

Michigan Office of Administrative Hearings and Rules

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**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Insurance and Financial Services

Division/Bureau/Office:

Insurance

Name of person completing this form:

Catherine Hart

Phone number of person completing this form:

517-284-8720

E-mail of person completing this form:

HartC4@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Sarah Wohlford

2. Rule Set Information

MOAHR assigned rule set number:

2019-136 IF

Title of proposed rule set:

Utilization Review

3. Purpose for the proposed rules and background:

These rules are mandatory under Section 3157a of the Insurance Code, MCL 500.3157a, which was added by Public Act 21 of 2019. Section 3157a was intended to help lower overall costs of automobile insurance by ensuring that persons injured in motor vehicle accidents receive an appropriate level of care. Under that section, DIFS is required to promulgate rules that will establish criteria or standards for utilization review that identify utilization of treatment, products, services, or accommodations under the no-fault automobile insurance statute that are above the usual range of utilization based on medically accepted standards. "Utilization review" is the initial evaluation by an insurer or the Michigan Catastrophic Claims Association of the appropriateness, based on medically accepted standards, of the level and the quality of treatment, products, services, or accommodations provided under personal protection insurance benefits. The rules must include a process by which medical providers submit records to, and comply with, any decision of DIFS regarding utilization review.

4. Summary of proposed rules:

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The proposed rules are mandatory under Section 3157a of the Insurance Code, MCL 500.3157a, which was added by Public Act 21 of 2019. Section 3157a(3) requires DIFS to promulgate rules to establish a utilization review program. The proposed rules are designed to impose standards for utilization review and establish an appeals process for health care providers to appeal to DIFS when they disagree with a benefit determination made by an automobile insurer.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

The Daily Press (Escanaba): March 13, 2020
Lansing State Journal: March 13, 2020
Oakland Press: March 13, 2020

6. Date of publication of rules and notice of public hearing in Michigan Register:

4/1/2020

7. Date, time, and location of public hearing:

4/10/2020 09:00 AM at First Floor Forum , Michigan Library & Historical Center, 702 W. Kalamazoo St., Lansing, Michigan

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=122>

9. List of the name and title of agency representative(s) attending public hearing:

Sarah Wohlford, Senior Deputy Director
Catherine Hart, Administrative Law Specialist

10. Persons submitting comments of support:

The following individuals recommended changes to the rules:

- Maureen Kinsella (Michigan Brain Injury Provider Council)
- Tim Hoste (Michigan Brain Injury Provider Council/NeuroRestorative)
- Tom Judd (Michigan Brain Injury Provider Council)
- Kris D. Curtis, MA, LPC, CRC
- KJ Miller (Michigan Catastrophic Claims Association)
- Lynn Brouwers (Rainbow Rehabilitation Center)
- Steven Armenti (Medlogix)
- Stephen Pontoni (Michigan Association for Justice)
- Jeffrey Junkas (American Property Casualty Insurance Association)
- Devin Hutchings (Eisenhower Center)
- Pam Feinberg-Rivkin
- Martha Levandowski
- Kathleen Coll
- Karen Gatko (McClaim Homecare)
- John Prosser (Home Partners Homecare)
- Kim Spanding (Onward Therapy Services)
- Michael Andary

