



Texas Department of Insurance Division of Workers' Compensation



**Utilization Review Agent Rules Changes
Effective February 2013**

Various Requirements for Workers' Compensation Utilization Reviews

- Texas Insurance Code (TIC) Chapters 1305 & 4201
- Texas Labor Code (TLC), Chapters 413 and 504
- **Chapter 19, Subchapter U, 28 TAC
(28 TAC §§19.2001 – 19.2017)**
- 28 TAC §§ 133.240, 133.250, 133.308, and 134.600
- 28 TAC §§ 180.1, 180.22, 180.28
- Chapter 10, Subchapter F, 28 TAC

Why did we change the URA Rules?

- Implement HB 4290, 81st Legislature, Regular Session, effective September 1, 2009
 - HB 4290 revised the definition of “adverse determination” in Insurance Code Chapter 4201 and clarified that all adverse determinations are subject to IRO reviews
- Clarify existing Utilization Review requirements

Key Definitions

- **Adverse Determination**

A determination by a URA made on behalf of a payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the failure to request prospective or concurrent utilization review. For the purposes of this subchapter, an adverse determination does not include a determination that health care services are experimental or investigational.

- **Utilization Review**

Includes a system for prospective, concurrent, or retrospective review of the medical necessity and appropriateness of health care services and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services. The term does not include a review in response to an elective request for clarification of coverage.

Key Definitions

- **Peer Review**

An administrative review by a health care provider performed at the insurance carrier's request without a physical examination of the injured employee.

- **Provider of Record**

The physician, doctor, or other health care provider that has primary responsibility for the health care services rendered or requested on behalf of an injured employee, or a physician, doctor, or other health care provider that has rendered or has been requested to provide health care services to an injured employee. This definition includes any health care facility where health care services are rendered on an inpatient or outpatient basis.

Key Definitions

- **UR Plan**

Must be reviewed and approved by a physician and conducted under standards developed and periodically updated.

- **Screening criteria**

URA must utilize written screening criteria that are evidence-based, scientifically valid, outcome-focused, and that comply with the requirements in TIC §4201.153. Screening criteria must also recognize that if evidence-based medicine is not available for a particular health care service provided, the URA must utilize generally accepted standards of medical practice recognized in the medical community. For workers' compensation network coverage, screening criteria must comply with TIC Chapter 1305 and 28 TAC §10.101; for workers' compensation non-network coverage and workers' compensation health plan, screening criteria must comply with TLC §§401.011, 413.011, and 413.014, and 28 TAC Chapters 133, 134, and 137.

Key Definitions

Referral & determination of adverse determinations

Adverse determinations must be referred to and may only be determined by a physician, doctor, or other health care provider with appropriate credentials under Chapter 180 of this title (relating to Monitoring and Enforcement) and §19.2006 of this title (relating to Requirements and Prohibitions Relating to Personnel).

Physicians and doctors performing utilization review must also comply with TLC §§408.0043, 408.0044, and 408.0045.

Important Message:

This requirement means that all personnel, including nurses, who perform utilization review must be health care providers licensed or otherwise authorized to provide services in Texas. Non-clinicians such as claims adjusters may neither approve nor deny requests for utilization review.

Applicability

Subchapter U

- Non-network claims (TLC Title 5, excluding TIC §1305)
- Network claims (TIC §1305)
- Health Plan claims
 - Political subdivisions contracting directly with health care providers or through a health benefits pool under Labor Code §504.053(b)(2)

Important Elements

Reasonable Opportunity – URA must:

- Provide “Reasonable Opportunity” to requesting provider*
- Provide requesting provider with information that may result in approval*
- Provide telephone number to requesting provider*
- Document date & time of “Reasonable Opportunity” discussion & outcome*
- Notify TDI of Independent Review Organization request w/in one (1) working day

***PRIOR to Adverse Determination**

Reasonable Opportunity Discussion: When is it Required?

