TWC-VR Consultant Arrangement: A Comprehensive Analysis

Violations Arising from the State Medical Director and Regional Dental Consultant Arrangements Under Federal VR Law, Texas Statutes, and Professional Ethics Standards

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By Stephen Martin

Executive Summary

This report presents a comprehensive analysis of the Texas Workforce Commission Vocational Rehabilitation (TWC-VR) program's use of two privately contracted consultants: the State Medical Director and the Regional Dental Consultant (RDC).

The analysis identifies violations across seven independent legal frameworks. The violations are not isolated errors. They form a coherent structural pattern in which non-delegable VR functions have been systematically transferred to private contractors who lack VR training, VR credentials, and official responsibility for program administration — in direct violation of federal statute, federal regulation, RSA official guidance, Texas law, and professional ethics standards.

The cumulative effect of these violations is the structural displacement of the Vocational Rehabilitation Counselor's (VRC's) independent professional judgment — the judgment that federal law requires and that the VRC's education, training, and certification specifically qualify them to exercise.

Framework	Primary Violations Identified
Federal VR Regulation	34 C.F.R. §§ 361.13(c)(1)(i),(iv),(c)(2): Non-delegation of service determination and expenditure authority; 361.38(b): Advisory body records prohibition; 361.42, 361.45, 361.48(b)(2): Eligibility, assessment, and service authorization functions delegated to contractors
RSA Official Guidance	TAC-12-03 (April 16, 2012): Non-delegable functions must be performed by DSU's own staff; VR decisions may not be entrusted to individuals lacking VR experience; interference with VRC decision-making capacity is impermissible
Texas Statutes & Rules	Tex. Labor Code § 352.054: Rate-setting authority; 40 TAC § 856.57: Consultant role limited to advisory input; 40 TAC § 850.11(c): VRC is the qualified professional for non-delegable duties; 40 TAC § 850.51(a)(3): Confidentiality prohibition
Federal Cost Principles	2 C.F.R. §§ 200.403(c), 200.404, 200.459: Unauthorized costs; unreasonable MAPS rates; consultant fees for functions the DSU is required to perform internally

Framework	Primary Violations Identified
Texas Insurance Code	Chapter 4201: State Medical Director and RDC conducting unregistered utilization review; DSU and VRC conducting utilization review when applying least-cost, least-invasive standard without UR registration
NDAS License Agreement	Three independent prohibitions violated: (1) NDAS may not be used to set treatment procedures; (2) NDAS may not be used to provide consulting services; (3) NDAS may not be used as a fee schedule; Non-dentist prohibition: State Medical Director is an M.D., not a licensed practicing dentist
Professional Ethics	CRCC § E.1.a: VRC placed in irresolvable conflict between regulatory duty (independent judgment) and ethics prohibition (practicing outside competence); VR3101 form assigns VRC eligibility functions to contractor with no VR training

Core Finding: The TWC-VR consultant arrangement does not merely create procedural irregularities. It structurally displaces the VRC's non-delegable authority through institutional design: misrepresenting contractors as state officials, requiring senior executive approval to override contractor recommendations, and formally assigning VR eligibility and service determination functions to contractors through the VR3101 form. The result is a program in which the person with VR expertise defers to the person without VR expertise on VR questions — and the person with dental expertise is asked to answer VR questions they were never trained to answer.

Part I: The Two Consultants — Who They Are and What the Law Requires

A. The State Medical Director

The State Medical Director is a privately contracted physician (M.D.) retained by TWC-VR under a services contract. The State Medical Director is not a state employee. The State Medical Director is not a licensed dentist. The State Medical Director is not a Qualified Vocational Rehabilitation Counselor (QVRC). The State Medical Director has held this contract for over 40 years, renewed approximately every two years, with a guaranteed minimum payment of $250 per hour for a minimum of five hours per week regardless of workload — approximately $65,000 per year in guaranteed compensation.

Despite this contractor status, the State Medical Director is presented to VRCs through language that creates a false impression of state employment:

- 40 TAC § 856.57(5) refers to "the Agency's medical director" — possessive language implying institutional ownership and employment, not a contractual service relationship.
- The VRSM refers to "the State Medical Director" — a title carrying the same institutional signal as "State Comptroller" or "State Auditor."
- The VRSM Glossary (Part E, Chapter 7) contains no definition of "State Medical Director," "Medical Director," "Regional Dental Consultant," or "RDC." Three separate documents. Three separate omissions. VRCs have no official source identifying the contractor status or limited authority of either consultant.

