

**SUBCHAPTER R. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER
A HEALTH BENEFIT PLAN OR HEALTH INSURANCE POLICY
28 TAC §19.1714**

**SUBCHAPTER U. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER
WORKERS' COMPENSATION INSURANCE COVERAGE
28 TAC §19.2014**

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC Chapter 19, Subchapter R, Utilization Reviews For Health Care Provided Under a Health Benefit Plan or Health Insurance Policy, §19.1714, Regulatory Requirements Subsequent to Certification or Registration; and Subchapter U, Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage, §19.2014, Regulatory Requirements Subsequent to Certification or Registration. The proposed amendments conform the rules to changes made by SB 784, 84th Legislature, Regular Session (2015).

2. EXPLANATION. SB 784 repealed Insurance Code §4201.204(c) requiring utilization review agents to submit to the commissioner summary reports of all complaints. Title 28 Texas Administrative Code §19.1714 and §19.2014 had expanded the reporting requirement to include adverse determinations and appeals of adverse determinations. The amendments to §19.1714(a)-(c) and §19.2014(a)-(c) remove the requirement for the summary reports.

Sections 19.1714 and 19.2014 are also amended to increase the number of days that a utilization review agent has to respond to a TDI inquiry from 10 to 15 days, to comply with SB 183, 83th Legislature, Regular Session (2013).

3. FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Kevin Brady, deputy commissioner for agency affairs, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

4. PUBLIC BENEFIT AND COST NOTE. Mr. Brady has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be the more efficient use of state and industry resources.

5. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that the proposed amendments to §19.1714 and §19.2014 will not have an adverse economic effect or disproportionate economic impact on small or micro businesses. Any small or micro businesses will no longer need to compile these reports. As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

6. TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

7. REQUEST FOR PUBLIC COMMENT. Submit any written comments on the proposal no later than 5 p.m., Central time, on January 18, 2016. TDI requires two copies of your comments. Send one copy either by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. Send the other copy either by mail to Kevin Brady, Deputy Commissioner for Agency Affairs, Texas Department of Insurance, Mail Code 113-1C, P.O. Box 149104, Austin, Texas 78714-9104; or by email to Kevin.Brady@tdi.texas.gov. If you wish to request a public hearing, submit a request separately to the chief clerk by email at chiefclerk@tdi.texas.gov or by mail to the Texas Department of Insurance, Office of the Chief Clerk, MC 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 before the close of the public comment period. If TDI holds a hearing, the commissioner will consider written comments and testimony presented at the hearing.

8. STATUTORY AUTHORITY. TDI proposes the amendments to §19.1714 and §19.2014 under Insurance Code §4201.204(c) which was repealed, eliminating the

requirement for utilization review agents to submit to the commissioner summary reports. Insurance Code §38.001 allows 15 days for a utilization review agent to respond to TDI. Insurance Code §36.001 provides that the commissioner may adopt rules and regulations to execute the duties and functions of TDI as authorized by statute.

9. CROSS-REFERENCE TO STATUTE. The amendments implement the repeal of Insurance Code §4201.204(c).

10. TEXT.

§19.1714. Regulatory Requirements Subsequent to Certification or Registration.

~~[(a) Summary report to TDI. By March 1 of each year, each URA certified or registered under this subchapter must submit to TDI through TDI's internet website a complete summary report of information related to complaints, adverse determinations, and appeals of adverse determinations.]~~

~~[(b) Contents of summary report. The summary report required by this section must cover reviews performed by the URA during the preceding calendar year and must include:]~~

~~[(1) the total number of written notices of adverse determinations;]~~

~~[(2) a listing of appeals of adverse determinations, by the medical condition that is the source of the dispute using the approved physical diagnosis or DSM-IV (mental health diagnosis) coding that is in effect at the time, or successor codes and modifiers, and by the treatment in dispute, if any, using CPT (procedure)]~~

~~code or other relevant procedure code if a CPT designation is not available, or any other nationally recognized numerically codified diagnosis or procedure;]~~

~~[(3) the classification of appellant, for example, "health care provider" or "enrollee";]~~

~~[(4) the disposition of the appeal of adverse determination (either in favor of the appellant, or in favor of the original utilization review determination) at each level within the internal utilization review process; and]~~

~~[(5) the subject matter of any complaint filed with the URA.]~~

~~[(c) Complaints included in the summary report. Complaints listed in the summary report under subsection (b)(5) of this section must be categorized as follows:]~~

~~[(1) administration, for example, copies of medical records not paid for, too many calls or written requests for information from provider, or too much information requested from provider;]~~

~~[(2) qualifications of URA's personnel; or]~~

~~[(3) appeal or complaint process, for example, the treating physician is unable to discuss plan of treatment with utilization review physician, no notice of adverse determination, no notice of clinical basis for adverse determination, or written procedures for appeal not provided.]~~

(a)~~[(d)]~~ Complaints to TDI. Complaints received by TDI against a URA must be processed under TDI's established procedures for investigation and resolution of complaints.

