

**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 implement Insurance Code §1368.007. Section 1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by group health benefit plans, 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. When providing coverage for chemical dependency treatment, health benefit plan issuers are also governed by other laws, including utilization review standards in Insurance Code Chapter 4201 and parity requirements for mental health conditions and substance use disorders in Insurance Code Chapter 1355, Subchapter F. Coordination of statutory language is addressed in rules implementing parity requirements at 28 TAC §21.2403. TDI encourages issuers to consider all applicable laws when designing policies and procedures related to coverage for chemical dependency treatment.

Proposed new §3.8001 requires group health benefit plan issuers subject to Insurance Code Chapter 1368 to use the applicable screening criteria published in the

27th edition of the MCG Care Guidelines (formerly Milliman Care Guidelines) or the 3rd edition of the American Society of Addiction Medicine (ASAM) Criteria for any utilization review of treatment required under Insurance Code Chapter 1368. This section will be updated as needed. The MCG Care Guidelines and ASAM Criteria meet Insurance Code §1368.007 treatment standards and the state standards for screening criteria used in utilization review and are already widely used by most health benefit plans. Following the MCG Care Guidelines or ASAM Criteria will ensure that issuers cover an appropriate continuum of care for treatment of substance use disorders and support the health, safety, and welfare of Texas insureds. To provide adequate time for issuers to transition to the new standards, TDI proposes an effective date of 180 days after the date the rule is adopted.

The following paragraphs summarize the proposal.

**New §3.8001. Chemical Dependency Treatment Standards.** Proposed new §3.8001 identifies the treatment standards that must be used for coverage of chemical dependency treatment. Subsection (a) explains that the purpose of the rule is to implement Insurance Code §1368.007. Subsection (b) clarifies that the section applies to a group health benefit plan that is subject to Insurance Code Chapter 1368. Subsection (c) specifies that the treatment standards adopted by the section are the 27th edition of the MCG Care Guidelines or the 3rd edition of the ASAM Criteria. Subsection (d) requires that group health benefit plans use either the MCG Care Guidelines or the ASAM Criteria for any treatment required to be covered under Insurance Code Chapter 1368.

**Repeal of §§3.8001 - 3.8030.** TDI proposes to repeal §§3.8001 - 3.8030.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Rachel Bowden, director of Regulatory Initiatives in the Life and Health Division, has determined that there will be no 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. Ms. Bowden made this determination because the proposed repeal and new section do not increase or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new rule.

Ms. Bowden does not anticipate any 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. Bowden 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 and §4201.153. The proposed changes will ensure that health benefit plan issuers are using screening criteria that are current and clinically valid. The updated MCG Care Guidelines and ASAM Criteria will provide a clear framework for coverage of an appropriate continuum of care for chemical dependency treatment. Replacing the treatment standards as proposed will protect the health, safety, and welfare of Texas insureds and those receiving chemical dependency treatment services.

Ms. Bowden expects that the proposed repeal and new section will increase the cost of compliance with Insurance Code §1368.007 for any group health benefit plan issuer that is not already using one of the proposed MCG Care Guidelines or ASAM Criteria. An issuer that is currently using a different treatment standard would need to purchase a license to access either the MCG Care Guidelines or ASAM Criteria. Access to both MCG Care Guidelines and ASAM Criteria is licensed on a nationwide, per-member basis, ranging from \$2,600 per year for low-subscriber plans to over \$375,000 per year for larger plans.

**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 rural communities, but it may have an adverse economic effect on small or micro businesses, to the extent that they offer group health benefit plans that are subject to Insurance Code Chapter 1368. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The department estimates that the proposed rule will affect approximately between one and three small or micro businesses.

The objective of this proposal is to ensure that group health benefit plan issuers are using up-to-date and clinically valid screening criteria when making coverage determinations for chemical dependency treatment. TDI has considered the following options to minimize any adverse effects on small and micro businesses while accomplishing the proposal's objectives:

(1) not repealing current sections and proposing the new section and allowing issuers, including those that are small or micro businesses, to continue using the standards contained in the current sections;

(2) phasing in a deadline for all issuers or just small or micro businesses to begin using the new treatment standards; and

(3) permitting all issuers or just small or micro businesses to use any chemical dependency treatment standards that satisfied the requirements under Insurance Code §4201.153.

