

**SUBCHAPTER HH. STANDARDS FOR REASONABLE COST CONTROL AND
UTILIZATION REVIEW FOR CHEMICAL DEPENDENCY TREATMENT CENTERS**

~~[28 TAC §§3.8001–3.8030]~~

28 TAC §3.8001

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §3.8001–3.8030, which established chemical dependency treatment standards, including cost control and utilization review standards, and adopt new 28 TAC §3.8001 regulating chemical dependency treatment standards.

EXPLANATION. The proposed repeal of §§3.8001–3.8030 and proposed adoption of new §3.8001 implements Insurance Code §1368.007. Section 1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment, as well as necessary extensions of treatment.

Proposed new §3.8001 requires insurers, other third-party reimbursement sources, and chemical dependency treatment providers to use chemical dependency treatment standards of care in 25 TAC, Chapter 448, Subchapter I, the rules adopted by the Texas Health and Human Services Commission (HHSC). Using HHSC's standards in conjunction with 28 TAC Chapter 19 (relating to Licensing and Regulation of Insurance Professionals) and Insurance Code Chapter 4201, concerning Utilization Review Agents, serve as a means to comply with §1368.007 to control costs and conduct utilization review.

Regulated persons must manage the sometimes-irreconcilable chemical dependency treatment standards of TDI and HHSC. By adopting HHSC's standards, TDI will reduce regulatory burdens and costs imposed on regulated persons. Also, HHSC

already regulates health care facilities, health care professionals, and public health, giving it access to current medical and scientific standards. The following two paragraphs summarize the proposal:

Repeal of §§3.8001–3.8030. TDI proposes to repeal §§3.8001–3.8030.

New §3.8001. Chemical Dependency Treatment Standards. New §3.8001 provides that insurers, other third-party reimbursement sources, and chemical dependency treatment providers must use the chemical dependency treatment standards in 25 TAC, Chapter 448, Subchapter I (relating to treatment program services).

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Debra Diaz-Lara, director of the Managed Care and Quality Assurance Office of the Texas Department of Insurance, has determined that there will be no resulting measurable fiscal impact on state and local governments to enforce or administer the section during each year of the first five years the proposed repeal and new section are in effect other than that imposed by the statute. The bases of that determination were that (1) the proposed amendments do not increase or decrease state revenues or expenditures, and (2) local governments are not involved in enforcing or complying with the proposed new rule.

Ms. Diaz-Lara does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed repeal and new section are in effect, Ms. Diaz-Lara expects that administering the proposed repeal and new section will have the public benefit of ensuring that TDI's rules conform to Insurance Code §1368.007. Regulated persons will no longer need to manage sometimes-irreconcilable chemical dependency standards that TDI and HHSC adopt, reducing regulatory burdens and costs imposed. The proposed changes will help chemical

dependency treatment services be more efficient and effective and provide an appropriate continuum of care that will enable individuals seeking those services to lead lives as productive members of society, free from the burdens associated with chemical dependency. Also, the health, safety, and welfare of Texas insureds and those receiving chemical dependency treatment services will be protected.

Ms. Diaz-Lara expects that the proposed repeal and adoption of the new section will not increase the cost of compliance with Insurance Code §1368.007, because the proposal does not impose requirements other than those necessary to comply with the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposal will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses or rural communities, because the proposed amendments do not impose a cost on regulated persons. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposal does not impose a cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years that the proposed rule is in effect, the proposed rule or its implementation:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to TDI;
- will not require an increase or decrease in fees paid to the agency;
- will create a new regulation;
- will repeal and replace an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively nor adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that the proposal does not affect private real property interests or 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.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 26, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be received by the department no later than 5:00 p.m., central time, on October 26, 2020.

If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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Repeal of 28 TAC §§3.8001–3.8030.

STATUTORY AUTHORITY. TDI proposes the repeal of §§3.8001–3.8030 under Insurance Code §1368.007 and §36.001.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment as well as necessary extensions of treatment.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The repeal of §§3.8001–3.8030 affects Insurance Code §1368.007.

TEXT.

§3.8001. Definitions.

§3.8002. Purpose and General Provisions.

§3.8003. Criteria.

§3.8004. Admission and Monitoring.

§3.8005. Utilization Review.

§3.8007. Admission Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8008. Continued Stay Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8009. Discharge Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8010. Recommended Length of Stay for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8011. Admission Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8012. Continued Stay Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8013. Discharge Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8014. Recommended Length of Stay for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8015. Admission Criteria for Partial Hospitalization Services.

§3.8016. Continued Stay Criteria for Partial Hospitalization Services.

§3.8017. Discharge Criteria for Partial Hospitalization Services.

§3.8018. Recommended Length of Stay for Partial Hospitalization Services.

§3.8019. Admission Criteria for Intensive Outpatient Rehabilitation/Treatment Service.

§3.8020. Continued Stay Criteria for Intensive Outpatient Rehabilitation/Treatment Service.

§3.8021. Discharge Criteria for Intensive Outpatient Rehabilitation/Treatment Service.

§3.8022. Recommended Length of Stay for Intensive Outpatient Rehabilitation Treatment Service.

§3.8023. Admission Criteria for Outpatient Treatment Service.

§3.8024. Continued Stay Criteria for Outpatient Treatment Services.

§3.8025. Discharge Criteria for Outpatient Treatment Service.

§3.8026. Recommended Length of Stay for Outpatient Treatment Service.

§3.8027. Admission Criteria for Outpatient Detoxification Treatment Service.

§3.8028. Continued Stay Criteria for Outpatient Detoxification Treatment Services.

§3.8029. Discharge Criteria for Outpatient Treatment Service.

§3.8030. Recommended Length of Stay for Outpatient Detoxification Treatment Service.

**SUBCHAPTER HH. STANDARDS FOR REASONABLE COST CONTROL AND
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28 TAC §3.8001**

STATUTORY AUTHORITY. TDI proposes new 28 TAC §3.8001 under Insurance Code §36.001 and §1368.007.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment as well as necessary extensions of treatment.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Proposed new §3.8001 affects Insurance Code Chapter 1368.

§3.8001. Chemical Dependency Treatment Standards.

Insurers, other third-party reimbursement sources, and chemical dependency treatment providers must use the chemical dependency treatment standards in 25 TAC, Chapter 448, Subchapter I (relating to treatment program services).

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

Issued in Austin, Texas, on September 8, 2020.

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James Person, General Counsel
Texas Department of Insurance