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- Geoff Byron (Therasupport)
- John Cornack (Eisenhower Center)
- Tom Judd
- Amy Stewart (Stewart Rehab Services)
- Jeff Friend
- Lance Treece
- Chuck Seigerman
- Tammy Goulding (Rehab Without Walls)
- Gregory Kirk (Onward Therapy Services)
- Meg Scaling (Galaxy Brain & Therapy Center)
- Tim Mucha
- Monica VanAcker (Willowbrook Rehab Services)
- Sarah Gibbs (Rehab Pathways Group)
- Tobias Roberts (CRCI Case Management)
- Dan Bogosian (Eisenhower Center)
- Joseph Richert (Special Tree Rehab System)
- Connie Demeulenaere (Therapeutic Rehab)
- Karen Pusilo (Eisenhower Center)
- Matt Ingram
- Jennifer Johnson (Eisenhower Center)
- Amy Baranek (Eisenhower Center)
- Ron Kilpela (Eisenhower Center)
- Denny Nystrom
- Ghassan Souri (Assistive Technology of MI, Inc.)
- Margaret Lanham (Eisenhower Center)
- Ashley El-Asri (Eisenhower Center)
- Margaret Kroese (Hope Network Neuro Rehab)
- Michael Shoemaker (Michigan Physical Therapy Association)
- Debra Emery
- Marcia TeVelde (Northern Comfort Specialized Care, Inc.)
- Julie Novak (Michigan State Medical Society)
- Case Management Society of America Board of Directors – Detroit Chapter
- Chad Brendtke (Eisenhower Center)
- William Bloom, Ph.D.
- Tanja Taddonio (Eisenhower Center)
- Lynn Rhodes (Rehab Care Provider)
- Heidi Hess-Willis (Eisenhower Center)
- Charlie Avila (Eisenhower Center)
- Priscilla Scovic (Eisenhower Center)
- Fonda Wilson (Eisenhower Center)
- Don Lipsy (Sedgwick)
- Marsha Hacker
- Dianne Mateja (Review Works)
- Stacy Rudd (Eisenhower Center)
- Bernadette Skodack
- Lorraine Zorbo (AdvisaCare)

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- Kim Nolan (Progressive Alternatives)
- Linda Mound (Eisenhower Center)
- Elizabeth Gava (Eisenhower Center)
- Brittani Davis (Eisenhower Center)
- Stephanie Harris (Eisenhower Center)
- Brent Ewald
- Eric Poe (Citizen United Reciprocal Exchange Auto Insurance)
- Mark Schloemer (State Auto Insurance Companies)
- Mary Ellen Clark
- Laura Appel (Michigan Health & Hospital Association)
- Dyck Van Koevering (Insurance Alliance of Michigan)
- Katie Tucker (Sinus Dramis Law Firm), on behalf of: Coalition Protecting Auto No-Fault, Health Partners, Inc., Origami Brain Injury Rehab, and Rehab Without Walls, Inc.
- Michele Hibbert-Iacobacci (Mitchell International)
- Jeannie Kunz (Michigan Occupational Therapy Association)
- Nicole Whitlow (Auto Club Group)
- Erika Parker (Eisenhower Center)

11. Persons submitting comments of opposition:

There were no express comments of opposition. Please see the list of names in response to question no. 10 for names of commenters who recommended changes to the proposed rules via either written comment or during the virtual public hearing held on April 10, 2020.

12. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for change	Rule number & citation changed
1	KJ Miller / Michigan Catastrophic Claims Association (MCCA)		The MCCA requested revisions to clarify that the rules apply equally to the MCCA as to insurers. In addition, the MCCA requested that a subrule be added to reflect the existing practice that MCCA utilization review decisions are relied upon by servicing carriers.	The requested changes were made to the revised proposed rules for clarification.	R 500.63(1)-(4); R 500.64(1)-(3); R 500.65(1)-(3),(5)

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2	Lynn Brouwers / Rainbow Rehabilitation	The word “medical” in the definition of “medical care” could be interpreted to exclude non-medical treatment, training, products, services, and accommodations.		To avoid the potential for any misinterpretation of covered benefits, the revised proposed rules re-state “treatment, training, products, services, and accommodations” instead of “medical care” throughout the proposed rules as appropriate.	R 500.61(i), (1); R 500.62 (1)(a); R 500.62(1)(b) (i)-(iii); R 500.62(1)(c); R 500.63(1), (2); R 500.64 (1),(3); R 500.66(1), (2)
3	Maureen Kinsella / MBIPC	The word “medical” in the definition of “medical care” could be interpreted to exclude non-medical treatment, training, products, services, and accommodations.		To avoid the potential for any misinterpretation of covered benefits, the revised proposed rules re-state “treatment, training, products, services, and accommodations” instead of “medical care” throughout the proposed rules as appropriate.	R 500.61(i), (1); R 500.62 (1)(a); R 500.62(1)(b) (i)-(iii); R 500.62(1)(c); R 500.63(1), (2); R 500.64 (1),(3); R 500.66(1), (2)