In considering Option 1, TDI believes that, absent the repeal of the current sections and adoption of the new section, some issuers may inappropriately deny care on the basis of outdated standards contained in the current rules. To ensure that all issuers use current standards to evaluate proposed care and protect the health, safety, and welfare of the residents of this state, TDI rejected this option.

In considering Option 2, TDI believes all issuers, and particularly small and micro businesses, should have adequate time to transition to the new treatment standards.

Issuers that are not already using the MCG Care Guidelines or ASAM Criteria will need time to evaluate which standard to use, purchase a license, and train staff on the new standards. More time may help issuers negotiate purchases and incorporate the transition into broader operational decisions. It may also enable issuers to train staff and implement the new standards using existing resources. Therefore, TDI anticipates making the new section effective 180 days after adoption.

In considering Option 3, TDI believes that failing to adopt specific treatment standards would not satisfy the requirements of Insurance Code §1368.007, which requires TDI to "adopt standards formulated and approved by the department." While Insurance Code §4201.153 requires screening criteria used by utilization review agents to meet certain standards, it does not require uniformity. Differences in standards selected by each utilization review agent could lead to inconsistent determinations. Specifying the standards as proposed, which are closely aligned in substance, will provide more clarity to providers of chemical dependency treatment. Because of this, TDI rejected this option.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** TDI has determined that the proposal does impose a cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed rule is necessary to implement Insurance Code §1368.007 and §4201.153 and to protect the health, safety, and welfare of the residents of this state by ensuring that outdated standards for treatment of chemical dependency are repealed and standards reflecting the most current accepted practices are adopted.

**GOVERNMENT GROWTH IMPACT STATEMENT.** TDI has determined that for each year of the first five years that the proposed rule is in effect, the proposed rule:

- 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 regulations;
- 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 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.

**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 August 14, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2838 at 2:00 pm, central time, on August 8, 2023, in Room 2.029 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

**Subchapter HH. Standards for Reasonable Cost Control and Utilization Review for  
Chemical Dependence Treatment Centers  
Repeal of 28 TAC §§3.8001 - 3.8030.**

**STATUTORY AUTHORITY.** TDI proposes the repeal of §§3.8001 - 3.8030 under Insurance Code §§1355.258, 1368.007, 4201.003, and 36.001.

Insurance Code §1355.258 requires the commissioner to adopt rules necessary to implement Chapter 1355, Subchapter F.

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 §4201.003 authorizes the commissioner to adopt rules to implement Chapter 4201.

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 implements Insurance Code Chapter 1368.

**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 Utilization Review for  
Chemical Dependence Treatment Centers  
28 TAC §3.8001**

**STATUTORY AUTHORITY.** TDI proposes new §3.8001 under Insurance Code §§1355.258, 1368.007, 4201.003, and 36.001.

Insurance Code §1355.258 mandates that the commissioner adopt rules necessary to implement Chapter 1355, Subchapter F.

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 §4201.003 provides that the commissioner may adopt rules necessary to implement Chapter 4201.

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 implements Insurance Code Chapter 1368.

**§3.8001. Chemical Dependency Treatment Standards.**

(a) Purpose. This section implements Insurance Code §1368.007, concerning Treatment Standards.

(b) Applicability. This section applies to a group health benefit plan that is subject to Insurance Code Chapter 1368, concerning Availability of Chemical Dependency Coverage.

(c) Treatment standards. For the purpose of this section, the department adopts the treatment standards in the 27th edition of the MCG Care Guidelines and the 3rd edition of the American Society of Addiction Medicine (ASAM) Criteria.

(d) Coverage required. For any treatment for which coverage is required under Insurance Code Chapter 1368, a group health benefit plan must use the MCG Care Guidelines or ASAM Criteria, as applicable to the treatment and care provided.

**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 June 28, 2023.

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*Jessica Barta*

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Jessica Barta, General Counsel  
Texas Department of Insurance