S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

November 25, 2002

Opinion No. 02-127

Application of 2002 Tenn. Pub. Acts Ch. 799 to HMOs, Regarding Utilization Review Agents

QUESTION

Do the provisions of Chapter 799 of the Public Acts of 2002, amending Tenn. Code Ann. §§ 56-6-702, -704 and -705, apply to health maintenance organizations?

OPINION

These provisions only apply to health maintenance organizations (HMOs) to the extent they perform utilization review services *other than* for their own members. The definition of utilization review agent in Tenn. Code Ann. § 56-6-703(5) exempts HMOs licensed and regulated by the Commissioner of Commerce and Insurance, but only to the extent that the HMO provides utilization review to its own members. An HMO providing this review pertaining to other individuals would be required to comply with the requirements of Tenn. Code Ann. §§ 56-6-701, *et seq.*

ANALYSIS

Chapter 799 of the Public Acts of 2002 ("PC 799") amends sections within Tennessee Code Annotated, Title 56, chapter 6, part 7, known as the Health Care Service Utilization Review Act ("Review Act"), regarding utilization review agents, by adding certain requirements effective November 1, 2002. PC 799 does not apply to TennCare, pursuant to Section 6. The function that is regulated by the Review Act, utilization review, is defined in Tenn. Code Ann. § 56-6-703(4) as "a system for prospective and concurrent review of the necessity and appropriateness in the allocation of health care resources and services given or proposed to be given to an individual within this state" but not including "elective requests for clarification of coverage."

PC 799 amends the Review Act by specifying standards related to utilization review of mental health and chemical dependency disorders, and to express the need for maintenance of confidentiality of all health-related records, not just medical records, in accordance with applicable laws and regulations. PC 799 amends the purposes of the Review Act found in Tenn. Code Ann. § 56-6-702. PC 799 also amends Tenn. Code Ann. § 56-6-704, by adding sentences following the mandate in § -704(a) for compliance by utilization review agents with minimum standards set forth in Tenn. Code Ann. § 56-6-705 and annual certification of that fact to the Commissioner of

Commerce and Insurance. But PC 799 did not change the underlying definition of utilization review agent, which is the person or entity that must comply and certify compliance. "Utilization review agent" continues to be defined in Tenn. Code Ann. § 56-6-703(5) as "any person or entity, including the state of Tennessee, performing utilization review, except: . . . (E) Health maintenance organizations licensed and regulated by the commissioner, but only to the extent of providing utilization review to their own members."

Thus, a health maintenance organization performing utilization review could be a utilization review agent if it provides utilization review to persons *other than* that HMO's own members. Such persons being reviewed include enrollees, where enrollee means "an individual who has contracted for or who participates in coverage under an insurance policy, an [HMO] contract, a health service corporation contract, an employee welfare benefit plan, a hospital or medical services plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for the individual or the individual's eligible dependents." Tenn. Code Ann. § 56-6-703(2). But, due to the definition of utilization review agent, when utilization review is performed pertaining to an HMO enrollee by the enrollee's HMO, such HMO is not covered by PC 799 and the requirements of Tenn. Code Ann. §§ 56-6-701, *et seq.*

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SARAH A. HIESTAND
Senior Counsel

Requested by:

Honorable Jerry Cooper
State Senator
309 War Memorial Building
Nashville, TN 37243-0214