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4	Tim Hoste / Michigan Brain Injury Provider Council (MBIPC)		The word “medical” in the definition of “medical care” could be interpreted to exclude non-medical treatment, training, products, services, and accommodations.	To avoid the potential for any misinterpretation of covered benefits, the revised proposed rules re-state “treatment, training, products, services, and accommodations” instead of “medical care” throughout the proposed rules as appropriate.	R 500.61(i), (1); R 500.62 (1)(a); R 500.62(1)(b) (i)-(iii); R 500.62(1)(c); R 500.63(1), (2); R 500.64 (1),(3); R 500.66(1), (2)
5	KJ Miller / MCCA		The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”	The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)
6	Lynn Brouwers / Rainbow Rehabilitation	The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”		The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)

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7	Stephen Pontoni / Michigan Association for Justice		The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”	The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)
8	Don Lipsy / Sedgwick Claims		The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”	The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)
9	Laura Appel / Michigan Health & Hospital Association (MHA)		The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”	The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)

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10	Dyck Van Koevering / Insurance Alliance of Michigan (IAM)		The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”	The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)
11	Michele Hibbert-Iacobacci / Mitchell International		The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”	The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)
12	Nicole Whitlow / Auto Club Group		The proposed rules lack sufficient detail to define what standards would be used in relation to the defined term “generally accepted standards.”	The revised proposed rules include a revised definition of “medically accepted standards” to define what standards will be used and to provide clarification.	R 500.61(i)

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13	Katie Tucker (for Sinas Dramis Law Firm, Coalition Protecting Auto No-Fault, Health Partners, Inc., Origami Brain Injury Rehab, and Rehab Without Walls, Inc.)	Insurers have long used third-party medical review organizations (MROs) to perform internal utilization review. Therefore, the rule that purports to grant insurers permission to utilize MROs seems unnecessary and confusing.		The rule was stricken, and a new provision was added to clarify that insurers may still use MROs.	The original draft R 500.68 (regarding medical review organizations) was stricken; R 500.62(d) was revised.
14	KJ Miller / MCCA		Utilizing the provider's average hourly rate to compensate the provider for document provision and/or a written response to an insurer's request for an explanation is too variable. Recommends using "reasonable and customary fee."	The revised rate is a "reasonable and customary fee."	R 500.63(4)

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15	Jeffrey Junkas / American Property Casualty Insurance Association (APCIA)		Utilizing the provider's average hourly rate to compensate the provider for document provision and/or a written response to an insurer's request for an explanation is too variable. Recommends using "reasonable and customary fee."	The revised rate is a "reasonable and customary fee."	R 500.63(4)
16	Nicole Whitlow / Auto Club Group		Utilizing the provider's average hourly rate to compensate the provider for document provision and/or a written response to an insurer's request for an explanation is too variable. Recommends using "reasonable and customary fee."	The revised rate is a "reasonable and customary fee."	R 500.63(4)
17	Tim Hoste / MBIPC		The timelines in R 500.64 and R 500.65 should be abbreviated.	Abbreviated timelines will lead to swifter resolutions.	R 500.63(2); R 500.65(1)
18	Lynn Brouwers / Rainbow Rehab	The timelines in R 500.64 and R 500.65 should be abbreviated.		Abbreviated timelines will lead to swifter resolutions.	R 500.63(2); R 500.65(1)

