FIRST REGULAR SESSION

SENATE BILL NO. 298

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHITE.

Read 1st time Janauary 24, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1410S.01I

AN ACT

To repeal sections 374.500, 376.1350, 376.1356, 376.1363, 376.1372, 376.1385, and 376.1387, RSMo, and to enact in lieu thereof ten new sections relating to payments for health care services.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 374.500, 376.1350, 376.1356, 376.1363, 376.1372, 376.1385, and 376.1387, RSMo, are repealed and ten new sections enacted in lieu thereof, to be known as sections 374.500, 376.1345, 376.1350, 376.1356, 376.1362, 376.1363, 376.1364, 376.1372, 376.1385, and 376.1387, to read as follows:

374.500. As used in sections 374.500 to 374.515, the following terms mean:

(1) "Certificate", a certificate of registration granted by the department of insurance, financial institutions and professional registration to a utilization review agent;

(2) "Director", the director of the department of insurance, financial institutions and professional registration;

(3) "Enrollee", an individual who has contracted for or who participates in coverage under a health insurance policy, an employee welfare benefit plan, a health services corporation plan or any other benefit program providing payment, reimbursement or indemnification for health care costs for himself or eligible dependents or both himself and eligible dependents. The term "enrollee" shall not include an individual who has health care coverage pursuant to a liability insurance policy, workers' compensation insurance policy, or medical payments insurance issued as a supplement to a liability policy;

(4) "Provider of record", the physician or other licensed practitioner

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

identified to the utilization review agent as having primary responsibility for the care, treatment and services rendered to an enrollee;

(5) "Utilization review", a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings. Techniques may include ambulatory review, **[**prospective**]** **prior authorization** review, second opinion, certification, concurrent review, case management, discharge planning or retrospective review. Utilization review shall not include elective requests for clarification of coverage;

(6) "Utilization review agent", any person or entity performing utilization review, except:

(a) An agency of the federal government;

(b) An agent acting on behalf of the federal government, but only to the extent that the agent is providing services to the federal government; or

(c) Any individual person employed or used by a utilization review agent for the purpose of performing utilization review services, including, but not limited to, individual nurses and physicians, unless such individuals are providing utilization review services to the applicable benefit plan, pursuant to a direct contractual relationship with the benefit plan;

(d) An employee health benefit plan that is self-insured and qualified pursuant to the federal Employee Retirement Income Security Act of 1974, as amended;

(e) A property-casualty insurer or an employee or agent working on behalf of a property-casualty insurer;

(f) A health carrier, as defined in section 376.1350, that is performing a review of its own health plan;

(7) "Utilization review plan", a summary of the utilization review procedures of a utilization review agent.

376.1345. 1. As used in this section, unless the context clearly indicates otherwise, terms shall have the same meaning as ascribed to them in section 376.1350.

2. No health carrier, nor any entity acting on behalf of a health carrier, shall restrict methods of reimbursement to health care providers for health care services to a reimbursement method requiring the provider to pay a fee, discount the amount of their claim for reimbursement, or remit any other form of remuneration in order to

redeem the amount of their claim for reimbursement.

3. If a health carrier initiates a new method of reimbursement or changes the reimbursement method used, the health carrier or an entity acting on its behalf shall:

(1) Notify participating providers, and any other health care provider to whom the carrier has issued a prior authorization within the past year, whether any fee, discount, or other remuneration is required to receive reimbursement through the new or different method; and

(2) For health benefit plans issued, delivered, or renewed on or after August 28, 2019, allow the provider to select an alternative reimbursement method which requires no fee, discount, or other form of remuneration in order to receive reimbursement, and such alternative reimbursement method shall be used to reimburse that provider until the provider requests otherwise.