- The State Medical Director listed TWC-VR headquarters as his place of practice on his Texas Medical Board (TMB) license registration — a representation consistent with state employment, not private contracting. When this was raised with VR leadership, the address was changed to a post office box approximately one month later.
- The State Medical Director retired from clinical practice (The People's Community Clinic) approximately in 2015. State procurement rules for professional services require consultants to be actively practicing in their field. A physician who lists a state agency's headquarters as his place of practice and has not been in active clinical practice for over a decade raises independent procurement compliance questions.

B. The Regional Dental Consultant (RDC)

The Regional Dental Consultant is a privately contracted licensed general dentist retained by TWC-VR under a services contract. The RDC is not a state employee. The RDC is not a specialist — the RDC is a general dentist. The RDC is not a QVRC. The RDC has no training in the federal VR regulatory framework, no knowledge of the client's IPE or employment goal, and no official responsibility for administration of the VR program.

The RDC does not conduct a physical examination of the client. The RDC reviews records — the same clinical letters, reports, and documentation that the VRC already has in the case file. The RDC does not examine the client's mouth, does not take X-rays, and does not perform any diagnostic procedure. The RDC's "recommendation" is a record review opinion, not a clinical finding based on direct patient contact.

Yet the VRSM presents the RDC's record review opinion as if it carries clinical authority equal to or greater than the treating specialists' direct clinical findings — without disclosing that the RDC never examined the client, that the RDC is a general dentist reviewing specialist findings, or that the RDC is a private contractor with no official program responsibility.

C. What the Law Requires of Both Consultants

Under 34 C.F.R. § 361.38(b) and 40 TAC § 850.51(a)(3), client records may not be shared with "advisory or other bodies that do not have official responsibilities for administration of the programs." Neither the State Medical Director nor the RDC holds official responsibility for administration of the VR program. Both are private contractors. The sharing of client records with either consultant is prohibited by federal regulation and Texas law — regardless of the client's consent, because the prohibition is structural, not privacy-based.

> **The Official Responsibility Standard:** Under Texas Government Code § 572.051 and the Texas Public Information Act, "official responsibility" means a duty assigned by law, rule, or official delegation to a person acting in an official governmental capacity. A private contractor retained under a services contract does not hold official responsibility for program administration. The prohibition in § 361.38(b) is not a privacy protection the client can waive — it is a structural limitation on the DSU's authority to share records with parties lacking official program responsibility.

Part II: Non-Delegation Violations — 34 C.F.R. § 361.13(c) and RSA TAC-12-03

A. The Regulatory Framework

34 C.F.R. § 361.13(c)(1) identifies five non-delegable functions of the DSU. Section 361.13(c)(2) provides that the DSU may not delegate these functions to any other agency or individual. The two functions most directly violated by the consultant arrangements are:

- § 361.13(c)(1)(i): All decisions affecting the nature and scope of available services — what services are authorized, at what level, from which provider.
- § 361.13(c)(1)(iv): The authority to supervise the provision of vocational rehabilitation services — including all decisions about whether to contract for a service, the amount to be contracted, and the service to be procured.

RSA Technical Assistance Circular TAC-12-03 (April 16, 2012) is RSA's official interpretation of § 361.13's non-delegation requirement. It provides three independently verified confirmations:

- TAC-12-03 states: "RSA has long interpreted these provisions to require that the specified functions and activities be carried out by the DSU's own staff" (citing NPRM, 60 Fed. Reg. 64475, 64482 (Dec. 15, 1995) and Final Regulations, 62 Fed. Reg. 6307, 6316 (Feb. 11, 1997)).
- TAC-12-03 states: "While certain purely administrative functions may be performed by personnel outside the DSU, centralization of functions on the state agency level is impermissible if it results in interference with the decision-making capacity of the administrator of the DSU to direct the VR program in the state."
- TAC-12-03 states: "While the DSA may centralize contracting processing, decisions involving whether to contract for a service, the amount to be contracted, and the service to be procured, must be retained by the DSU since those decisions pertain to the allocation and expenditure of VR funds and the provision of VR services, both of which are non-delegable functions of the DSU (34 CFR 361.13(c)(1)(i) and (iv))."
- TAC-12-03 purpose: retaining non-delegable functions within the DSU ensures that State agencies "do not entrust these key VR programmatic decisions to individuals who lack experience in meeting the needs of individuals with disabilities" (62 Fed. Reg. at 6316).

