

# Cases and Rulings in the News States N-Z, Texas Comptroller of Public Accounts, TX—Letter No. 202005027L, Texas, (May 15, 2020)

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Texas Comptroller of Public Accounts STAR System

202005027L

May 15, 2020

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RE: Private Letter Ruling No. 20190613133913

\*\*\*\*\* , Taxpayer No. \*\*\*\*\*

Dear \*\*\*\*\*

We issue this private letter ruling in accordance with Rule 3.1, Private Letter Rulings and General Information Letters. <sup>1</sup> We are responding to your requests dated June 13, 2018, June 3, 2019 and subsequent information provided on July 24, 2018 and March 5, 2019, via e-mail. Detrimental reliance relief is provided in accordance with Rule 3.10, Taxpayer Bill of Rights.

You requested guidance on the taxability of medical review services provided to the insurance industry.

## **Facts Presented**

COMPANY (Taxpayer) provides the insurance industry with services to review insured patients' requests for payment of medical treatments. Taxpayer's services include utilization review, peer review, and an independent medical examination service.

An insurance company (insurer) hires Taxpayer to provide its utilization review service. Taxpayer provides a medical professional to review an insured's (patient) medical treatment. The medical professional is a state-licensed utilization review agent, typically a licensed physician. The insurer could have several different reasons for requesting a utilization review including (1) the utilization review is mandated by the Texas Department of Insurance if the medical claim is made under the Texas workers' compensation system; (2) an insurer may independently request a utilization review for reducing overutilization (i.e., reducing inappropriate costs); or (3) the utilization review is requested by an insurer as a mechanism to ensure the most appropriate and necessary medical treatment is given to the patient.

The records examined include the patient diagnoses, patient complaints, plan of medical care, progression and completed medical care. Taxpayer's medical professional applies evidence-based guidelines to the information they gather and documents the overall findings to ensure the medical services provided comply with the appropriate medical guidelines. The Taxpayer's medical professional will document the extent from which the provided services differ from the appropriate guidelines, the treatment required, the patient's response to the treatment and diagnostic abnormalities.

Taxpayer provides insurers a peer review service which is a more extensive version of the utilization review service. The peer review service involves the examination of medical records and clinical information by a Texas licensed physician. The physician reviews the claim and medical records to determine if a treatment or progression of treatment is appropriate and compares it to evidence-based guidelines in doing so. Taxpayer provides the peer review service when an insurer cannot authorize payment of certain medical treatments as a result of a utilization review or when medical services do not comply with established evidence-based guidelines as required by the Texas Department of Insurance.

The independent medical exam service is Taxpayer's most extensive review service. Like Taxpayer's other

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services, Taxpayer provides this service to insurers to determine the appropriateness of medical treatments provided to a patient. An insurance adjuster, employed by the insurer, may request an independent medical exam when the adjuster believes a patient's standard of care deviates from evidence-based guidelines. An independent physician with no prior knowledge of a patient's case performs a comprehensive review of the patient's records and conducts a physical examination of the patient. The physician determines the appropriateness or necessity of treatments, any deviations from evidence-based guidelines, and the reasons for the deviations, based on information gathered during the independent medical examination process.

**Question, Ruling, and Analysis**

Our restatement of your question is shown below, followed by our response and analysis.

*Question:* Are Taxpayer's medical review services taxable insurance services?

*Ruling:* Taxpayer's utilization review, peer review, and independent medical review services are taxable insurance services. See Rule 3.355 (Insurance Services).

*Analysis:* Texas imposes a sales tax on each sale of a taxable item in this state. Section 151.051 (Sales Tax Imposed). Section 151.010 (Taxable Item) defines a taxable item to include tangible personal property and taxable services. Section 151.0101 ("Taxable Services") provides a list of taxable services that includes insurance services.

Section 151.0039(a) ("Insurance Service") defines an insurance service as insurance loss or damage appraisal, insurance inspection, insurance investigation, insurance actuarial analysis or research, insurance claims adjustment or processing, or insurance loss prevention service. Rule 3.355(a)(8) further defines "insurance claims adjustment or claims processing" as any activity to supervise, handle, investigate, pay, settle, or adjust claims or losses. Rule 3.355(b) states insurance services performed on behalf of an insurance carrier are taxable.

In Taxpayer's utilization review service, a physician reviews a claim to determine if a treatment is the appropriate medical treatment the patient needs to receive. While the utilization review service may be provided at any point in the treatment process, in most cases it is performed before treatment begins. Taxpayer's utilization review service meets the definition of an insurance claims adjustment or claims processing service, which is an insurance service under Rule 3.355(a)(8). In STAR Accession No. 9110T1139A12 (Oct. 9, 1991) the Comptroller concluded that a similar utilization review service was an insurance claims adjustment or claims processing service under Rule 3.355(a)(8).

Taxpayer's peer review and independent medical exam services are performed by licensed physicians. Taxpayer's peer review involves the examination of an insurance claim and medical records. Taxpayer's independent medical review service includes an in-depth review of the patient's records, and a physical examination of the patient, to determine if a treatment is appropriate. Taxpayer's peer review and independent medical review services are performed on behalf of an insurance agency to determine the appropriateness of services provided to the patient. In Comptroller's Decision No. 27,950 (1991) the ALJ concluded that a service provided to an insurer for the purpose of evaluating the validity and scope of an insured client's claim were taxable insurance services. Taxpayer's peer review and independent medical review services are insurance claims adjustment or claims processing services subject to Texas sales and use tax. Rule 3.355(b).

Nontaxable medical insurance services described in Rule 3.355(c)(2) are medical services provided to the patient for the patient's health and benefit. See Comptroller's Decision No. 27,950. STAR Accession No. 200511408L (Nov. 1, 2005) does not accurately represent current comptroller policy regarding nontaxable medical insurance services under Rule 3.355(c)(2) and will be superseded.

STAR documents cited can be found on the Comptroller's State Tax Automated Research (STAR) system. The Texas Tax Code, Texas Administrative Code, and the STAR system are accessible at [www.comptroller.texas.gov/taxes/](http://www.comptroller.texas.gov/taxes/).

If you have questions about this private letter ruling, please email us through our website at <https://comptroller.texas.gov/web-forms/tax-help/> and reference Private Letter Ruling No. 20190613133913.

Sincerely,

Tax Policy Division – Indirect Taxes  
Texas Comptroller of Public Accounts  
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#### Footnotes

- <sup>1</sup> Unless otherwise indicated, all references to "Section" are to the Texas Tax Code, and all references to "Rule" are to Title 34 of the Texas Administrative Code.