4. Violation of this section shall be deemed an unfair trade practice under sections 375.930 to 375.948.

376.1350. For purposes of sections 376.1350 to 376.1390, the following terms mean:

(1) "Adverse determination", a determination by a health carrier or **[**its designee**]** **a** utilization review **[**organization**]** **entity** that an admission, availability of care, continued stay or other health care service **furnished or proposed to be furnished to an enrollee** has been reviewed and, based upon the information provided, does not meet the **utilization review entity or** health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, **or are experimental or investigational,** and the payment for the requested service is therefore denied, reduced or terminated;

(2) "Ambulatory review", utilization review of health care services performed or provided in an outpatient setting;

(3) "Case management", a coordinated set of activities conducted for individual patient management of serious, complicated, protracted or other health conditions;

(4) "Certification", a determination by a health carrier or **[**its designee**]** **a** utilization review **[**organization**]** **entity** that an admission, availability of care, continued stay or other health care service has been reviewed and, based on the

information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care and effectiveness**, and that payment will be made for that health care service**;

(5) "Clinical peer", a physician or other health care professional who holds a nonrestricted license in a state of the United States and in the same or similar specialty as typically manages the medical condition, procedure or treatment under review;

(6) "Clinical review criteria", the **written policies,** written screening procedures, **drug formularies or lists of covered drugs, determination rules,** decision abstracts, clinical protocols **[**and**], medical protocols,** practice guidelines**, and any other criteria or rationale** used by the health carrier **or utilization review entity** to determine the necessity and appropriateness of health care services;

(7) "Concurrent review", utilization review conducted during a patient's hospital stay or course of treatment;

(8) "Covered benefit" or "benefit", a health care service that an enrollee is entitled under the terms of a health benefit plan;

(9) "Director", the director of the department of insurance, financial institutions and professional registration;

(10) "Discharge planning", the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility;

(11) "Drug", any substance prescribed by a licensed health care provider acting within the scope of the provider's license and that is intended for use in the diagnosis, mitigation, treatment or prevention of disease. The term includes only those substances that are approved by the FDA for at least one indication;

(12) "Emergency medical condition", the sudden and, at the time, unexpected onset of a health condition that manifests itself by symptoms of sufficient severity, regardless of the final diagnosis that is given, that would lead a prudent lay person, possessing an average knowledge of medicine and health, to believe that immediate medical care is required, which may include, but shall not be limited to:

(a) Placing the person's health in significant jeopardy;

(b) Serious impairment to a bodily function;

(c) Serious dysfunction of any bodily organ or part;

(d) Inadequately controlled pain; or

(e) With respect to a pregnant woman who is having contractions:

a. That there is inadequate time to effect a safe transfer to another hospital before delivery; or

b. That transfer to another hospital may pose a threat to the health or safety of the woman or unborn child;

(13) "Emergency service", a health care item or service furnished or required to evaluate and treat an emergency medical condition, which may include, but shall not be limited to, health care services that are provided in a licensed hospital's emergency facility by an appropriate provider;

(14) "Enrollee", a policyholder, subscriber, covered person or other individual participating in a health benefit plan;

(15) "FDA", the federal Food and Drug Administration;

(16) "Facility", an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings;

(17) "Grievance", a written complaint submitted by or on behalf of an enrollee regarding the:

(a) Availability, delivery or quality of health care services, including a complaint regarding an adverse determination made pursuant to utilization review;

(b) Claims payment, handling or reimbursement for health care services; or

(c) Matters pertaining to the contractual relationship between an enrollee and a health carrier;

(18) "Health benefit plan", a policy, contract, certificate or agreement entered into, offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services; except that, health benefit plan shall not include any coverage pursuant to liability insurance policy, workers' compensation insurance policy, or medical payments insurance issued as a supplement to a liability policy;

(19) "Health care professional", a physician or other health care practitioner licensed, accredited or certified by the state of Missouri to perform specified health services consistent with state law;

(20) "Health care provider" or "provider", a health care professional or a

facility;

(21) "Health care service", a service for the diagnosis, prevention, treatment, cure or relief of a health condition, illness, injury or disease**, including but not limited to the provision of drugs or durable medical equipment**;

(22) "Health carrier", an entity subject to the insurance laws and regulations of this state that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services; except that such plan shall not include any coverage pursuant to a liability insurance policy, workers' compensation insurance policy, or medical payments insurance issued as a supplement to a liability policy;

