

From: [Sunset Advisory Commission](#)
To: [Dawn Roberson](#)
Subject: FW: New issues, not included, in the Sunset Staff Report on the Department of Aging and Disability Services.
Date: Friday, June 27, 2014 9:07:22 AM

From: Lori Nabors
Sent: Thursday, June 26, 2014 2:38 PM
To: Sunset Advisory Commission
Subject: New issues, not included, in the Sunset Staff Report on the Department of Aging and Disability Services.

On behalf of the Texas Medicaid Coalition (TMC) and its membership, I am respectfully requesting that the following issues and recommendations be reviewed during the Sunset Commission Meeting on June 24 through June 25, 2014. These are new issues that were not included in the Sunset Staff report, but have serious implications to Long Term Care providers in Texas.

Issue #1: Texas Administrative Code rule 371.212 relating to Minimum Data Set Assessments (MDS) is outdated

Nursing facilities must conduct the MDS assessment in order to receive Medicaid payment. The current TAC was specifically written for documentation requirements and guidance related to coding MDS 2.0. CMS updated the MDS to version 3.0 in October 2010, which impacted the guidance on coding the entire MDS. Therefore, TAC rule 371.212 needs to be updated to reflect current CMS RAI 3.0 guidance.

TMC Recommendation to issue #1:

HHSC-OIG should stop all MDS 3.0 Utilization Reviews until TAC 371.212 is updated to reflect CMS RAI 3.0 Manual coding and documentation guidance. Additionally, once the TAC is updated, HHSC OIG will conduct Utilization Reviews on MDS 3.0 assessments completed on or after the date the TAC is updated.

Issue #2: Utilization Review informal review and appeal process is insufficient:

Utilization Review Reconsideration (TAC 371.212) and subsequent ALJ appeal (TAC 357.484) processes and timelines are not sufficient in allowing providers a fair due process.

TMC Recommendation to Issue #2:

TAC requirements for responding to unfavorable Utilization Review and subsequent appeals processes/timelines should be updated to reflect CMS's appeal process, which can be located at:

<https://www.cms.gov/Medicare/Appeals-and-Grievances/OrgMedFFSAppeals/index.html?redirect=/OrgMedFFSAppeals/>

Issue #3: TAC guidance on Administrative Law Judge Hearing process and response time is unclear

Providers are having a difficult time navigating the formal appeal process following unfavorable outcomes from RUG III Utilization Reviews and subsequent Reconsiderations. DADS attorneys and providers are attempting to settle cases to eliminate the need for a hearing, but there is no clear guidance outlining this process. Multiple providers are reporting that they have unsettled cases that date back several years, which is irrelevant as long as recoupment is limited at this level. Additionally the recoupment process is unclear, which may jeopardize the operations of some providers.

TMC Recommendations to Issue #3:

1. TAC guidelines should be updated to provide a clear outline to the formal appeal settlement/hearing process.
2. TAC guidelines should be updated to provide a reasonable timeframe for appeals to be settled.
3. Recoupment should be stopped until providers exhaust all due processes and appeals are finalized.

4. TAC guidance should be updated to outline the exact recoupment process and allow providers to negotiate a repayment plan.

*Lori Nabors LVN MDS Specialist
Texhoma Christian Care Center*