

HOUSE BILL No. 2637

By Committee on Insurance and Pensions

2-8

1 AN ACT concerning insurance; relating to accident and health insurance;
2 pertaining to health maintenance organizations; enacting the health
3 maintenance organization preauthorization exemption act; establishing
4 an exemption for certain physicians and other providers from certain
5 preauthorization requirements when providing certain healthcare
6 services.

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8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. (a) This act shall be known and may be cited as the health
10 maintenance organization preauthorization exemption act.

11 (b) This section shall be a part of and supplemental to article 32 of
12 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

13 Sec. 2. (a) As used in this act:

14 (1) "Healthcare services" means services provided to an individual to
15 prevent, alleviate, cure or heal human illness or injury. "Healthcare
16 services" includes, but is not limited to:

17 (A) Medical, chiropractic or dental care;

18 (B) hospitalization;

19 (C) pharmaceutical services; or

20 (D) care or services incidental to the healthcare services described in
21 this subsection.

22 (2) "Physician" means an individual licensed to practice medicine and
23 surgery under the Kansas healing arts act.

24 (3) "Preauthorization" means a determination made by a health
25 maintenance organization or person contracting with a health maintenance
26 organization or insurer that healthcare services proposed to be provided to
27 a patient are medically necessary and appropriate.

28 (4) "Provider" means a:

29 (A) Person licensed to practice any branch of the healing arts by the
30 state board of healing arts;

31 (B) person who holds a temporary permit to practice any branch of
32 the healing arts issued by the state board of healing arts;

33 (C) medical care facility licensed by the state of Kansas;

34 (D) podiatrist licensed by the state board of healing arts;

35 (E) health maintenance organization issued a certificate of authority
36 by the commissioner;

- 1 (F) optometrist licensed by the board of examiners in optometry;
- 2 (G) pharmacist licensed by the state board of pharmacy;
- 3 (H) licensed professional nurse who is authorized to practice as a
4 registered nurse anesthetist;
- 5 (I) licensed professional nurse who has been granted a temporary
6 authorization to practice nurse anesthesia under K.S.A. 65-1153, and
7 amendments thereto;
- 8 (J) physician assistant licensed by the state board of healing arts;
- 9 (K) licensed advanced practice registered nurse who is certified by
10 the board of nursing in the role of registered nurse anesthetist while
11 functioning as a registered nurse anesthetist;
- 12 (L) licensed advanced practice registered nurse who has been granted
13 a temporary certification by the board of nursing to practice in the role of
14 certified nurse-midwife;
- 15 (M) licensed professional nurse who is authorized to practice as a
16 registered nurse anesthetist;
- 17 (N) licensed professional nurse who has been granted a temporary
18 authorization to practice nurse anesthesia under K.S.A. 65-1153, and
19 amendments thereto;
- 20 (O) dentist certified by the state board of healing arts to administer
21 anesthetics under K.S.A. 65-2899, and amendments thereto; and
- 22 (P) person licensed, registered, certified or otherwise authorized to
23 practice by the behavioral sciences regulatory board.
- 24 (b) This section shall be a part of and supplemental to article 32 of
25 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.
- 26 Sec. 3. (a) A health maintenance organization that uses a
27 preauthorization process for healthcare services shall not require a
28 physician or provider to obtain preauthorization for a particular healthcare
29 service if, in the most recent six-month evaluation period, as described in
30 subsection (b), the health maintenance organization has approved or would
31 have approved not less than 90% of the preauthorization requests
32 submitted by the physician or provider for the particular healthcare
33 service.
- 34 (b) Except as provided by subsection (c), a health maintenance
35 organization shall evaluate whether a physician or provider qualifies for an
36 exemption from preauthorization requirements under subsection (a) once
37 every six months.
- 38 (c) A health maintenance organization may continue an exemption
39 under subsection (a) without evaluating whether the physician or provider
40 qualifies for the exemption under subsection (a) for a particular evaluation
41 period.
- 42 (d) A physician or provider shall not be required to request an
43 exemption under subsection (a) to qualify for the exemption.

1 (e) This section shall be a part of and supplemental to article 32 of
2 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

3 Sec. 4. (a) A physician's or provider's exemption from
4 preauthorization requirements under section 3, and amendments thereto,
5 shall remain in effect until:

6 (1) 30 days after the date the health maintenance organization notifies
7 the physician or provider of the health maintenance organization's
8 determination to rescind the exemption under section 5, and amendments
9 thereto, if the physician or provider does not appeal such health
10 maintenance organization's determination; or

11 (2) if the physician or provider appeals such health maintenance
12 organization's determination, the fifth day after the date the independent
13 review organization affirms the health maintenance organization's
14 determination to rescind the exemption.

15 (b) If a health maintenance organization does not finalize a rescission
16 determination as described in subsection (a), then the physician or provider
17 shall be considered to have met the criteria under section 3, and
18 amendments thereto, to continue to qualify for the exemption.

19 (c) This section shall be a part of and supplemental to article 32 of
20 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

21 Sec. 5. (a) A health maintenance organization or insurer may rescind
22 an exemption from preauthorization requirements under section 3, and
23 amendments thereto, only:

24 (1) During January or June of each year;

25 (2) if the health maintenance organization makes a determination, on
26 the basis of a retrospective review of a random sample of not fewer than
27 five and not more than 20 claims submitted by the physician or provider
28 during the most recent evaluation period described in section 3(b), and
29 amendments thereto, that less than 90% of the claims for the particular
30 healthcare service met the medical necessity criteria that would have been
31 used by the health maintenance organization when conducting
32 preauthorization review for the particular healthcare service during the
33 relevant evaluation period; and

34 (3) if the health maintenance organization complies with other
35 applicable requirements specified in this section, including:

36 (A) Notifying the physician or provider not less than 25 days before
37 the proposed rescission is to take effect; and

38 (B) providing the required notice under subparagraph (A):

39 (i) The sample information used to make the determination under
40 paragraph (2); and

41 (ii) a plain language explanation of how the physician or provider
42 may appeal and seek an independent review of the determination.