B. How the State Medical Director Violates § 361.13(c)

The State Medical Director violates § 361.13(c)(1)(i) and (iv) through the rate-setting and expenditure determination process:

- § 361.13(c)(1)(i) violation — Service determination: The State Medical Director's recommendation on whether a medical service should be authorized at a given rate directly affects the nature and scope of services available to the client. When the VRC defers to that recommendation — as the VRSM's approval structure is designed to produce — the service determination has been made by the contractor, not the VRC.
- § 361.13(c)(1)(iv) violation — Expenditure function: The State Medical Director's annual reevaluation of MAPS rates — including recommending rate increases of approximately 20% to the Medicaid FFS rate each year — is a rate-setting function. Under TAC-12-03, decisions about the amount to be contracted must be retained by the DSU. The State Medical Director's rate recommendations are not advisory input to a VRC decision — they are the mechanism by which MAPS rates are set. That is the expenditure function, and it belongs to the DSU.

- NDAS violation compounding the expenditure violation: The State Medical Director used the National Dental Advisory Service (NDAS) commercial dental fee database to derive authorized rates. The NDAS License Agreement contains three independent prohibitions that the State Medical Director violated: (1) the NDAS may not be used to set treatment procedures or substitute for clinical dental judgment; (2) the NDAS may not be used to provide consulting services; (3) the NDAS may not be used as a fee schedule or reimbursement schedule. Additionally, the NDAS license prohibits use by non-licensed practicing dentists — the State Medical Director is an M.D., not a licensed practicing dentist.

C. How the RDC Violates § 361.13(c)

The RDC violates § 361.13(c)(1)(i) and (iv) through the dental service authorization process:

- § 361.13(c)(1)(i) violation: When the RDC recommends against authorizing a comprehensive dental examination — or recommends a less comprehensive evaluation at a lower rate — that recommendation directly affects the nature and scope of services available to the client. The VRSM's approval structure (mandatory consultation, automatic manager notification, Deputy Division Director escalation for disagreement) converts the RDC's recommendation into the default outcome. The VRC's nominal authority to disagree is structurally inaccessible.
- § 361.13(c)(1)(iv) violation: Under TAC-12-03, decisions about whether to contract for a service, the amount to be contracted, and the service to be procured must be retained by the DSU. The RDC's recommendation determines whether a dental service is contracted, at what scope, and from which provider. That is the contracting decision TAC-12-03 says must be retained by the DSU.
- TAC-12-03 marginalization standard: RSA evaluates whether the VRC's independent judgment is marginalized before being transmitted upward. The VRSM's structure marginalizes the VRC's judgment at every stage: mandatory consultation, institutional deference to a Doctor of Dentistry, and escalation requirements that signal to the VRC that disagreement is disfavored.

Part III: The VR3101 Form — Documentary Proof of Scope Displacement

The TWC Consultant Review form (VR3101, revised June 2026) provides documentary proof that the VRSM has formally assigned core VR eligibility and service determination functions to the consultant through the form's own required fields. Every substantive field on the form asks the consultant to perform a function that belongs exclusively to the VRC under federal law.

VR3101 Field	VR Function Assigned to Consultant	Regulatory Owner	Consultant Qualified?
Does impairment exist?	VR eligibility determination — whether qualifying impairment exists for VR purposes	34 C.F.R. § 361.42(a)(1) — VRC exclusively	NO — dental license does not authorize VR eligibility determinations

VR3101 Field	VR Function Assigned to Consultant	Regulatory Owner	Consultant Qualified?
Establish presence of disability?	Foundational disability determination for VR program entry	34 C.F.R. § 361.42 — VRC exclusively	NO — no VR training; no knowledge of Rehabilitation Act eligibility standards
Diagnostic studies adequate?	Assessment adequacy determination for VR purposes	34 C.F.R. § 361.45(f)(2)(ii) — VRC exclusively	NO — no knowledge of VR assessment adequacy standards
Restoration services indicated?	VR service authorization — whether service should be authorized under IPE	34 C.F.R. § 361.48 — VRC exclusively	NO — no knowledge of IPE, employment goal, or VR service authorization standards
Specialist exam needed?	Assessment determination — whether specialist referral is warranted	34 C.F.R. §§ 361.45(b)(1), 361.48(b)(2) — VRC exclusively	NO — general dentist reviewing records; never examined client; no VR assessment authority
Signature line: Physician only	Form treats consultant as decision-maker; VRC appears only as data entry	VRC is the responsible professional under all applicable law	STRUCTURAL INVERSION — form design displaces VRC authority on its face

VR3101 Legal Significance: The VR3101 form is not merely evidence of the RDC's scope of practice problem — it is documentary proof that the VRSM has formally assigned VR eligibility and service determination functions to a contractor through the form itself. This is the precise scenario TAC-12-03 was designed to prevent: VR programmatic decisions being entrusted to individuals who lack experience in meeting the needs of individuals with disabilities.