(23) "Health indemnity plan", a health benefit plan that is not a managed care plan;

(24) "Managed care plan", a health benefit plan that either requires an enrollee to use, or creates incentives, including financial incentives, for an enrollee to use, health care providers managed, owned, under contract with or employed by the health carrier;

(25) "Participating provider", a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the health carrier;

(26) "Peer-reviewed medical literature", a published scientific study in a journal or other publication in which original manuscripts have been published only after having been critically reviewed for scientific accuracy, validity and reliability by unbiased independent experts, and that has been determined by the International Committee of Medical Journal Editors to have met the uniform requirements for manuscripts submitted to biomedical journals or is published in a journal specified by the United States Department of Health and Human Services pursuant to Section 1861(t)(2)(B) of the Social Security Act **(42 U.S.C. 1395x)**, as amended, as acceptable peer-reviewed medical literature. Peer-reviewed medical literature shall not include publications or supplements to publications that are sponsored to a significant extent by a

pharmaceutical manufacturing company or health carrier;

(27) "Person", an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing;

(28) **"Prior authorization", an affirmative determination of coverage made pursuant to a prior authorization review, or notice as required by a health carrier or utilization review entity from an enrollee or provider prior to the provision of health care services;**

(29) "**[**Prospective review**] Prior authorization review**", utilization review conducted prior to an admission or a course of treatment**, including but not limited to pre-admission review, pre-treatment review, utilization review, and case management**;

[(29)**] (30)** "Retrospective review", utilization review of medical necessity that is conducted after services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding or adjudication for payment;

[(30)**] (31)** "Second opinion", an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service;

[(31)**] (32)** "Stabilize", with respect to an emergency medical condition, that no material deterioration of the condition is likely to result or occur before an individual may be transferred;

[(32)**] (33)** "Standard reference compendia":

(a) The American Hospital Formulary Service-Drug Information; or

(b) The United States Pharmacopoeia-Drug Information;

[(33)**] (34) "Step therapy protocol", any protocol or program establishing a specific sequence in which prescription drugs are authorized by a utilization review entity as medically appropriate for a particular enrollee;**

(35) "Utilization review", a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings. Techniques may include ambulatory review, **[**prospective**] prior authorization** review, second opinion, certification, concurrent review, case management, discharge planning or retrospective review. Utilization review shall not include elective requests for

clarification of coverage;

[(34)**]** **(36)** "Utilization review **[**organization**]** **entity**", a utilization review agent as defined in section 374.500**, or an individual or entity that performs prior authorization reviews for a health carrier or health care provider. A health carrier or health care provider is a utilization review entity if it performs prior authorization review**.

376.1356. Whenever a health carrier contracts to have a utilization review **[**organization or other**]** entity perform the utilization review functions required by sections 376.1350 to 376.1390 or applicable rules and regulations, the health carrier shall be responsible for monitoring the activities of the utilization review **[**organization or**]** entity with which the health carrier contracts and for ensuring that the requirements of sections 376.1350 to 376.1390 and applicable rules and regulations are met.

376.1362. No utilization review entity or health carrier shall:

(1) Require a health care provider offering services to an enrollee to follow a step therapy protocol when the provider determines the step therapy protocol is not in the enrollee's best interest;

(2) Require a health care provider to obtain a waiver, exception, or other override when determining a step therapy protocol to not be in the enrollee's best interest; or

(3) Sanction or otherwise penalize a health care provider for recommending or performing a health care service that may conflict with a step therapy protocol.

376.1363. 1. A health carrier shall maintain written procedures for making utilization review decisions and for notifying enrollees and providers acting on behalf of enrollees of its decisions. For purposes of this section, "enrollee" includes the representative of an enrollee.

