisions that, in the absence of fraud, prohibit retrospective denial of
8 payment for treatment after it has been initially approved by the private review agent;

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

10 Sec. 08.85.040. RENEWAL OF LICENSE. (a) The department shall renew the license
11 of a private review agent holding a license under AS 08.85.020 if, before the license expires, the
12 agent

13 (1) files an application for renewal, including the information required under
14 AS 08.85.030(b), and submits the appropriate renewal fee; and

15 (2) meets the qualifications for issuance of a license under AS 08.85.020(b).

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

20 Sec. 08.85.050. DENIAL OF LICENSE OR RENEWAL APPLICATION. (a) Before
21 denying an application for a private review agent license or for renewal of a license, the
22 department shall provide the applicant with reasonable time to supply additional documentation
23 establishing that the applicant is entitled to a license or to renewal of a license.

24 (b) An applicant who is denied a license or renewal of a license shall be afforded the
25 opportunity for a hearing. The hearing shall be conducted by the department. The hearing shall
26 be held in accordance with AS 44.62.330 - 44.62.630.

27 Sec. 08.85.060. REVOCATION OF LICENSE. (a) The department may revoke a
28 license if the holder fails to comply with a utilization review plan filed by the holder under
29 AS 08.85.030(b) or otherwise violates a provision of this chapter or a regulation adopted under
30 this chapter.

31 (b) Before revoking a license under this section, the department shall provide the license

1 holder with reasonable time to supply additional information demonstrating the holder's
2 compliance with the requirements of this chapter.

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

6 Sec. 08.85.070. COMPLAINTS AGAINST LICENSE HOLDER. (a) A patient or
7 provider may file a complaint with the department alleging that a private review agent is not in
8 compliance with this chapter or the regulations adopted under this chapter or with other
9 applicable federal or state law. The complaint may request that the department revoke the license
10 of the agent or require that the agent demonstrate to the department proof of compliance.

11 (b) Proceedings under this section shall be conducted in accordance with AS 44.62.330 -
12 44.62.630.

13 (c) If the department fails to render a decision on a complaint brought by a patient or
14 provider within 90 days, the patient or provider shall have the right to bring suit in the superior
15 court to compel the department to take an action specified in (a) of this section.

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

18 Sec. 08.85.080. REGULATIONS. The department shall adopt regulations to implement
19 the provisions of this chapter, including regulations

20 (1) establishing license application and renewal fees in an amount sufficient to
21 pay for the costs to the department of administering this chapter;

22 (2) establishing rules of procedure consistent with AS 44.62.330 - 44.62.630.

23 Sec. 08.85.090. EXEMPTION. A private review agent that operates solely under contract
24 with the federal government or an agency of the federal government for utilization review of
25 patients eligible for health related services under 42 U.S.C. 1395 - 1395ccc (Subchapter XVIII
26 of the Social Security Act), 42 U.S.C. 1396 - 1396s (Subchapter XIX of the Social Security Act),
27 and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) is exempt
28 from the licensing requirements of this chapter.

29 Sec. 08.85.100. LIST OF PRIVATE REVIEW AGENTS. The department shall
30 periodically provide a list of licensed private review agents and the expiration date for their
31 licenses to all hospital utilization review programs and to other individuals or organizations

1 requesting the list. The department may charge a reasonable fee for providing the list.

2 Sec. 08.85.110. PATIENT CONFIDENTIALITY AND RECORDS. (a) A private review
3 agent may not disclose or publish individual medical records or other confidential information
4 obtained in the performance of activities as a private review agent, except that an agent may
5 provide patient information to a third party to which the agent is under contract or with which
6 it is affiliated.

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

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

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

15 Sec. 08.85.150. DEFINITIONS. In this chapter,

16 (1) "department" means the Department of Commerce and Economic
17 Development;

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

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

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

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

31 (6) "utilization review plan" means a description of the criteria, procedures, and

1 standards governing utilization review activities performed by a private review agent.

2 * Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

3- (57) Department of Commerce and Economic Development concerning the
4 licensing and regulation of private review agents under AS 08.85.

5 * Sec. 4. AS 08.85.080 and 08.85.150, enacted by sec. 2 of this Act, take effect immediately under
6 AS 01.10.070(c).