Part IV: The VRC's Competency — Three Independent Sources Confirm Medical Records Review Is a Core VRC Function

Three independent authoritative sources converge to establish that reviewing medical and clinical records is a core, required competency of the VRC position — not a function requiring outside clinical consultation:

A. TWC Job Posting (February 24, 2026)

TWC's own job posting lists as a general duty: "Collects and analyzes all information necessary to make an accurate eligibility decision (e.g. medical, psychological, school records, employment records, etc.)." This is TWC's own admission that the VRC is hired specifically to collect and analyze medical records. TWC cannot simultaneously hire VRCs to

analyze medical records and then require outside clinical consultation before acting on that analysis.

B. Texas State Auditor's Office — SAO Classification #2517 (Revised September 1, 2025)

The SAO — the independent auditor for Texas state government — classifies "Evaluates disabilities to determine functional limitations and assets" and "Conducts vocational assessments to establish suitable vocational objectives for the client" as the defining work of the VRC at every level from VRC I through VRC IV. The SAO explicitly grades independent judgment as a distinguishing characteristic at every VRC level.

C. University of North Texas (UNT) MS Rehabilitation Counseling Curriculum

UNT's CACREP-accredited program — one of only seven nationally designated CRCC Centers of Excellence — requires all students to complete RHAB 5730 (Medical and Psychosocial Aspects of Disability) and RHAB 5740 (Rehabilitation Assessment) as mandatory core courses. These are not electives. They are required components of the 60-credit-hour curriculum that qualifies a graduate to perform non-delegable VR functions under 40 TAC § 850.11(c).

> **Three-Source Convergence:** The employer (TWC), the state's independent auditor (SAO), and the accrediting educational institution (UNT/CACREP) all independently confirm that medical records review is a core VRC competency. The RDC does not supply expertise the VRC lacks — the RDC duplicates a function the VRC is trained and required to perform. The consultation is not a quality assurance measure; it is a structural displacement of the VRC's non-delegable authority.

Part V: The Ethical Trap — The VRSM Places the VRC in an Irresolvable Professional Conflict

The VRSM's consultant structure imposes a direct ethical conflict on every VRC who participates in the consultation process. This conflict is built into the structure of the consultation requirement itself.

A. The Three-Part Conflict

The regulatory obligation: 34 C.F.R. §§ 361.13(c)(1)(i) and 361.48(b)(2) require the VRC to make independent determinations about the nature and scope of services. This is non-delegable. The VRC is legally required to exercise independent judgment.

The ethical prohibition: CRCC Code of Professional Ethics § E.1.a requires VRCs to practice only within the boundaries of their professional competence. A VRC is not a licensed dentist. The CRCC Code does not authorize a VRC to substitute their own clinical judgment for the judgment of a licensed dental professional on a question of dental clinical necessity.

The irresolvable conflict: When the RDC — a licensed Doctor of Dentistry — recommends against authorizing a dental service, the VRC faces a direct conflict between two binding obligations. Federal regulation requires independent determination. Professional ethics prohibits clinical dental determination contrary to a licensed dentist's recommendation without equivalent credentials. The VRC cannot simultaneously comply with both.

B. The VRSM's Override Pathway Does Not Resolve the Conflict

The VRSM states that the VRC may seek Deputy Division Director approval to act contrary to the RDC's recommendation. But management approval does not give the VRC dental clinical credentials. The CRCC Code's prohibition on practicing outside one's competence is not waived by a supervisor's approval. The override pathway is institutionally available but professionally inaccessible.

C. The Only Lawful Override Is Regulatory, Not Clinical

The VRC cannot override the RDC by saying "I disagree with your clinical assessment" — that would require dental credentials the VRC does not hold. The VRC can only override the RDC by saying "your role in this process is legally impermissible" — which requires regulatory knowledge, not dental credentials. The legal arguments in this memorandum are therefore not merely alternative grounds for relief. They are the only lawful pathway available to the VRC to fulfill their non-delegable statutory duty consistent with professional ethics.

D. The Structural Deception — The RDC Never Examines the Client

The RDC does not conduct a physical examination of the client. The RDC reviews records — the same records the VRC already has. The treating specialists physically examined the client and made direct clinical findings. The RDC's recommendation is a record review opinion from a general dentist who never saw the patient. Yet the VRSM presents this record review opinion as a clinical recommendation carrying institutional authority — without disclosing that it is record-based, not examination-based.