2. For initial determinations, a health carrier shall make the determination within **[**thirty-six hours, which shall include one working day,**]** **twenty-four hours** of obtaining all necessary information regarding a proposed admission, procedure or service requiring a review determination. For purposes of this section, "necessary information" includes the results of any face-to-face clinical evaluation or second opinion that may be required:

(1) In the case of a determination to certify an admission, procedure or service, the carrier shall notify the provider rendering the service by telephone

or electronically **[**within twenty-four hours of**]** **immediately upon** making the initial certification, and provide written or electronic confirmation of a telephone or electronic notification to the enrollee and the provider within two working days of making the initial certification;

(2) In the case of an adverse determination, the carrier shall notify the provider rendering the service by telephone or electronically **[**within twenty-four hours of**]** **immediately upon** making the adverse determination; and shall provide written or electronic confirmation of a telephone or electronic notification to the enrollee and the provider within one working day of making the adverse determination.

3. For concurrent review determinations, a health carrier shall make the determination within one working day of obtaining all necessary information:

(1) In the case of a determination to certify an extended stay or additional services, the carrier shall notify by telephone or electronically the provider rendering the service **[**within one working day of**]** **immediately upon** making the certification, and provide written or electronic confirmation to the enrollee and the provider within one working day after telephone or electronic notification. The written notification shall include the number of extended days or next review date, the new total number of days or services approved, and the date of admission or initiation of services;

(2) In the case of an adverse determination, the carrier shall notify by telephone or electronically the provider rendering the service **[**within twenty-four hours of**]** **immediately upon** making the adverse determination, and provide written or electronic notification to the enrollee and the provider within one working day of a telephone or electronic notification. The service shall be continued without liability to the enrollee until the enrollee has been notified of the determination.

4. For retrospective review determinations, a health carrier shall make the determination within thirty working days of receiving all necessary information. A carrier shall provide notice in writing of the carrier's determination to an enrollee within ten working days of making the determination.

5. A written notification of an adverse determination shall include the principal reason or reasons for the determination, **[**the**]** **and** instructions for initiating an appeal or reconsideration of the determination**[**, and the instructions for requesting a written statement of the clinical rationale, including the clinical

review criteria used to make the determination**]**. A health carrier shall provide the clinical rationale in writing for an adverse determination, including the clinical review criteria used to make that determination, to **the health care provider and to** any party who received notice of the adverse determination and who requests such information.

6. A health carrier shall have written procedures to address the failure or inability of a provider or an enrollee to provide all necessary information for review. **These procedures shall be made available to health care providers on the health carrier's website or provider portal.** In cases where the provider or an enrollee will not release necessary information, the health carrier may deny certification of an admission, procedure or service.

7. No utilization review entity shall revoke, limit, condition, or otherwise restrict a prior authorization within forty-five working days of the date the health care provider receives the prior authorization. The prior authorization shall be valid for one year from the date it is received by the health care provider unless revoked or restricted, in writing, in accordance with this subsection.

8. Any failure by a utilization review entity to comply with the provisions of this section shall be deemed authorization of the health care services being reviewed.

9. For purposes of utilization reviews, a health care service shall be considered medically necessary if a prudent health care professional would provide the service to the enrollee for the purpose of diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease in a manner that is:

(1) In accordance with generally accepted standards of health care practices;

(2) Clinically appropriate in terms of the type, frequency, extent, site, and duration; and

(3) Not primarily for the economic benefit of the health carrier, nor the convenience of the patient, treating physician, or other health care provider.

376.1364. 1. No later than January 1, 2020, utilization review entities shall accept and respond to requests for prior authorization of drug benefits through a secure electronic transmission using the National Council for Prescription Drugs SCRIPT Standard Version 201310 or a backwards-compatible successor adopted by the United

States Department of Health and Human Services. For purposes of this section, facsimile, proprietary payer portals, and electronic forms shall not be considered electronic transmission.

2. (1) No later than January 1, 2020, the department shall develop a standard prior authorization form to be used by all health carriers utilizing prior authorization review.

(2) Beginning January 1, 2021, all health carriers utilizing prior authorization review shall use the standard prior authorization form developed by the department under subdivision (1) of this subsection.

3. The department may promulgate rules as necessary to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010 that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid and void.