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19	Jeffrey Junkas / APCIA		The timelines in R 500.64 and R 500.65 should be abbreviated.	Abbreviated timelines will lead to swifter resolutions.	R 500.63(2); R 500.65(1)
20	Laura Appel / MHA		The timelines in R 500.64 and R 500.65 should be abbreviated.	Abbreviated timelines will lead to swifter resolutions.	R 500.63(2); R 500.65(1)
21	Nicole Whitlow / Auto Club Group		The timelines in R 500.64 and R 500.65 should be abbreviated.	Abbreviated timelines will lead to swifter resolutions.	R 500.63(2); R 500.65(1)
22	Tim Hoste / MBIPC		R 500.66(7) should be revised to clarify that providers are not required to exhaust their administrative remedies via the utilization review process.	The revised rules clarify that providers can appeal to DIFS in two circumstances: 1) when an insurer denies a claim on the basis that a provider overutilized care without requesting additional information from the provider; or 2) when an insurer has requested an explanation from a provider for the necessity of the care and subsequently denies the claim. The revised rules also clarify that any decision made by DIFS under the utilization review process is subject to judicial review as a contested case under MCL 500.244.	R 500.64(3); R 500.65(7)

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23	Maureen Kinsella / MBIPC	R 500.66(7) should be revised to clarify that providers are not required to exhaust their administrative remedies via the utilization review process.		The revised rules clarify that providers can appeal to DIFS in two circumstances: 1) when an insurer denies a claim on the basis that a provider overutilized care without requesting additional information from the provider; or 2) when an insurer has requested an explanation from a provider for the necessity of the care and subsequently denies the claim. The revised rules also clarify that any decision made by DIFS under the utilization review process is subject to judicial review as a contested case under MCL 500.244.	R 500.64(3); R 500.65(7)

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24	Lynn Brouwers / Rainbow Rehab	R 500.66(7) should be revised to clarify that providers are not required to exhaust their administrative remedies via the utilization review process.		The revised rules clarify that providers can appeal to DIFS in two circumstances: 1) when an insurer denies a claim on the basis that a provider overutilized care without requesting additional information from the provider; or 2) when an insurer has requested an explanation from a provider for the necessity of the care and subsequently denies the claim. The revised rules also clarify that any decision made by DIFS under the utilization review process is subject to judicial review as a contested case under MCL 500.244.	R 500.64(3); R 500.65(7)

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25	Stephen Pontoni / MAJ		R 500.66(7) should be revised to clarify that providers are not required to exhaust their administrative remedies via the utilization review process.	The revised rules clarify that providers can appeal to DIFS in two circumstances: 1) when an insurer denies a claim on the basis that a provider overutilized care without requesting additional information from the provider; or 2) when an insurer has requested an explanation from a provider for the necessity of the care and subsequently denies the claim. The revised rules also clarify that any decision made by DIFS under the utilization review process is subject to judicial review as a contested case under MCL 500.244.	R 500.64(3); R 500.65(7)

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26	Katie Tucker (for Sinas Dramis Law Firm, Coalition Protecting Auto No-Fault, Health Partners, Inc., Origami Brain Injury Rehab, and Rehab Without Walls, Inc.)	R 500.66(7) should be revised to clarify that providers are not required to exhaust their administrative remedies via the utilization review process.		The revised rules clarify that providers can appeal to DIFS in two circumstances: 1) when an insurer denies a claim on the basis that a provider overutilized care without requesting additional information from the provider; or 2) when an insurer has requested an explanation from a provider for the necessity of the care and subsequently denies the claim. The revised rules also clarify that any decision made by DIFS under the utilization review process is subject to judicial review as a contested case under MCL 500.244.	R 500.64(3); R 500.65(7)
27	Julie Novak / Michigan State Medical Society		Insurers should pay interest on overdue benefits.	An additional provision was added to clarify that insurers remain obligated by statute (MCL 500.3142) to pay interest on overdue benefits, regardless of whether the provider files an appeal with DIFS.	R 500.65(6)

13.Date report completed:

6/30/2020