

**HB 3459**

**Texas' "Gold Carding" Law**

Kelly Walla, Deputy General Counsel &  
Clayton Stewart, Director, Legislative Affairs  
Texas Medical Association



# Background

- Texas physician complaints regarding the negative patient impact and burden of prior authorization over the past five years had increased drastically.
- A process that began as a check on the healthcare system started to be viewed by many physicians as a method to unnecessarily deny and delay care.
- Most physicians did not want to eliminate all forms of prior authorization, but rather to narrow its application by excluding common and regularly approved procedures, while creating a system of accountability for those reviewing their recommended course of treatment for patients.



# National Physician Data from AMA

- Of patients requiring PA 94% reported delays in care.
- 79% of physicians reported that PA can lead to treatment abandonment.
- 30% of physicians reported that PA has led to a serious adverse event for a patient in their care.
- 32% of physicians reported that PA criteria used by health plans are rarely or never evidence-based, and 90% reported a significant negative impact on clinical outcomes.
- On average a physician practice completes 40 PAs per week, spending an average of 16 hours or two business days to complete.



# Texas Physician Data

- 85% of physicians reported delays in patient care due to PA, while 78% said PA can lead to patient abandonment of treatment all together.
- 38% indicated that PA has led to an adverse event for their patient.
- 87% of physicians said the burden of PA has increased over the past five years while 48% have had to hire staff to solely process PA requests.

- \*2020 Texas Medical Association Physician Survey (survey conducted prior to pandemic)



# Texas Voter Data

- One in four Texas patients have been subject to PA in the past two years.
- Of those, the following outcomes occurred:
  - **29% appealed and got the denial reversed**
  - **40% just paid for it out-of-pocket**
  - **15% went without care**
  - **9% went without and suffered from the denial**
  - **7% had no comment**

- 2020 Texas Medical Association Texas Public Opinion Survey of Texas Voters



# The Politics

- Legislation similar to HB 3459 had been filed in the prior sessions, but never received a hearing in the State Senate.
- In the 2021 legislative session, the bill was finally heard in a senate committee hearing and was voted out unanimously upon compromise and the realization from most committee members that they had been subjected to a PA.

# Evolution of Bill Language





# Original Bill Draft

- Exemption from prior authorization requirement on a per “physician/provider” per health care service basis for one year if there was an 80% approval on the respective health care service the prior year. (year on, year off)
- Exemption only valid for health care services where physician/provider had submitted at least 5 preauthorization requests in the prior year.
- If preauthorization exemption applies, the HMO/insurer couldn’t reduce or deny payment on the basis of medical necessity or appropriateness of care.
- Provided that before adverse determination is made, there would be a required reasonable opportunity for a peer-to-peer discussion with a Texas-licensed physician of the same or similar specialty.





# Compromise Language

- “Gold carding” 90% approval on rolling six-month period. No minimum number of services for initial granting of gold card status.
- Added IRO process.
- HMO or insurer can’t retroactively deny a service on the basis of a revocation of an exemption (even if affirmed by an IRO).
- HMO/insurer may not deny or reduce payment for a service for which the physician or provider qualified for an exemption based upon medical necessity or appropriateness – but added two exceptions.



# Compromise Language

- Maintained application to ALL health care services, which is broadly defined term in the law.
- “Health care services” means services provided to an individual to present, alleviate, cure, or heal human illness or injury. The term includes:
  - (A) Pharmaceutical services;
  - (B) Medical, chiropractic, or dental care;
  - (C) Hospitalization; and
  - (D) Care or services incidental to the health care services described by Paragraphs (A-C); and
  - (E) Services provided under a limited health care service plan or a single health care service plan.
- Maintained that prior to adverse determinations, there is a required reasonable opportunity for a peer-to-peer discussion with a Texas-licensed physician in same or similar specialty.



# Rulemaking

- Texas Department of Insurance (TDI) has begun the initial stages of rulemaking.
- TDI Request for information (asked 8 questions)
  - Comments were due Sept. 20.
  - Stakeholder meeting Sept. 23<sup>rd</sup>
  - Supplemental comments due by Sept. 30<sup>th</sup>.
- New gold-carding subchapter applies only to a request for preauthorization of health care services made on or after January 1, 2022.
- Peer-to-peer discussion with same or similar specialty/Texas-licensed physician provision applies to a UR requested on or after Sept. 1, 2021 (effective date of the Act).



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THANK YOU

[kelly.walla@texmed.org](mailto:kelly.walla@texmed.org)  
[clayton.stewart@texmed.org](mailto:clayton.stewart@texmed.org)



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