



**TO:** Medical Care Advisory Committee  
**DATE:** August 16, 2018  
**FROM:** Judy Knobloch, Assistant Deputy IG,  
HHSC-OIG Division of Medical Services  
  
Patrick Myers, HHSC-OIG Senior Counsel

**Agenda Item No.: 5**

**SUBJECT:** Nursing Facility Utilization Reviews

**Amendments to:** Texas Administrative Code Title 1, Part 15, Chapter 371, Subchapter C, §371.214(n)(1)

**BACKGROUND:**  Federal Requirement  Legislative Requirement  Other: (e.g., Program Initiative)

The proposed amendment replaces the requirement that HHSC's Office of Inspector General (HHSC-OIG) conduct on-site utilization reviews of every nursing facility at least every fifteen months with a process whereby HHSC-OIG conducts a comprehensive annual review of all nursing facilities by considering criteria such as length of time since the last review, previous review results, complaints, and referrals, and uses the results of that review to prioritize nursing facilities for on-site utilization reviews.

Moving from the Texas Index for Level of Effort (TILE) classification system to the Resource Utilization Group (RUG) classification system in 2008 increased the workload of the nurse reviewers, as the number of review items changed from 34 to 105. Section 371.214(n)(1) provides that the HHSC-OIG's Division of Medical Services Utilization Review group (UR) will conduct a review of each nursing facility at least every fifteen months. Currently there are approximately 1,300 licensed nursing facilities in Texas.

Since initiating the lengthier reviews, UR has established a risk assessment process that addresses high risks, low risks, and referrals to determine its schedule of reviews. By applying an inclusive set of key criteria to each nursing facility on a case-by-case basis, the proposed change allows UR the flexibility to schedule and prioritize its work in the most cost-effective and resource-efficient manner while upholding its commitment to review all nursing facilities in Texas.

## **ISSUES AND ALTERNATIVES:**

Based on the opportunities provided for stakeholder feedback through the informal comment period and stakeholder meetings, there are no major issues regarding this amendment. The amendment clarifies for providers the selection criteria used to prioritize on-site nursing facility reviews and eliminates language that is not relevant.

## **STAKEHOLDER INVOLVEMENT:**

The proposed rule amendment was provided to external stakeholders for review. External stakeholders included the Texas Health Care Association, LeadingAge Texas, Texas Medicaid Coalition, and representatives from public and private nursing facility providers.

The current proposed rule amendment was posted for informal comment on the HHSC website from May 8 to May 18, 2018. HHSC-OIG received comments from three stakeholders. These comments were reviewed by staff and taken into consideration in finalizing the language for this proposed amendment.

Disability Rights Texas submitted a comment that expressed concern regarding the replacement of the term "nurse reviewer" with "OIG." The proposed amendment was revised to retain "nurse reviewer."

The Texas Medicaid Coalition and Dirk Le Flore of Sava Senior Care Consulting, LLC submitted identical comments. These comments were primarily seeking further clarification to the criteria listed in the proposed amendment. Based on these comments, the proposed amendment was revised to clarify the relevant timeframe for review and language related to variances in billing patterns.

HHSC-OIG held a stakeholder conference call to discuss the informal comments on May 29, 2018, and no additional comments were offered during the call. HHSC-OIG hosted a Nursing Facility Quarterly Stakeholder meeting on June 11, 2018, and discussed the draft rule language with those in attendance. OIG did not receive any additional comments at that time.

## **FISCAL IMPACT:**

None     Yes

## **RULE DEVELOPMENT SCHEDULE:**

August 2018	Present to the Medical Care Advisory Committee
August 2018	Present to HHSC Executive Council

September 2018 Publish proposed rules in *Texas Register*  
January 2019 Publish adopted rules in *Texas Register*  
February 2019 Effective date

**REQUESTED ACTION: (Check appropriate box)**

The MCAC recommends approval of the proposed rules for publication.

Information Only

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TITLE 1 ADMINISTRATION  
PART 15 TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 371 MEDICAID AND OTHER HEALTH AND HUMAN SERVICES  
FRAUD AND ABUSE PROGRAM INTEGRITY  
SUBCHAPTER C UTILIZATION REVIEW

PROPOSED PREAMBLE

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §371.214, concerning Resource Utilization Group Classification System.