The Structural Deception: A record review opinion presented as a clinical recommendation is not a clinical recommendation. The VRSM's failure to disclose the nature of the RDC's review — that it is record-based, not examination-based — is the mechanism by which the RDC's document review acquires the appearance of clinical authority it does not possess.

E. Federal Law and Texas Law Designate the VRC — Not the Consultant — as the Qualified Professional

The three-source convergence in Part IV establishes that the VRC is competent to perform medical records review and service determination. But the legal argument goes further: federal law and Texas law do not merely permit the VRC to perform these functions — they affirmatively designate the VRC as the only person qualified to do so. The consultants are not merely unauthorized; they are affirmatively unqualified under the applicable federal standard.

1. Federal Law Requires Assessment by "Qualified Personnel" — Meaning the VRC

34 C.F.R. § 361.48(b)(2) requires that assessment for determining eligibility and vocational rehabilitation needs be conducted by "qualified personnel." RSA has consistently interpreted "qualified personnel" to mean the VRC employed by the DSU — someone credentialed under 34 C.F.R. § 361.18(c)(1)(ii)(A) and accountable under federal grant conditions. The State Medical Director is not a VRC. The RDC is not a VRC. Neither is "qualified personnel" within the meaning of § 361.48(b)(2) for the purpose of assessing whether a service should be authorized as a VR service.

34 C.F.R. § 361.18(c)(1)(ii)(A) requires the DSU to maintain a comprehensive system of personnel development ensuring that VR counselors meet the standards of the Commission on Rehabilitation Counselor Certification (CRCC). This provision makes the CRCC credential a federal requirement — not merely a professional preference. A VRC who holds CRC

certification has met the federal qualification standard. A contractor who does not hold CRC certification has not.

2. Texas Law Defines the VRC as Qualified to Perform Non-Delegable Duties

40 TAC § 850.11(c) states:

> *"VR counselors are considered qualified to perform non-delegable duties upon meeting the minimum initial standards for hire, successful completion of required training, and an initial probationary period that allows demonstration of performance. The minimum initial standards for hire are aligned with 34 CFR § 361.18(c)(1)(ii)(A) and the State of Texas VR Counselor Classification Schedule."*

This provision does three things simultaneously. First, it defines when a VRC is "qualified" — upon meeting minimum hire standards, completing training, and passing probation. Second, it links that qualification directly to non-delegable duties — the VRC is qualified to perform non-delegable duties, not just to work generally. Third, it ties the qualification standard to federal law — aligned with 34 CFR § 361.18(c)(1)(ii)(A). The QVRC designation is therefore the state's formal implementation of the federal "qualified personnel" standard under § 361.48(b)(2).

3. The Qualification Gap — Neither Consultant Holds the Required Designation

Neither the State Medical Director nor the RDC is a Qualified Vocational Rehabilitation Counselor (QVRC). Neither holds CRC certification. Neither has completed the educational and training requirements of 40 TAC § 850.11. Neither meets the federal "qualified personnel" standard of 34 C.F.R. § 361.48(b)(2). The delegation of non-delegable VR functions to these consultants is therefore impermissible not only structurally — under § 361.13(c)(2)'s non-delegation prohibition — but also because the persons to whom the functions have been delegated do not meet the federal qualification standard for performing them.

4. The VR3101 Form Explicitly Grants Consultant Authority Reserved to the VRC

The qualification gap is made legally concrete by the VR3101 form itself. As analyzed in Part III, every substantive field on the VR3101 asks the consultant to perform a function that 34 C.F.R. §§ 361.42, 361.45, and 361.48 assign exclusively to "qualified personnel" — meaning the VRC. The form does not ask the consultant for clinical input that the VRC can then apply to a VR determination. The form asks the consultant to make the VR determinations directly:

- Field 1 ("Does impairment exist?") is a § 361.42 eligibility determination — reserved to the VRC as the qualified personnel designated by federal law.
- Field 2 ("Establish presence of disability") is the foundational eligibility function — reserved to the VRC.
- Field 3 ("Diagnostic studies adequate?") is a § 361.45(f)(2)(ii) assessment adequacy determination — reserved to the VRC.
- Field 4 ("Restoration services indicated?") is a § 361.48 service authorization determination — reserved to the VRC.
- Field 5 ("Specialist exam needed?") is a §§ 361.45(b)(1) and 361.48(b)(2) assessment determination — reserved to the VRC.

The VR3101 form is therefore not merely evidence of scope displacement — it is documentary proof that TWC-VR has formally granted to unqualified contractors the authority that federal law reserves to qualified personnel. The form's signature line —

which belongs to the "Physician," not the VRC — makes the inversion visible on the face of the document: the unqualified contractor signs; the qualified professional receives the form as a recipient.

