

**SUBCHAPTER R. UTILIZATION REVIEW AGENTS  
28 TAC §§19.1701 – 19.1724**

**SUBCHAPTER U. UTILIZATION REVIEWS FOR HEALTH CARE PROVIDED UNDER  
WORKERS' COMPENSATION INSURANCE COVERAGE  
28 TAC §§19.2001 – 19.2021**

**1. INTRODUCTION.** The Texas Department of Insurance proposes the repeal of Subchapter R, §§19.1701 – 19.1724, concerning utilization review agents, and Subchapter U, §§19.2001 – 19.2021, concerning utilization review for health care provided under workers' compensation insurance coverage. Repeal of §§19.1701 – 19.1717, 19.1720, 19.1721, 19.1723, and 19.1724 is necessary to incorporate the requirements in those sections and Insurance Code Chapter 4201 into proposed new Subchapter R, §§19.1701 – 19.1719. Repeal of §§19.2001 – 19.2017, 19.2020, and 19.2021 is necessary to incorporate the requirements in those sections and Insurance Code Chapter 4201 into proposed new Subchapter U, §§19.2001 – 19.2017.

Repeal of §19.1718 and §19.2018, concerning criminal penalties, is necessary because the statute on which it was based, Insurance Code Article 21.58A §10, was repealed by Senate Bill 14, 77th Legislature, Regular Session, effective September 1, 2001. Repeal of §19.1719, concerning responsibility of HMOs and insurers performing utilization review under Insurance Code Article 21.58A, §14(g) and (h), and §19.2019, concerning responsibility of insurance companies performing utilization review under Insurance Code Article 21.58A, §14(h), is necessary because the requirements already exist in Insurance Code §§4201.057, 4201.058, and 4201.053, and repeating the requirements in the proposed new rules would be redundant. Repeal of §19.1722,

concerning the utilization review advisory committee, is necessary because the utilization review agents' advisory committee was abolished by House Bill 1951, 82nd Legislature, Regular Session, effective September 1, 2011.

In conjunction with this proposal, TDI is proposing new Subchapter R, §§19.1701 – 19.1719, and Subchapter U, §§19.2001 – 19.2017, also published in this edition of the *Texas Register*.

**2. FISCAL NOTE.** Debra Diaz-Lara, director, Managed Care Quality Assurance Office, 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 accord with Government Code

§2006.002(c), TDI 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 accord with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

**5. 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 and, therefore, does not constitute a taking or require a takings impact assessment under 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 September 24, 2012 to Sara Waitt, General Counsel, 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, Director, Managed Care Quality Assurance Office, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed repeal in a public hearing under Docket No. 2741 scheduled for September 26, 2012 at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas. Written and oral comments presented at the hearing will be considered.

**7. STATUTORY AUTHORITY.** . Repeal of §§19.1718, 19.1722, and 19.2018 is proposed pursuant to SB 14, 77th Legislature, Regular Session, effective September 1, 2001, and HB 1951, 82nd Legislature, Regular Session, effective September 1, 2011. SB 14 repealed Article 21.58A, Section 10, which was the statutory basis for §19.1718 and §19.2018. HB 1951 abolished the utilization review agents' advisory committee, which was the basis for §19.1722. Repeal of §§19.1701 – 19.1717, 19.1719 – 19.1721, 19.1723, 19.1724, 19.2001 – 19.2017, and 19.2019 – 19.2021, is proposed pursuant to the Insurance Code §4201.003 and §36.001. Section 4201.003 provides that the commissioner may adopt rules to implement Chapter 4201 of the Insurance Code. 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.

**8. CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposal: (i) §§19.1701 – 19.1724 affect Insurance Code Chapters 843, 4201, and 4202; and (ii) §§19.2001 – 19.2021 affect Insurance Code Chapters 1305, 4201, and 4202, and Labor Code, Title 5, Chapters 401, 408, and 413.

**9. TEXT.**

#### **SUBCHAPTER R. UTILIZATION REVIEW AGENTS**

**§19.1701. General Provisions.**

**§19.1702. Limitations on Applicability.**

**§19.1703. Definitions.**

**§19.1704. Certification of Utilization Review Agents.**

**§19.1705. General Standards of Utilization Review.**

**§19.1706. Personnel.**

**§19.1707. Prohibitions of Certain Activities of Utilization Review Agents.**

**§19.1708. Utilization Review Agent Contact With and Receipt of Information from Health Care Providers.**

**§19.1709. On-Site Review by the Utilization Review Agent.**

**§19.1710. Notice of Determinations Made by Utilization Review Agents.**

**§19.1711. Requirements Prior to Adverse Determination.**

**§19.1712. Appeal of Adverse Determination of Utilization Review Agents.**

**§19.1713. Utilization Review Agent's Telephone Access.**

**§19.1714. Confidentiality.**

**§19.1715. Retrospective Review of Medical Necessity.**

**§19.1716. Complaints and Information.**

**§19.1717. Administrative Violations.**

**§19.1718. Criminal Penalties.**

**§19.1719. Responsibility of HMOs and Insurers Performing Utilization Review under the Insurance Code, Article 21.58A, §14(g) and (h).**

**§19.1720. Specialty Utilization Review Agent.**

**§19.1721. Independent Review of Adverse Determinations.**

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

**§19.1723. Preauthorization.**

**§19.1724. Verification.**

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

**§19.2001. General Provisions.**

**§19.2002. Limitations on Applicability.**

**§19.2003. Definitions.**

**§19.2004. Certification of Utilization Review Agents.**

**§19.2005. General Standards of Utilization Review.**

**§19.2006. Personnel.**

**§19.2007. Prohibitions of Certain Activities of Utilization Review Agents.**

**§19.2008. Utilization Review Agent Contact with and Receipt of Information from  
Health Care Providers.**

**§19.2009. On-Site Review by the Utilization Review Agent.**

**§19.2010. Notice of Determinations Made by Utilization Review Agents, Excluding  
Retrospective Review.**

**§19.2011. Requirements Prior to Adverse Determination.**

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

**§19.2013. Utilization Review Agent's Telephone Access.**

**§19.2014. Confidentiality.**

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

**§19.2016. Complaints and Reporting Requirements.**

**§19.2017. Administrative Violations.**

**§19.2018. Criminal Penalties.**

**§19.2019. Responsibility of Insurance Companies Performing Utilization Review  
under the Insurance Code, Article 21.58A, §14(h).**

**§19.2020. Specialty Utilization Review Agent.**

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