376.1372. 1. In the certificate of coverage and the member handbook provided to enrollees, a health carrier shall include a clear and comprehensive description of its utilization review procedures, including the procedures for obtaining review of adverse determinations, and a statement of rights and responsibilities of enrollees with respect to those procedures.

2. A health carrier shall include a summary of its utilization review procedures in material intended for prospective enrollees.

3. A health carrier shall print on its membership cards a toll-free telephone number to call for utilization review decisions.

4. (1) A health carrier or utilization review entity shall make any current prior authorization requirements or restrictions, including written clinical criteria, readily accessible on its website. Requirements and restrictions shall be described in detail in easy-to-understand terms.

(2) No health carrier or utilization review entity shall amend or implement a new prior authorization requirement or restriction prior to the change being reflected on the carrier or utilization review

entity's website as specified in subdivision (1) of this subsection.

(3) Health carriers and utilization review entities shall provide participating providers with written notice of the new or amended requirement not less than sixty days prior to implementing the requirement or restriction.

(4) Any health carrier utilizing prior authorization review shall make statistics available regarding prior authorization approvals and denials on its website in a readily accessible format, including categories for:

(a) Health care provider type or physician specialty;

(b) Medication or diagnostic test or procedure;

(c) Indication offered; and

(d) Reason for denial.

376.1385. 1. Upon receipt of a request for second-level review, a health carrier shall submit the grievance to a grievance advisory panel consisting of:

(1) Other enrollees;

(2) Representatives of the health carrier that were not involved in the circumstances giving rise to the grievance or in any subsequent investigation or determination of the grievance; and

(3) Where the grievance involves an adverse determination, a majority of persons that are **[**appropriate**]** **actively practicing** clinical peers **licensed to practice medicine** in the same or similar specialty as would typically manage the case being reviewed that were not involved in the circumstances giving rise to the grievance or in any subsequent investigation or determination of the grievance.

2. Review by the grievance advisory panel shall follow the same time frames as a first level review, except as provided for in section 376.1389 if applicable. Any decision of the grievance advisory panel shall include notice of the enrollee's or the health carrier's or plan sponsor's rights to file an appeal with the director's office of the grievance advisory panel's decision. The notice shall contain the toll-free telephone number and address of the director's office.

376.1387. 1. The director shall resolve any grievance regarding an adverse determination as to covered services appealed by an enrollee or health carrier or plan sponsor through any means not specifically prohibited by law but if the grievance is unresolved by the director then it shall be resolved by referral of such grievance to an independent review organization. The director shall

establish the qualifications for such review organizations(s) and shall seek the services of such organization(s) by competitive bid pursuant to chapter 34. The director shall enter into contracts with such organization(s) as deemed necessary to conduct the adverse determination appeals process set forth in this section. Any request for an adverse determination appeal shall be assigned on a rotational basis. The organization's decision as to the resolution of the grievance shall be based upon a review of the written record before it. The grievance and resolution of such grievance shall not be considered a contested case within the meaning of section 536.010, but the resolution of such grievance by the panel shall be considered a final agency decision within the director's discretion, binding upon the enrollee and health carrier, and subject to judicial review if:

(1) Action for such review is filed within thirty days of the final agency decision; and

(2) Judicial review is limited to the record before the director; and

(3) The enrollee and health carrier are deemed real parties in interest; and

(4) The scope of judicial review extends only to a determination of whether the action of the director is unconstitutional, unlawful, unreasonable, arbitrary, or capricious or involves an abuse of discretion or is in excess of the statutory authority or jurisdiction of the director.

2. Nothing in this section is intended to restrict the director's authority to investigate and resolve any complaint against a health carrier that does not constitute a grievance within the meaning of section 376.1350.

3. Any grievance involving coverage provided pursuant to a Medicaid program, however, shall be resolved in accordance with the rules and procedures established for the Medicaid program.

4. If an independent review organization reviews an adverse determination appeal as described in subsection 1 of this section and the review results in a reversal of the adverse determination, any and all fees charged by the independent review organization for the review of the adverse determination shall be reimbursed to the department by the health carrier.

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