> **Federal Mandate Summary:** 34 C.F.R. § 361.48(b)(2) requires assessment by "qualified personnel." 40 TAC § 850.11(c) defines the VRC as qualified to perform non-delegable duties. The VR3101 form formally assigns those non-delegable duties to contractors who are not QVRCs and do not meet the federal qualified personnel standard. The result is a form-level violation of the federal mandate that is documented in TWC's own paperwork.

Part VI: Rate-Setting and Expenditure Violations

A. The Three-Level Rate-Setting Authority Chain

The lawful rate-setting framework operates at three levels:

- Texas Labor Code § 352.054 (enabling statute): Authorizes TWC to create a rate schedule and requires comparison to both Medicare and Medicaid rates.
- 40 TAC § 856.57 (implementing rule): States that MAPS rates are to be based on Medicare and Medicaid rates.
- VRSM policy: States that MAPS rates in conflict with the enabling statute.

The State Medical Director's annual rate recommendations — recommending approximately 20% increases to the Medicaid FFS rate each year — usurped the rate-setting function that belongs to the DSU under § 361.13(c)(1)(iv). The medical director had no authority to recommend rate changes. That function belongs to the DSU.

B. The MAPS Rate Fails the Federal Reasonable Cost Standard

Under 2 C.F.R. § 200.404, a cost is reasonable if it does not exceed what a prudent person would incur under similar circumstances. The MAPS dental rate fails this standard on every applicable factor:

- Not ordinary and necessary at the rate offered: The MAPS rate is so low that no qualified specialist will accept it, effectively denying the client access to the service.
- Not compliant with applicable laws and regulations: The MAPS rate is derived from Medicaid FFS rates that have not been updated or used since 2011, according to the Texas Attorney General. The Texas Legislature appropriated $140 million in emergency relief in June 2025 because Medicaid dental rates were so inadequate that provider participation was threatened.
- No relationship to current market prices: A prudent person would not apply a Medicaid FFS rate designed for a general dentist to a specialist prosthodontic evaluation.
- Deviation from established written policies: Using the NDAS to evaluate the rate violates the NDAS license agreement.

C. The 2 C.F.R. § 200.459 Violation

Under 2 C.F.R. § 200.459, professional service costs must be "necessary and not available within the organization." The assessment function is not only available within the DSU — it is exclusively assigned to the DSU by § 361.42 and § 361.48(b)(2). A consultant fee charged for reviewing records that the VRC is already required and equipped to review fails the "not available within the organization" criterion as a matter of law.

Part VII: Confidentiality and Advisory Body Violations

A. 34 C.F.R. § 361.38(b) — The Federal Prohibition

Section 361.38(b) prohibits the DSU from sharing client records with "advisory or other bodies that do not have official responsibilities for administration of the programs." Neither the State Medical Director nor the RDC holds official responsibility for administration of the VR program. Both are private contractors. The sharing of client records with either consultant violates § 361.38(b).

This prohibition is structural, not consent-based. The client cannot waive it. The VRSM cannot authorize a disclosure that federal law prohibits. The prohibition is designed not only to protect the client's privacy interest but to protect the integrity of the VR program's non-delegable assessment function — ensuring that records used to make service determinations are not shared with parties who have no official program responsibility.

B. 40 TAC § 850.51(a)(3) — The State Prohibition

Texas Administrative Code § 850.51(a)(3) states: "The Agency may not share information containing identifiable personal information with advisory or other bodies that do not have official responsibilities for administration of the programs." This provision mirrors the federal prohibition and applies independently at the state level.

C. Texas Labor Code § 352.006 — The Statutory Prohibition

Texas Labor Code § 352.006 prohibits use of client records for purposes not directly connected with administering the VR program. The State Medical Director's use of client records to apply the NDAS commercial dental fee database — a tool not authorized for use in the VR program and prohibited by its own license agreement — is not a purpose directly connected with administering the VR program. It fails both exceptions in § 352.006.

Part VIII: Unregistered Utilization Review — Texas Insurance Code Chapter 4201

Texas Insurance Code Chapter 4201 requires any person or entity conducting utilization review of health care services to register with the Texas Department of Insurance (TDI). Utilization review means "a system for prospective, concurrent, or retrospective review of the necessity and appropriateness of health care services."

A. The State Medical Director as Unregistered UR Agent

The State Medical Director reviews clinical records and renders opinions on whether recommended medical and dental services are necessary and appropriate at given rates and within VRSM policy. This is utilization review. The State Medical Director is not registered with TDI as a utilization review agent. Every review conducted by the State Medical Director is a violation of Chapter 4201.

