

knowledge of the abuse or neglect for the purpose of gathering the facts, assessing the risk to the child, and formulating a plan.

(j) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and parenting time expeditor services.

(k) "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.

(l) "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury.

(m) Persons who conduct assessments or investigations under this section shall take into account accepted child-rearing practices of the culture in which a child participates, which are not injurious to the child's health, welfare, and safety.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Presented to the governor May 17, 2001

Signed by the governor May 21, 2001, 11:01 a.m.

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#### CHAPTER 137—S.F.No. 414

*An act relating to health; modifying the Minnesota Utilization Review Act; adding criteria specifying when the board of medical practice may impose disciplinary action; amending Minnesota Statutes 2000, sections 62M.06, subdivision 3; 62M.09, subdivisions 3, 3a, 6, by adding a subdivision; 62M.10, subdivision 7; 147.091, by adding a subdivision.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2000, section 62M.06, subdivision 3, is amended to read:

Subd. 3. **STANDARD APPEAL.** The utilization review organization must establish procedures for appeals to be made either in writing or by telephone.

(a) A utilization review organization shall notify in writing the enrollee, attending health care professional, and claims administrator of its determination on the appeal within 30 days upon receipt of the notice of appeal. If the utilization review organization cannot make a determination within 30 days due to circumstances outside the control of the utilization review organization, the utilization review organization may take up to 14 additional days to notify the enrollee, attending health care professional, and claims administrator of its determination. If the utilization review organization takes any additional days beyond the initial 30-day period to make its determination, it must inform the enrollee, attending health care professional, and

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claims administrator, in advance, of the extension and the reasons for the extension.

(b) The documentation required by the utilization review organization may include copies of part or all of the medical record and a written statement from the attending health care professional.

(c) Prior to upholding the initial determination not to certify for clinical reasons, the utilization review organization shall conduct a review of the documentation by a physician who did not make the initial determination not to certify.

(d) The process established by a utilization review organization may include defining a period within which an appeal must be filed to be considered. The time period must be communicated to the enrollee and attending health care professional when the initial determination is made.

(e) An attending health care professional or enrollee who has been unsuccessful in an attempt to reverse a determination not to certify shall, consistent with section 72A.285, be provided the following:

(1) a complete summary of the review findings;

(2) qualifications of the reviewers, including any license, certification, or specialty designation; and

(3) the relationship between the enrollee's diagnosis and the review criteria used as the basis for the decision, including the specific rationale for the reviewer's decision.

(f) In cases of appeal to reverse a determination not to certify for clinical reasons, the utilization review organization must, ~~upon request of the attending health care professional,~~ ensure that a physician of the utilization review organization's choice in the same or a similar general specialty as typically manages the medical condition, procedure, or treatment under discussion is reasonably available to review the case.

(g) If the initial determination is not reversed on appeal, the utilization review organization must include in its notification the right to submit the appeal to the external review process described in section 62Q.73 and the procedure for initiating the external process.

Sec. 2. Minnesota Statutes 2000, section 62M.09, subdivision 3, is amended to read:

Subd. 3. **PHYSICIAN REVIEWER INVOLVEMENT.** (a) A physician must review all cases in which the utilization review organization has concluded that a determination not to certify for clinical reasons is appropriate.

(b) The physician conducting the review must be licensed in this state. This paragraph does not apply to reviews conducted in connection with policies issued by a health plan company that is assessed less than three percent of the total amount assessed by the Minnesota comprehensive health association.

(c) The physician should be reasonably available by telephone to discuss the determination with the attending health care professional.

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(d) This subdivision does not apply to outpatient mental health or substance abuse services governed by subdivision 3a.