(b)~~[(e)]~~ TDI inquiries. TDI may address inquiries to a URA related to any matter connected with URA transactions that TDI considers necessary for the public good or

for the proper discharge of TDI's duties. Under Insurance Code §38.001, a URA that receives an inquiry from TDI must respond to the inquiry in writing not later than the 15th ~~10th~~ day after the date the inquiry is received.

(c)~~(f)~~ On-site review by TDI. For scheduled and unscheduled on-site reviews, TDI may make a complete on-site review of the operations of each URA at the principal place of business for each agent as often as is deemed necessary. An on-site review will only be conducted during working days and normal business hours. The URA must make available all records relating to its operation during any scheduled and unscheduled on-site review.

(1) Scheduled on-site reviews. URAs will be notified of any scheduled on-site review by letter, which will specify, at a minimum, the identity of TDI's designated representative and the expected arrival date and time.

(2) Unscheduled on-site reviews. At a minimum, notice of an unscheduled on-site review of a URA will be in writing and be presented by TDI's designated representative on arrival.

§19.2014. Regulatory Requirements Subsequent to Certification or Registration.

~~[(a) Summary report to TDI. By March 1 of each year, each URA certified or registered under this subchapter must submit to TDI through TDI's Internet website a complete summary report of information related to complaints, adverse determinations, and appeals of adverse determinations.]~~

~~[(b) Contents of summary report. The summary report required by this section must cover reviews performed by the URA during the preceding calendar year and must include:]~~

~~[(1) the total number of written notices of adverse determinations;]~~

~~[(2) a listing of adverse determinations for preauthorization, by the medical condition and treatment using the physical diagnosis or DSM-IV (mental health diagnosis) coding that is in effect at the time, or successor codes and modifiers, and CPT (procedure) code or other relevant procedure code if a CPT designation is not available, or any other nationally recognized numerically codified diagnosis or procedure;]~~

~~[(3) the classification of the party requesting review, for example, a health care provider; injured employee; or their representative;]~~

~~[(4) the disposition of the appeal of adverse determination (either in favor of the appellant, or in favor of the original utilization review determination) at each level within the internal utilization review process; and]~~

~~[(5) the subject matter of any complaint filed with the URA.]~~

~~[(c) Complaints included in summary report. Complaints listed in the summary report under subsection (b)(5) of this section must be categorized as follows:]~~

~~[(1) administration, for example, copies of medical records not paid for, too many calls or written requests for information from provider, and too much information requested from provider;]~~

~~[(2) qualifications of URA's personnel; or]~~

~~[(3) appeal or complaint process, for example, a treating physician unable to discuss the plan of treatment with a utilization review physician; no notice of adverse determination; no notice of clinical basis for adverse determination; or written procedures for appeal not provided.]~~

(a)~~[(d)]~~ Complaints to TDI. Complaints received by TDI against a URA must be processed under TDI's established procedures for investigation and resolution of complaints.

(b)~~[(e)]~~ TDI inquiries. TDI may address inquiries to a URA related to any matter connected with URA transactions TDI considers necessary for the public good or for the proper discharge of TDI's duties. Under Insurance Code §38.001, a URA that receives an inquiry from TDI must respond to the inquiry in writing not later than the 15th~~[40th]~~ day after the date the inquiry is received.

(c)~~[(f)]~~ TDI-DWC inquiries. This section does not limit the ability of the commissioner of workers' compensation or TDI-DWC to make inquiries, conduct audits, or receive and investigate complaints against URAs or personnel employed by or under contract with URAs to perform utilization review to determine compliance with or violations of Labor Code Title 5, the Insurance Code, or applicable TDI-DWC rules.

(d)~~[(g)]~~ On-site review by TDI. For scheduled and unscheduled on-site reviews, TDI may make a complete on-site review of the operations of each URA at the principal

place of business for each agent as often as is deemed necessary. An on-site review will only be conducted during working days and normal business hours. A URA must make available all records relating to its operation during any scheduled or unscheduled on-site reviews.

(1) Scheduled on-site reviews. A URA will be notified of any scheduled on-site review by letter, which will specify, at a minimum, the identity of TDI's designated representative and the expected arrival date and time.

(2) Unscheduled on-site reviews. At a minimum, notice of an on-site review of a URA will be in writing and be presented by TDI's designated representative on arrival.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued at Austin, Texas, on December 4, 2015.



Norma Garcia
General Counsel
Texas Department of Insurance