B. The RDC as Unregistered UR Agent

The RDC reviews dental records and renders opinions on whether recommended dental services are necessary and appropriate. This is utilization review. The RDC is not registered with TDI as a utilization review agent. Every RDC consultation is a violation of Chapter 4201.

C. The DSU and VRC as Unregistered UR Agents

When the DSU and VRC apply a "least-cost, least-invasive" standard to determine whether a recommended dental service is necessary and appropriate, they are conducting utilization review. The DSU is not registered with TDI as a utilization review agent. The application of the least-cost, least-invasive standard without UR registration is a violation of Chapter 4201.

D. Client Protections Not Being Provided

Chapter 4201 requires registered UR agents to provide clients with specific procedural protections, including the right to appeal adverse determinations, the right to an independent review, and the right to a written explanation of any adverse determination. These protections are not being provided to VR clients whose service requests are subject to consultant review.

Part IX: Complete Violation Summary — By Consultant and Legal Framework

Legal Framework	State Medical Director	Regional Dental Consultant	Specific Violation
§ 361.13(c)(1)(i)	✓ Violated	✓ Violated	Service determination function delegated to contractor; VRC's independent judgment structurally displaced through mandatory consultation and escalation requirements
§ 361.13(c)(1)(iv)	✓ Violated	✓ Violated	Expenditure and contracting decisions made by contractor; rate recommendations (SMD) and service scope recommendations (RDC) usurp DSU's non-delegable expenditure authority
§ 361.13(c)(2)	✓ Violated	✓ Violated	Non-delegation prohibition violated through institutional design rather than explicit policy; delegation accomplished through misperception, procedural barriers, and VR3101 form structure
§ 361.38(b)	✓ Violated	✓ Violated	Client records shared with advisory bodies lacking official program

Legal Framework	State Medical Director	Regional Dental Consultant	Specific Violation
			responsibility; prohibition is structural and non-waivable
§§ 361.42, 361.45, 361.48(b)(2)	✓ Violated	✓ Violated	VR3101 form assigns eligibility determination, disability presence, assessment adequacy, service indication, and specialist referral functions to contractor
§ 361.50 / 2 C.F.R. § 200.404	✓ Violated	N/A	MAPS rates fail reasonable cost standard; rates not updated since 2011; NDAS used in violation of license agreement; annual rate recommendations usurp DSU rate-setting authority
2 C.F.R. § 200.459	✓ Violated	✓ Violated	Consultant fees for functions available within the DSU; assessment function exclusively assigned to DSU by § 361.48(b)(2)
TAC-12-03	✓ Violated	✓ Violated	VR decisions entrusted to individuals lacking VR experience; interference with VRC decision-making capacity; contracting decisions not retained by DSU
40 TAC § 856.57	✓ Violated	N/A	Advisory role converted to institutional authority through VRSM approval structure; VRC independence structurally eliminated
40 TAC § 850.51(a)(3)	✓ Violated	✓ Violated	Identifiable client records shared with advisory bodies lacking official program responsibility
Tex. Labor Code § 352.054	✓ Violated	N/A	Rate-setting authority usurped; statute requires comparison to both Medicare and Medicaid; VRSM uses only Medicaid FFS
Tex. Ins. Code Ch. 4201	✓ Violated	✓ Violated	Unregistered utilization review; client protections not provided; DSU also conducting UR without registration when applying least-cost standard
NDAS License Agreement	✓ Violated	N/A	Three independent prohibitions violated: (1) not for setting treatment procedures; (2) not for consulting

Legal Framework	State Medical Director	Regional Dental Consultant	Specific Violation
			services; (3) not as fee schedule; non-dentist prohibition violated
CRCC § E.1.a	N/A	✓ Violated	VRC placed in irresolvable conflict between regulatory duty and ethics prohibition; override pathway institutionally available but professionally inaccessible

Part X: Recommended Actions and Remedies

A. Immediate Actions

1. Suspend all consultant contracts.
2. Halt sharing of identifiable client records with the consultants, State Medical Director and RDC pending legal review of compliance with 34 C.F.R. § 361.38(b) and 40 TAC § 850.51(a)(3).
3. Issue internal guidance to all VRCs clarifying: (1) the State Medical Director and RDC are private contractors, not state employees;