Sec. 3. Minnesota Statutes 2000, section 62M.09, subdivision 3a, is amended to read:

Subd. 3a. **MENTAL HEALTH AND SUBSTANCE ABUSE REVIEWS.** A peer of the treating mental health or substance abuse provider or a physician must review requests for outpatient services in which the utilization review organization has concluded that a determination not to certify a mental health or substance abuse service for clinical reasons is appropriate, provided that any final determination not to certify treatment is made by a psychiatrist certified by the American Board of Psychiatry and Neurology and appropriately licensed in the this state in which the psychiatrist resides. Notwithstanding the notification requirements of section 62M.05, a utilization review organization that has made an initial decision to certify in accordance with the requirements of section 62M.05 may elect to provide notification of a determination to continue coverage through facsimile or mail. This subdivision does not apply to determinations made in connection with policies issued by a health plan company that is assessed less than three percent of the total amount assessed by the Minnesota comprehensive health association.

Sec. 4. Minnesota Statutes 2000, section 62M.09, subdivision 6, is amended to read:

Subd. 6. **PHYSICIAN CONSULTANTS.** A utilization review organization must use physician consultants in the appeal process described in section 62M.06, subdivision 3. The physician consultants ~~should include, as needed and available, specialists who are must be board-certified, or board-eligible and working towards certification, in a specialty board approved by the American Board of Medical Specialists or the American Board of Osteopathy.~~

Sec. 5. Minnesota Statutes 2000, section 62M.09, is amended by adding a subdivision to read:

Subd. 9. **ANNUAL REPORT.** A utilization review organization shall file an annual report with the annual financial statement it submits to the commissioner of commerce that includes:

(1) per 1,000 claims, the number and rate of claims denied based on medical necessity for each procedure or service; and

(2) the number and rate of denials overturned on appeal.

Sec. 6. Minnesota Statutes 2000, section 62M.10, subdivision 7, is amended to read:

Subd. 7. **AVAILABILITY OF CRITERIA.** Upon request, a utilization review organization shall provide to an enrollee ~~or to a, a provider, and the commissioner of commerce~~ the criteria used for a ~~specific procedure~~ to determine the medical necessity, appropriateness, and efficacy of that a procedure or service and identify the database, professional treatment guideline, or other basis for the criteria.

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Sec. 7. Minnesota Statutes 2000, section 147.091, is amended by adding a subdivision to read:

Subd. 1b. UTILIZATION REVIEW. The board may investigate allegations and impose disciplinary action as described in section 147.141 against a physician performing utilization review for a pattern of failure to exercise that degree of care that a physician reviewer of ordinary prudence making utilization review determinations for a utilization review organization would use under the same or similar circumstances. As part of its investigative process, the board shall receive consultation or recommendation from physicians who are currently engaged in utilization review activities. The internal and external review processes under sections 62M.06 and 62Q.73 must be exhausted prior to an allegation being brought under this subdivision. Nothing in this subdivision creates, modifies, or changes existing law related to tort liability for medical negligence. Nothing in this subdivision preempts state peer review law protection in accordance with sections 145.61 to 145.67, federal peer review law, or current law pertaining to complaints or appeals.

Presented to the governor May 17, 2001

Signed by the governor May 21, 2001, 10:58 a.m.

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#### CHAPTER 138—S.F.No. 1430

*An act relating to health; eliminating commissioner's reporting requirement for alcohol and drug counselors; providing for exchange of information for investigations of alcohol and drug counselors; modifying an exception relating to school counselors; amending Minnesota Statutes 2000, sections 148C.03, subdivision 1; 148C.099; 148C.11, subdivision 1.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2000, section 148C.03, subdivision 1, is amended to read:

Subdivision 1. **GENERAL.** The commissioner shall, after consultation with the advisory council or a committee established by rule:

(a) adopt and enforce rules for licensure of alcohol and drug counselors, including establishing standards and methods of determining whether applicants and licensees are qualified under section 148C.04. The rules must provide for examinations and establish standards for the regulation of professional conduct. The rules must be designed to protect the public;

(b) develop and, at least twice a year, administer an examination to assess applicants' knowledge and skills. The commissioner may contract for the administration of an examination with an entity designated by the commissioner. The examinations must be psychometrically valid and reliable; must be written and oral, with the oral examination based on a written case presentation; must minimize cultural bias;

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