BACKGROUND AND PURPOSE

The proposed amendment replaces the requirement that HHSC's Office of Inspector General (HHSC-OIG) conduct on-site utilization reviews of every nursing facility at least every fifteen months with a process whereby HHSC-OIG conducts a comprehensive annual review of all nursing facilities by considering criteria such as length of time since the last review, previous review results, complaints, and referrals, and uses the results of that review to prioritize nursing facilities for on-site utilization reviews.

Moving from the Texas Index for Level of Effort (TILE) classification system to the Resource Utilization Group (RUG) classification system in 2008 increased the workload of the nurse reviewers, as the number of items for review changed from 34 to 105. Section 371.214(n)(1) provides that the HHSC-OIG's Division of Medical Services Utilization Review group (UR) will conduct a review of each nursing facility at least every fifteen months. Currently there are approximately 1,300 licensed nursing facilities in Texas.

Since initiating the lengthier reviews, UR has established a risk assessment process that addresses high risks, low risks, and referrals to determine its schedule of reviews. By applying an inclusive set of key criteria to each nursing facility on a case-by-case basis, the proposed change allows UR the flexibility to schedule and prioritize its work in the most cost-effective and resource-efficient manner while upholding its commitment to review all nursing facilities in Texas.

FISCAL NOTE

Greta Rymal, Deputy Executive Director for Financial Services, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

## GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the section will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of employee positions;
- (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to the agency;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

## SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The proposed amendment changes the criteria for selecting facilities for utilization review, but makes no change to the on-site utilization review procedures; therefore, there is no required change to current business practices and no additional cost to small businesses, micro-businesses, or rural communities.

## ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed.

There is no anticipated negative impact on local employment.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas; does not impose a cost on regulated persons; and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

## PUBLIC BENEFIT

Judy Knobloch, Assistant Deputy Inspector General, HHSC-OIG Division of Medical Services, has determined that for each year of the first five years the amended rule is in effect, the public will benefit from adoption of the amended rule. The public benefit anticipated as a result of enforcing or administering the amended rule will be a utilization review program that is both cost- and resource-efficient.

#### TAKINGS IMPACT ASSESSMENT

HHSC-OIG has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code §2007.043.

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 149030, Mail Code H600, Austin, Texas 78714-9030, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to *HHSCRulesCoordinationOffice@hhsc.state.tx.us*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 1R029" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides the HHSC Executive Commissioner the authority to adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.033, which grants the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with HHSC-OIG to adopt rules

necessary to implement a power or duty of HHSC-OIG; and Texas Government Code §531.102, which grants HHSC-OIG the responsibility to conduct reviews of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded.

The amendment implements Texas Human Resources Code, Chapter 32; and Texas Government Code, Chapter 531.

This agency hereby certifies that this proposal has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

#### ADDITIONAL INFORMATION

For further information, please call Judy Knobloch, Assistant Deputy Inspector General, HHSC-OIG Division of Medical Services: (512) 491-2070.

Legend:

Single Underline = Proposed new language

~~[Strikethrough and brackets]~~ = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for the designated subdivision

TITLE 1                   ADMINISTRATION  
PART 15                 TEXAS HEALTH AND HUMAN SERVICES COMMISSION  
CHAPTER 371         MEDICAID AND OTHER HEALTH AND HUMAN SERVICES  
                              FRAUD AND ABUSE PROGRAM INTEGRITY  
SUBCHAPTER C        UTILIZATION REVIEW

§371.214. Resource Utilization Group Classification System.

(a) - (m) (No change.)

(n) Utilization reviews are conducted in accordance with this subsection.

(1) ~~[An]~~ OIG nurse reviewers conduct [reviewer conducts an] unannounced on-site MDS utilization reviews [review] of [a] nursing facilities [facility at least every 15 months]. ~~[The frequency of unannounced on-site reviews is determined by the accuracy of the MDS assessment(s) and the facility's error rate.]~~ The OIG selects nursing facilities for an on-site review by conducting a comprehensive annual review of all facilities, considering factors such as:

\_\_\_\_\_ (A) length of time since the last on-site review;

\_\_\_\_\_ (B) whether the nursing facility has ever been reviewed;

\_\_\_\_\_ (C) previous review results;

\_\_\_\_\_ (D) compliance history of the nursing facility;

\_\_\_\_\_ (E) nursing facilities with claims in high-dollar reimbursement categories such as rehabilitation, extensive services, and special care services;

\_\_\_\_\_ (F) variances in billing patterns;

\_\_\_\_\_ (G) data analytics indicating potential fraud, waste, or abuse; and

\_\_\_\_\_ (H) complaints and referrals.

(2) - (3) (No change.)

(o) - (s) (No change.)