B. Structural Reforms

4. Revise 40 TAC § 856.57(5) to bring it into compliance with 34 C.F.R. § 361.13(c)'s non-delegation requirement. As currently written, § 856.57(5) is not permissible under federal law because it authorizes a consultation structure that necessarily involves sharing client records with an advisory body lacking official program responsibility and that structurally displaces the VRC's non-delegable assessment authority.
5. Reassess the MAPS fee methodology for alignment with 2 C.F.R. § 200.404 reasonable cost standards and Texas Labor Code § 352.054's requirement to compare to both Medicare and Medicaid rates. As it stands the MAPS rate is based on those rates not compared to.
6. Assess TDI registration requirements for utilization review activities conducted by the State Medical Director, the RDC, and the DSU itself when applying least-cost, least-invasive standards.
7. Conduct a legal review of the NDAS license agreement and immediately discontinue use of the NDAS for rate-setting, consulting services, or any purpose prohibited by the license.

C. RSA Referral

The violations identified in this memorandum are systemic and structural. They affect every VR client whose case involves a consultant review. RSA should be notified of these findings and requested to conduct a compliance review of the TWC-VR program's consultant arrangement, rate-setting practices, and VR3101 form structure.

> **Conclusion:** The TWC-VR consultant arrangement violates federal VR regulation, RSA official guidance, Texas statutes and rules, federal cost principles, Texas Insurance Code Chapter 4201, the NDAS license agreement, and professional ethics standards. The violations are not isolated. They form a coherent structural pattern in which non-delegable VR functions have been systematically transferred to private contractors through institutional design — misrepresentation of contractor status, procedural barriers to independent VRC judgment, and formal assignment of VR eligibility functions through the VR3101 form. The remedy requires not merely correcting individual errors but restructuring the consultant arrangement to comply with the non-delegation requirements of 34 C.F.R. § 361.13(c), RSA TAC-12-03 and 4 C.F.R. § 361.38(b)

Part XI: Sources and Legal Authorities

Federal Regulations: 34 C.F.R. §§ 361.5(c)(5)(ii), 361.13(b)(1)(v), 361.13(c)(1)(i), 361.13(c)(1)(iv), 361.13(c)(2), 361.18, 361.21, 361.38(b), 361.42, 361.45, 361.45(f)(2)(ii), 361.48(b)(2), 361.50, 361.57; 2 C.F.R. §§ 200.303, 200.403(c), 200.404, 200.459

RSA Official Guidance: RSA Technical Assistance Circular TAC-12-03 (April 16, 2012); NPRM, 60 Fed. Reg. 64475, 64482 (Dec. 15, 1995); Final Regulations, 62 Fed. Reg. 6307, 6316 (Feb. 11, 1997)

Texas Statutes: Texas Labor Code §§ 351.002, 352.006, 352.054; Texas Insurance Code Chapter 4201, §§ 4201.251, 4201.303–4201.360; Texas Government Code § 572.051

Texas Administrative Code: 40 TAC §§ 850.11(c), 850.51(a)(3), 856.57(5)

VRSM Provisions: Part A, Ch. 2 (Exception procedure); Part B, Ch. 7 (VRC assessment authority); Part C, Ch. 5.1 (Restoration services); Part C, Ch. 5.2.a (Medical services); Part C, Ch. 5.2.c (Dental surgery and treatment); Part D (Service authorizations); Part E, Ch. 7 (Glossary)

TWC Job Posting: Vocational Rehabilitation Counselor, Texas Workforce Commission (February 24, 2026). Available at: https://www.uh.edu/socialwork/alumni/career-services/job-board/the-texas-workforce-commission-2-24-26-vocational-rehabilitation-counselor.pdf

SAO Classification: Texas State Auditor's Office, State Classification Job Description: Vocational Rehabilitation Counselor, Class Code 2517 (Revised September 1, 2025). Available at: https://hr.sao.texas.gov/Compensation/JobDescriptions/2517.pdf

UNT Curriculum: University of North Texas, 2025–2026 Graduate Catalog: Rehabilitation Counseling, MS. CACREP-accredited; CRCC Center of Excellence. Available at: https://catalog.unt.edu/preview_program.php?catoid=36&poid=17140

Professional Ethics: CRCC Code of Professional Ethics for Rehabilitation Counselors (2023), §§ A.1.a, E.1.a, E.1.d, E.1.e, F.1.b

NDAS License: National Dental Advisory Service License Agreement 2026, Yale Wasserman DMD Medical Publishers, Ltd. (§§ 8, 10(b))

ACP Standards: ACP Parameters of Care for the Specialty of Prosthodontics, Third Edition, Journal of Prosthodontics 29 (2020) 3–147

VR3101 Form: TWC Consultant Review Form VR3101 (Revised June 2026)