43 (b) A determination made under subsection (a)(2) shall be made by an

1 individual licensed to practice medicine and surgery in this state. For a
2 determination made under subsection (a)(2) with respect to a physician,
3 the determination shall be made by an individual licensed to practice
4 medicine and surgery in this state who has the same or similar specialty as
5 that physician.

6 (c) A health maintenance organization may deny an exemption from
7 preauthorization requirements under section 3, and amendments
8 thereto, only if:

9 (1) The physician or provider does not have the exemption at the time
10 of the relevant evaluation period; and

11 (2) the health maintenance organization provides the physician or
12 provider with actual statistics and data for the relevant preauthorization
13 request evaluation period and detailed information sufficient to
14 demonstrate that the physician or provider does not meet the criteria for an
15 exemption from preauthorization requirements for the particular healthcare
16 service under section 3, and amendments thereto.

17 (d) This section shall be a part of and supplemental to article 32 of
18 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

19 Sec. 6. (a) A physician or provider has a right to a review of an
20 adverse determination regarding a preauthorization exemption be
21 conducted by an independent review organization. A health maintenance
22 organization may not require a physician or provider to engage in an
23 internal appeal process before requesting a review by an independent
24 review organization under this section.

25 (b) A health maintenance organization shall pay:

26 (1) For any appeal or independent review of an adverse determination
27 regarding a preauthorization exemption requested under this section; and

28 (2) a reasonable fee determined by the state board of healing arts for
29 any copies of medical records or other documents requested from a
30 physician or provider during an exemption rescission review requested
31 under this section.

32 (c) An independent review organization shall complete an expedited
33 review of an adverse determination regarding a preauthorization
34 exemption not later than 30 days after the date a physician or provider files
35 the request for a review under this section.

36 (d) A physician or provider may request that the independent review
37 organization consider another random sample of not fewer than five claims
38 and not more than 20 claims submitted to the health maintenance
39 organization or insurer by the physician or provider during the relevant
40 evaluation period for the relevant health care service as part of its review.
41 If the physician or provider makes a request under this subsection, the
42 independent review organization shall base the determination on the
43 medical necessity of claims reviewed by the health maintenance

1 organization or insurer under section 5, and amendments thereto, and
2 reviewed under this subsection.

3 (e) This section shall be a part of and supplemental to article 32 of
4 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.

5 Sec. 7. (a) A health maintenance organization shall not deny or reduce
6 payment to a physician or provider for a healthcare service for which the
7 physician or provider has qualified for an exemption from preauthorization
8 requirements under section 3, and amendments thereto, based on medical
9 necessity or appropriateness of care unless the physician or provider:

10 (1) Knowingly and materially misrepresented the healthcare service
11 in a request for payment submitted to the health maintenance organization
12 with the specific intent to deceive and obtain an unlawful payment from
13 the health maintenance organization; or

14 (2) failed to substantially perform the healthcare service.

15 (b) A health maintenance organization or an insurer may not conduct
16 a retrospective review of a health care service subject to an exemption
17 except:

18 (1) To determine if the physician or provider still qualifies for an
19 exemption under the health maintenance organization preauthorization
20 exemption act; or

21 (2) if the health maintenance organization has a reasonable cause to
22 suspect a basis for denial exists under subsection (a).

23 (c) For a retrospective review described by subsection (b)(2), nothing
24 in this section may be construed to modify or otherwise affect:

25 (1) The requirements under or application of section 5, and
26 amendments thereto, including any timeframes specified in that section; or

27 (2) any other applicable law, except to prescribe the only
28 circumstances under which:

29 (A) A retrospective utilization review may occur as specified in
30 paragraph (b)(2); or

31 (B) payment may be denied or reduced as specified by subsection
32 (a).

33 (d) Not later than five days after qualifying for an exemption from
34 preauthorization requirements under section 3, and amendments thereto, a
35 health maintenance organization shall provide to a physician or provider a
36 notice that includes a:

37 (1) Statement that the physician or provider qualifies for an
38 exemption from preauthorization requirements under section 3, and
39 amendments thereto;

40 (2) list of the healthcare services and health benefit plans to which the
41 exemption applies; and

42 (3) statement of the duration of the exemption.

43 (e) If a physician or provider submits a preauthorization request for a

1 healthcare service for which the physician or provider qualifies for an
2 exemption from preauthorization requirements under section 3, and
3 amendments thereto, the health maintenance organization shall promptly
4 provide notice to the physician or provider that includes:
5 (1) The information described by subsection (d); and
6 (2) a notification of the health maintenance organization's payment
7 requirements.
8 (f) Nothing in this section shall be construed to:
9 (1) Authorize a physician or provider to provide a healthcare service
10 outside the physician's or provider's scope of practice; or
11 (2) require a health maintenance organization to pay for a healthcare
12 service described in paragraph (1) that is performed in violation of the
13 laws of this state.
14 (g) This section shall be a part of and supplemental to article 32 of
15 chapter 40 of the Kansas Statutes Annotated, and amendments thereto.
16 Sec. 8. This act shall take effect and be in force from and after its
17 publication in the statute book.