



Texas Association of Health Plans
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June 9, 2026

Re: Informal Draft Rule: §371.1725 (RAC Managed Care)

The Texas Association of Health Plans (TAHP) appreciates the opportunity to comment on the OIG's informal draft rule implementing HB 142 (89th Legislature), which expands the Medicaid Recovery Audit Contractor (RAC) program to cover managed care. TAHP and its member plans support program integrity efforts and the goal of ensuring that state Medicaid dollars are spent appropriately. We offer the following comments to ensure the rule is appropriately scoped and consistent with both statute and sound policy.

I. RAC Authority Should Be Expressly Limited to Claims Involving State Funds

The RAC program exists to identify and recover Medicaid overpayments, that is, payments made with state and federal funds that should not have been made. The draft rule does not expressly limit RAC reviews to claims where state funds are actually at risk, and TAHP urges the OIG to add this limitation explicitly.

MCOs routinely approve services and payments that exceed the Medicaid benefit package or benefit limits as a matter of member care, absorbing the cost as an unallowable expense with no state funds involved. Common examples include high-cost drugs that are not yet allowable costs, durable medical equipment approvals beyond benefit limits, and other case-by-case authorizations made at MCO discretion. These are legitimate business decisions by MCOs, made in the interest of their members, and the costs are appropriately classified as unallowable on the MCO's Financial Statistical Report (FSR).

Allowing the RAC to recoup these payments would be both legally unsupported and deeply counterproductive. There are no state funds at risk in these scenarios, and the MCO has already absorbed the cost. RAC recoupment authority should not extend to purely private expenditures. More importantly, permitting such reviews would create a significant disincentive for MCOs to go above and beyond for their members. If a plan risks a RAC recoupment every time it approves a service outside the standard benefit, the rational response is to stop doing so, a result that would lead to worse outcomes for Medicaid enrollees.

The correct mechanism for reviewing whether MCOs are properly characterizing unallowable expenses is the FSR audit process, which already serves that function. TAHP recommends that the rule be amended to expressly state that RAC reviews are limited to claims and encounters for



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which state funds are at risk, and that the RAC has no authority to recoup payments that are considered unallowable for the purposes of the MCO's FSR.

II. MCOs Should Have the Same Appeal Rights as Providers

The draft rule describes a RAC review process in which providers have the opportunity to submit records and appeal determinations. TAHP supports those provider protections but notes that the rule does not clearly extend equivalent appeal rights to MCOs. This is an omission that should be corrected.

MCOs are not passive conduits in the RAC process. They are responsible for producing records, and under the draft rule, an MCO's failure to timely produce records can itself result in a technical denial and recovery. Moreover, RAC determinations may result in recoveries imposed on the MCO, including in situations where the underlying clinical or coverage decision was made appropriately. MCOs should have a clear, formal right to contest RAC determinations through the same appeal process available to providers.

TAHP also recommends that the rule expressly prohibit any recovery, whether from a provider or an MCO, until all applicable appeal rights have been fully exhausted. Requiring payment before the conclusion of the appeals process would impose significant financial and administrative burdens on MCOs and could result in erroneous overpayments that must later be clawed back.

Finally, TAHP notes that the draft rule contemplates that second-level appeals may be delegated to an external vendor. TAHP strongly urges the OIG to ensure that any such vendor is a genuinely independent third party with no financial relationship to the RAC contractor. The integrity of the appeals process depends on it.

III. The Rule Should Allow Extended Record Production Timelines for Large Requests

The draft rule requires providers and MCOs to produce requested records within the time period specified by the RAC or 30 calendar days from receipt, whichever is later. While TAHP appreciates that the rule establishes a floor of 30 days, a single timeline may be inadequate when the RAC requests a large volume of records.

Locating, compiling, and submitting a large volume of records is a resource-intensive undertaking, and 30 days may not be sufficient to do so completely and accurately. Failure to meet the deadline, for any reason, can result in a technical denial and recovery. TAHP recommends that the rule be amended to provide an extended production timeline when the volume of records requested is significant. For example, when a request exceeds 50 records, plans should have 60 calendar days



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from receipt to respond. This would ensure that health plans can respond fully and accurately to large-volume requests without being penalized for circumstances outside their control.

IV. The OIG Has Improperly Expanded MCO Reporting Obligations to Include “Waste”

The RAC rule correctly reflects what state law requires: proposed §371.1725(b)(7) limits RAC referrals to “suspected fraud or abuse, as defined in Texas Government Code §544.0001.” TAHP commends the OIG for tracking statutory language here, and we use this opportunity to highlight a related problem in the OIG’s existing MCO reporting rules.

Chapter 544 of the Texas Government Code uses the word “waste” deliberately and repeatedly, including in the chapter’s title and in provisions governing OIG coordination with the OAG. However, Subchapter H, titled “Managed Care Prevention and Investigation of Fraud and Abuse,” conspicuously omits it. That subchapter requires MCOs to investigate “fraudulent claims and other types of program abuse” and comply with “mandatory reporting of possible acts of fraud or abuse.” The legislature knew how to include “waste” when it meant to. It did not include it here.

Despite this, the MCO rules expand Subchapter H to require MCOs to report waste, first by adopting a definition of “waste” that does not appear in the statute, and then by inserting that term throughout the MCO reporting requirements. The rules changed the statutory “fraud and abuse prevention plan” to a “plan to prevent and reduce *waste*, abuse, and fraud,” changed the requirement to investigate “fraudulent claims and other types of program abuse” to “possible acts of *waste*, abuse, or fraud,” and changed “mandatory reporting of possible acts of fraud or abuse” to “mandatory reporting of possible acts of *waste*, abuse, or fraud.”

While TAHP commends the OIG for proposing RAC rules that align reporting requirements with statute, we would encourage the office to consider a separate rulemaking that would also align MCO reporting requirements with state law by limiting reporting requirements to fraud and abuse as the legislature intended.

TAHP appreciates the OIG’s engagement on these issues and looks forward to continued dialogue as this rule moves through the formal rulemaking process.

Respectfully submitted,

A handwritten signature in black ink that reads "Jamie Dudensing". The script is fluid and cursive, with a large, stylized "J" and "D".



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