- **Prospective** – not less than one (1) working day before Adverse Determination
- **Concurrent** – PRIOR to Adverse Determination
- **Retrospective** – not less than five (5) working days before Adverse Determination

Documentation

- The peer-to-peer discussion must be documented and must include:
 - Date and time the reasonable opportunity was offered by the URA;
 - Date and time the discussion, if any, took place; and
 - Outcome of the discussion
- This information must be provided upon request to TDI or TDI-DWC

Adverse Determinations

- A physician, doctor or health care provider may issue an adverse determination
- But a physician, dentist or chiropractor must conduct the peer-to-peer discussion prior to the adverse determination
- A physician, dentist or chiropractor who has not previously reviewed the case must make the decision on an appeal of an adverse determination

Notice of Adverse Determination Must Include:

- the principal reasons
- the clinical basis
- the URA's internal complaint and appeal procedure & how to file a complaint with Texas Department Insurance (TDI)
- the professional specialty and Texas license number of the physician, doctor, or other health care provider that made the adverse determination
- for WC network coverage, a description or the source of the screening criteria
- for WC non-network coverage, a description of treatment guidelines used under Texas Department of Insurance, Division of Workers' Compensation rule in Chapter 137
- Independent review process

Clarification

- The notice of adverse determination may constitute a peer review report required by 28 TAC §180.28 (relating to Peer Review Requirements, Reporting, and Sanctions) if the notice also complies with the required elements of that section

Who may request the Adverse Determination Appeal? How?

An injured employee, the injured employee's representative, or the provider of record may appeal the adverse determination orally or in writing.

URA Appeal Procedures

WC Network URA procedures must comply with:

- TIC Chapter 1305 and
- 28 TAC §10.102

BOTH WC Network ***AND*** WC Non-Network URA procedures must comply with:

- 28 TAC §19.2009
- 28 TAC §133.250 and
- TIC §4201.359

URA Appeal Procedures

- Decision made by a physician, dentist, or chiropractor who has not previously reviewed the case as required by 28 TAC Chapter 180, TIC §1305.354, and 28 TAC §10.103*
- URA must give requesting provider “Reasonable Opportunity”*

***NOTE:** If the health care services are dental services, a dentist may make the appeal decision if the services are within the scope of the dentist's license. If the health care services are chiropractic services, a chiropractor may make the appeal decision if the services are within the scope of the chiropractor's license.

Timeframes for Appeal Review

- **WC Network Coverage**
 - not later than 30 days from receipt of request
- **WC Non-Network Coverage**
 - 30 days for standard appeal
 - Three (3) working days for concurrent review
 - One (1) working day for inpatient length of stay

After the URA Reviews the Appeal

The URA must issue a **response letter** explaining appeal resolution to individuals specified in 28 TAC §19.2009(a).

Notice of Right to IRO

Must comply with 28 TAC §19.2017 and include:

- a copy of the request for a review by an IRO form, available on the TDI website www.tdi.texas.gov/forms; or
- notice in at least 12 point font that the injured employee can obtain a copy of the request for a review by an IRO form by:
 - accessing the TDI website at www.tdi.texas.gov/forms
or
 - calling *{insert URA's telephone number}* to request a copy of the form, at which time the URA will send a copy of the request for a review by an IRO form to the injured employee or health care provider

Other Interactions with TDI-DWC Rules

Peer Review Reports, 28 TAC, Chapter 180

- The notice of determination made in utilization review required under 28 TAC §19.2009 and the peer review report required by 28 TAC §180.28 (relating to Peer Review Requirements, Reporting, and Sanctions) may be combined into one document if all the requirements of both sections are met.
- Peer review on medical necessity issues must be in writing.

First Responders

28 TAC Chapters 133 and 134

- Utilization review plan written policies must evidence compliance with TLC §504.055, concerning Expedited Provision of Medical Benefits for Certain Injuries Sustained by First Responder in Course and Scope of Employment.

Pharmacy Closed Formulary

28 TAC Chapter 134, Subchapter F

- A URA must have procedures that the URA will implement when responding to requests for:
 - drugs that require preauthorization, in situations in which the injured employee has received or is currently receiving the requested drugs and an adverse determination could lead to a medical emergency; and
 - post-stabilization care and pain management medication immediately subsequent to surgery or emergency treatment, as requested by the treating physician or provider of record

Prospective and Concurrent Review of Health Care

28 TAC Chapter 134, Subchapter G

- The URA is required to assign preauthorization numbers that comply with the standards adopted by the U.S. Department of Health and Human Services in 45 C.F.R. §162.1102

Medical Billing Rules

28 TAC Chapter 133

- URA rules do not exempt insurance carriers from TDI-DWC medical billing rules or modify duties imposed by those rules

Questions?

- TDI Managed Care and Quality Assurance Office
 - URAGrp@tdi.texas.gov
 - (512) 322-4266
- TDI Division of Workers' Compensation
 - Comp Connection for Health Care Providers
 - MedicalBenefits@tdi.texas.gov
 - (800) 372-7713