

**SUBCHAPTER R. UTILIZATION REVIEW AGENTS  
28 TAC §19.1718 and §19.1722**

**SUBCHAPTER U. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED  
UNDER WORKERS' COMPENSATION INSURANCE COVERAGE  
28 TAC §§19.2012, 19.2015, 19.2018 and 19.2021**

**1. INTRODUCTION.** The Texas Department of Insurance (Department) proposes the repeal of §§19.1718, 19.1722, 19.2012, 19.2015, 19.2018, and 19.2021, concerning utilization review. Repeal of these sections is necessary because they are obsolete and no longer necessary. Repeal of §19.1718, concerning criminal penalties, is necessary because the statute on which it was based, the Insurance Code Article 21.58A §10, was repealed by Senate Bill (SB) 14, 77th Legislature, Regular Session, effective September 1, 2001. Repeal of §19.1722, concerning the utilization review advisory committee, is necessary because the utilization review agents advisory committee was abolished by House Bill (HB) 1951, 82nd Legislature, Regular Session, effective September 1, 2011. Repeal of §19.2012, concerning appeal of adverse determination of utilization review agents, is necessary because the Department is proposing a new §19.2012 relating to appeal of adverse determinations, which contains more specific guidelines. Repeal of §19.2015, concerning retrospective review of medical necessity, is necessary because the Department is proposing (i) amendments to §19.2005 that address requirements for retrospective review; and (ii) new §19.2015, concerning notice of determinations made in retrospective review, which contains more specific notice requirements. Repeal of §19.2018, concerning criminal penalties, is necessary because the statute on which it was based, the Insurance Code Article 21.58A §10, was repealed by SB 14, 77th

Legislature, Regular Session, effective September 1, 2001. Repeal of §19.2021, concerning independent review organizations non-involvement, is necessary because the Department is proposing a new §19.2021 relating to independent review of adverse determinations, which contains more specific requirements relating to independent review. In conjunction with this proposal, the Department is proposing amendments to §§19.1701 – 19.1717, 19.1719 – 19.1721, 19.1723, 19.1724, 19.2001 – 19.2011, 19.2013, 19.2014, 19.2016, 19.2017, 19.2019, and 19.2020 of this chapter (relating to Utilization Reviews for Health Care Provided under a Health Benefit Plan or Health Insurance Policy and Utilization Reviews for Health Care Provided under Workers' Compensation Insurance Coverage, respectively) and new §§19.2012, 19.2015, and 19.2021 (relating to Appeal of Adverse Determination, Notice of Determination Made in Retrospective Review, and Independent Review of Adverse Determinations, respectively) also published in this edition of the *Texas Register*.

**2. FISCAL NOTE.** Debra Diaz-Lara, Deputy Commissioner, Health and Workers' Compensation Network Certification and Quality Assurance Division, has determined that during each year of the first five years that the proposed repeal is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

**3. PUBLIC BENEFIT/COST NOTE.** Ms. Diaz-Lara also has determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of administration and enforcement of the repealed sections will be the elimination of obsolete regulations. There is no anticipated economic cost to persons who are required to comply with the proposed repeal. There is no anticipated difference in cost of compliance between small and large businesses.

**4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** In accordance with the Government Code §2006.002(c), the Department has determined that this proposed repeal will not have an adverse economic effect on small or micro business carriers because it is simply a repeal of unnecessary rules. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

**5. TAKINGS IMPACT ASSESSMENT.** The Department 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 and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**6. REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on August 1, 2011 to Gene C.

Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Debra Diaz-Lara, Deputy Commissioner of the Health and Workers' Compensation Network Certification and Quality Assurance/HWCN for the Life, Health & Licensing Division, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** Repeal of §§19.1718, 19.1722, 19.2012, 19.2015, 19.2018, and 19.2021 is proposed pursuant to SB 14, 77th Legislature, Regular Session, effective September 1, 2001 (SB 14), HB 1951, 82nd Legislature, Regular Session, effective September 1, 2011 (HB 1951), the Insurance Code §4201.003, and §36.001. SB 14 repealed Article 21.58A Section 10, which was the statutory basis for repealed §19.1718 and §19.2018. HB 1951 abolished the utilization review agents advisory committee. Section 4201.003 provides that the Commissioner of Insurance may adopt rules to implement Chapter 4201 of the Insurance Code. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**8. CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§19.1718	Insurance Code Chapter 4201, Subchapter M
§19.1722	Insurance Code §4201.003
§19.2012	Insurance Code Chapter 4201, Subchapter H; Labor Code Title 5, Subtitle A
§19.2015	Insurance Code Chapter 4201, Subchapter H; Labor Code Title 5, Subtitle A
§19.2018	Insurance Code Chapter 4201, Subchapter M
§19.2021	Insurance Code Chapter 4201 and Chapter 4202

**9. TEXT.**

**SUBCHAPTER R. UTILIZATION REVIEW AGENTS**

**§19.1718. Criminal Penalties.**

**§19.1722. Utilization Review Advisory Committee.**

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

**§19.2012. Appeal of Adverse Determination of Utilization Review Agents.**

**§19.2015. Retrospective Review of Medical Necessity.**

**§19.2018. Criminal Penalties.**

**§19.2021. Independent Review Organizations Non-Involvement.**